

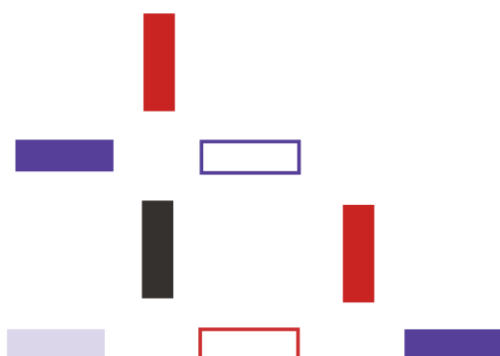


EIC FUND INVESTMENT GUIDELINES

(Horizon Europe Compartment)

Version: December 2023

These Investment Guidelines are intended to provide information to potential beneficiaries and co-investors on the strategy and conditions under which the EIC Fund will make investment and divestment decisions. They constitute an update from previous versions, providing among others an updated definition of a qualified investor and an updated description of possible investment scenarios, as well as new clauses covering EIC Fund follow-on investments and exits. The Investment Guidelines ensure that the EIC investments fulfil the objectives to support high potential startups and SMEs to accelerate their scale up and to catalyse additional investors. This text is applicable to the EIC Fund Horizon Europe compartment.



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EIC Fund Horizon EUROPE Compartment

1. INVESTMENT RULES

1.1. Investment Restrictions

1.1.1. The Compartment is subject to the Investment Restrictions set out in the General Section of the EIC Fund Memorandum.

1.2. Investment Objective

1.2.1. The objective of the Compartment is to invest in EIC Fund Final Recipients which develop or deploy breakthrough technologies and disruptive and market creating innovations (the Investment Objective).

1.2.2. The Compartment aims to fill a persistent critical financing gap in the European technology transfer market: Despite the channelling of significant amounts of grant funding to research and innovation projects in Europe by EU and national schemes, very few operations subsequently manage to attract investment and reach the commercialisation and scale-up stages.

1.3. Investment Strategy

1.3.1. To achieve its Investment Objective, the Compartment may invest directly in equity securities or equity-related securities (including preferred equity, convertible debt, options, warrants or similar securities in accordance with the Compartment's Investment Guidelines) in an EIC Fund Final Recipient.

1.3.2. The Compartment provides the investment component of the EIC blended finance subject to the maximum investment amount set by the EU Commission (in particular in equity or quasi-equity). The final award of the investment component under the EIC blended finance is subject to overall due diligence by the External AIFM and the Adviser in accordance with the Compartment's Investment Guidelines.

1.3.3. Candidate companies will apply to the EIC Accelerator through public calls for proposals published by the EU Commission. The EISMEA will collect and evaluate Accelerator proposals. The EU Commission will then select those Accelerator actions to be supported with an indicative EIC blended finance amount, which may under conditions¹ consist of the combination of a grant with an investment, a grant only, or and if so requested only an investment support. The EU Commission will indicate in its award decision whether a company requires specific safeguards to protect European interests in strategic areas. The Commission may designate a list of non-eligible countries

¹ See EIC Work Programme.

for the purpose of protecting European interests in strategic areas in a specific company in such an award decision.

- 1.3.4. In such cases, the EIC Fund will take at least one investment-related measure listed in Sections 1.7, 1.27, 1.29, 1.42, 1.53 1.64 or 1.78 of these Investment Guidelines, including, for example, investing by acquiring a blocking minority allowing the Compartment to prevent the entry of new investors established in non-eligible countries for the purpose of the above-mentioned decision, as well as new investors effectively controlled by companies or nationals from such countries. In such cases the Compartment can invest via equity on a stand-alone basis, without matching co-investors, if needed. The EIC Fund Final Recipients in question will be automatically considered for possible Follow-on Investments in accordance with the provisions in Section 1.64 of this Special Section.
- 1.3.5. Where the EIC support awarded by the EU Commission is conditioned to the acquisition of a blocking minority by the Compartment and in order to align interests, the Compartment may opt to substitute direct blocking minority by a shareholder agreement providing for similar guarantees regarding European interests in strategic areas.
- 1.3.6. Following selection, the EISMEA will negotiate and sign a contract describing the action and providing already for the grant component of the awarded EIC blended finance after a single award decision is adopted by the EU Commission. In parallel, the EISMEA will channel actions selected to the Compartment to process the awarded indicative investment component (due diligence, market assessment and identification of co-investment or syndication opportunities, preparation of the possible term-sheet, approval by the External AIFM upon recommendation from the Adviser, negotiation of the investment documentation, etc.).
- 1.3.7. Once concluded, elements related to the investment will be attached to the Accelerator contract through an amendment, reflecting the agreed investment amount, instalments of the investment and related milestones or deliverables, and any agreed change to the action (activities, deliverables, milestones), in order to ensure its unicity and the consistent implementation and management of both support components. Other elements of the investment agreement, in particular terms and Shareholders agreements, will be kept confidential by the EIC Fund and its Service Providers.

1.4. Compartment investment process

- 1.4.1. All investment and divestment decisions for the account of the Compartment will be made by the External AIFM.
- 1.4.2. [Step 1] Proposals selected by the EU Commission in a single award decision or other implementing decision, including a maximum

investment amount are channelled to the External AIFM for an initial assessment.

- 1.4.3. [Step 2] Following this initial assessment, the cases will be categorised in accordance with the various possible investment scenarios (“**Buckets**”).
- 1.4.4. [Step 3] The Adviser will undertake financial due diligence (unless performed by co-investors). In parallel, know your customer (KYC)-compliance checks will be performed on the target companies by the External AIFM.
- 1.4.5. [Step 4] The Adviser will discuss potential draft financing terms with the beneficiary and co-investors (if any) [to be approved by the External AIFM], or advise the External AIFM in case of alternate investors. The External AIFM will examine the due diligence together with the structuring proposal from the Adviser.
- 1.4.6. [Step 5] The External AIFM will decide on financing operations, which will either approve (sometimes with conditions), including the amount and terms, or reject the operation.
- 1.4.7. [Step 6] Provided that the External AIFM has approved the investment, the Adviser, will guide the work of the lawyers for each specific transaction leading to legal documents, which will be signed by the External AIFM.
- 1.4.8. [Step 7] The External AIFM will do, helped by the Adviser, which assumes an observer function in each EIC Fund Final Recipient the monitoring, milestone disbursements, reporting and exit.
- 1.4.9. All decisions related to the investments have to be compliant with the Compartment’s Investment Guidelines and will be made by the External AIFM.

2. INVESTMENT GUIDELINES

2.1. Target company development stage: Pre-Seed, Seed and Early-stage SMEs, and small mid-caps²

- 2.1.1. Eligible applicants under EIC Accelerators are for-profit highly innovative SMEs, including start-ups and early-stage companies and

² An enterprise within the meaning of Article 1 of the Title I of the Annex of the EU Commission SME Recommendation which (i) has up to 499 employees calculated in accordance with Articles 3, 4, 5 and 6 of the Title I of the Annex of the EU Commission SME Recommendation, and (ii) is not a micro, small or medium-sized enterprise as defined in the EU Commission SME Recommendation.

small mid-caps, from any sector, and typically with a strong intellectual property component.

- 2.1.2. The EIC Accelerator support aims to address high-risk projects that are not yet sufficiently attractive for investors, also considering the scale of investment required, with the aim to de-risk such projects and catalyse private investment throughout the lifetime of the EIC investment thanks to the leverage provided by the EIC blended finance.

2.2. Type of innovations

- 2.2.1. The Compartment will support different types of innovation, in particular those based on deep-tech or radical thinking, but also social innovation.
- 2.2.2. For the purpose of the present document, “deep-tech” refers to a technology based on cutting-edge scientific advances and discoveries. It is characterised by the need to stay at the technological forefront by constant interaction with new ideas and results from the lab. The deep tech definition is distinct from ‘high tech,’ which tends to refer only to R&D intensity.
- 2.2.3. Whilst open to innovation in all areas presenting high technological or market or financial risks, the EIC Accelerator may also focus part of its support, provided that it cannot be financed by the implementing partners of InvestEU, on capital-intensive strategic technologies.

2.3. Protection of European interests in strategic areas

- 2.3.1. In case the EU Commission identifies a strategic area in relation to a specific case in its award decision in order to protect European interests in such strategic area in the case in question, the Compartment will take at least one of the investment-related measures in relation to the EIC Fund Final Recipient concerned set out in the following Sections of this Special Section: 1.27 (secondary share purchase), 1.29 (acquiring a blocking stake), 1.42 (d) (i) (investing in EIC candidate companies even if potential investors show immediate interest in providing the full investment), 1.53 (the disposal of Compartment’s interest in the investing scheme via a secondary sales transaction), 1.64 (a) (Follow-on investments) or 1.78 (securing European ownership of intellectual property and of the company)

2.4. Geographical scope

- 2.4.1. Eligible companies must be established and operating in the EU Member States or Associated Countries to Horizon Europe Pillar III Equity component.
- 2.4.2. The External AIFM may decide to invest for the compartment not in the entity having submitted the proposal (“operating company”) but in its holding or parent established in the territory of a EU Member State or a Country Associated to Horizon Europe Pillar III, upon a

recommendation from the investment advisor that contains: (i) justification of the need, in the professional judgement of the investment advisor, to invest in the holding or parent in the specific case in question; and (ii) confirmation that the holding or parent fulfils all eligibility criteria, in particular SME status and non-bankability for the purpose of the EIC Accelerator.

2.4.3. When negotiating, implementing and monitoring investments, the External AIFM, with the support of the Adviser, will ensure that supported companies keep most of their value, including their intellectual property, in the EU or in Associated Countries, in order to contribute to their economic growth and job creation.

2.4.4. Having regard to the Compartment's public policy role, the External AIFM, with the support of the Adviser, will also take into account the EU initiatives to create a Capital Markets Union, including an attractive landscape for the financing of companies in the European Union that ensures a very high level of protection, effectiveness and easiness of operation.

2.4.5. In order to comply with the EU guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards (Commission Notice 2013/C 205/05) (OJEU C205 of 19.07.2013 – EN), which stipulate that only Israeli entities having their place of establishment within Israel's pre-1967 borders and not operating in the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem, either in the framework of EU-funded financial instruments or otherwise, are eligible³, the Compartment shall ensure that any agreement signed between the Compartment and an Israeli EIC Fund Final Recipient shall include by default the following article: *“Following the signature by the State of Israel of the agreement to join the Horizon Europe programme, the new EU research and innovation programme, dated 6 December 2021 and the terms set out therein, the [EIC Fund Final Recipient's name to be included] by signing this agreement commits to comply with the EU Guidelines (Commission Notice 2013/C 205/05) (OJEU C205 of 19.07.2013 – EN) on the eligibility of Israeli entities for financial instruments funded by the EU from 2014 onwards”*.

2.5. Exclusions

2.5.1. In addition to the exclusion laid down in the General Section of the EIC Fund Memorandum and in the EU Financial Regulation including Article 136 (Exclusion criteria and decisions on exclusions) and other applicable legislation in particular the restrictive measures adopted on the basis of Article 215 TFEU, the Compartment shall not invest in economic sectors that are considered incompatible with the ethical and social basis of the Horizon Europe mission. Such restrictions are

³ Activities which, although carried out in the mentioned territories, aim at benefiting protected persons under the terms of international humanitarian law who live in these territories and/or at promoting the Middle East peace process in line with EU policy are also eligible (Point 15 of the EU guidelines).

summarised in the Horizon Europe Regulation including Article 19 (Ethical principles), the EU Financial Regulation including Article 136 (Exclusion criteria and decisions on exclusions) and other applicable legislation. Companies benefitting from the EIC support shall not engage into these sectors.

- 2.5.2. In addition, each EIC Fund Agreement will contain the undertakings and/or representations by each EIC Fund Final Recipient set out in Annex 2 in order to comply with certain exclusion criteria as at the date of the Compartment's initial Investment, namely:
- 2.5.3. undertakings and/or representations, consistent with prevailing market practice for Luxembourg funds, intended to fulfil the requirements listed in the EU Financial Regulation (Articles 136 to 141 and 155.2), relating to its financial and legal standing and that of the natural and legal persons with which it has financial or other relations as further specified in 4 to this Memorandum; and
- 2.5.4. undertakings and/or representations, consistent with prevailing market practice for Luxembourg funds, intended to fulfil the ethical principles of Article 18 and 19 of the Horizon Europe Regulation as further detailed in the Horizon Europe Guidance "How to complete your ethics self-assessment"⁴.

2.6. Investment size and equity stake targets

- 2.6.1. The EIC Accelerator supports innovators and entrepreneurs. Starting at the earliest at TRL 5 down to TRL 9, the support aims at bringing their innovation to market deployment and scale-up.
- 2.6.2. Adding to a grant component for TRL 5 to 8 activities, representing up to seventy per cent (70%) of these activities' costs, the investment component may be tailored and take different forms. It may consist of convertible instruments (i.e. loans/bonds/notes and other similar instruments such as participation rights and SAFE), a combination of such quasi-equity instruments and direct equity, or direct equity. The Investment component may cover from seed-stage up to growth equity rounds - to support the innovator along its journey from concept to scale up.
- 2.6.3. In some cases, including in relation to European interests in strategic areas clauses in this Special Section (for example, when linked to the exercise of pre-emptive-rights to buy out existing investors in order to secure European ownership to protect European interests in strategic areas, as identified by the award decision by the EU Commission related to the specific case in question and when required to align with the conditions set up for an investment round so as to restructure the cap table of pipeline or portfolio companies), it is confirmed that the EIC Fund can make secondary share purchases. Such decisions will be

⁴ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/how-to-complete-your-ethics-self-assessment_en.pdf

taken by the EIC Fund on a case-by-case basis following the necessary authorizations in the Commission award decision in question.

- 2.6.4. For this purpose, the EIC Fund, subject to the applicable company law in the jurisdiction in question, will strive to have a preferential right (right of first refusal) to purchase the shares of any other exiting shareholder on a pro-rata basis, and could exercise such preferential right inter alia in case the shares would be otherwise sold to a company established to in/an individual of a non-eligible country for the purposes of economic security considerations
- 2.6.5. The Compartment's investment (in particular equity or quasi-equity) will range between five hundred thousand euro (EUR 500,000) and fifteen million euro (EUR 15,000,000) per company, without prejudice to the specific provisions of the EIC Work Programme, which may provide for a higher amount in specific cases.
- 2.6.6. Where it provides equity or quasi-equity, the Compartment will target minority ownership stakes (aiming in general at stakes between ten per cent (10%) and twenty per cent (20%)) It may acquire a blocking stake (through minority or majority ownership) in order to protect European interests in strategic areas as identified by the award decision by the EU Commission related to the specific case in question
- 2.6.7. The investment amount may be lower or higher⁵ than the one proposed by the independent expert evaluators during the evaluation process run by the EISMEA. Maximum investment amounts per company will have to be authorised *ex ante* through an EU Commission award decision covering the specific case in question. Based on the EU Commission award decision, the External AIFM will decide on the overall investment package for the Compartment and has the right to reduce or even reject the investment that was initially authorised by the EU Commission.
- 2.6.8. In the case of investment in tranches, the External AIFM will take a position on the entire amount considered for funding. The timing and conditions for investment in tranches (upon achievement of predefined milestones) will be negotiated with the EIC Fund Final Recipient, agreed and managed by the External AIFM, under the operational coordination of the EISMEA as long as the grant component of the EIC blended finance is in force.
- 2.6.9. For the purposes of these guidelines, milestones will be meaningful achievements in the development of the innovative project of a company, reflecting maturity stages and TRLs achieved, including co-investment leveraged. The EIC Accelerator support will finance the activities of the company as long as relevant milestones are achieved,

⁵ Subject to the terms of the EU Commission selection decision.

except where the expected market deployment, especially in the EU, cannot realistically be met.

- 2.6.10. A material breach of the EIC Accelerator contract related to the grant component shall prevent the Compartment from further investing in a company and eventually lead to early exit, and vice-versa.

2.7. Investment/co-investment scenarios

- 2.7.1. From the onset and during the lifetime of the Compartment investment, and subject to non-disclosure obligations, the External AIFM will connect the potential investee company to the EIC Accelerator investor community ecosystem, to leverage co-investment opportunities.
- 2.7.2. EIC Selected Beneficiaries are also entitled to and even encouraged to seek on their side for co-investors, building on the EIC Accelerator support.
- 2.7.3. If the EIC Fund Final Recipient and the External AIFM, upon recommendation from the Adviser, consent to the proposed co-investment opportunity, financial and commercial due diligence and negotiations may then be performed jointly and in agreement with the potential co-investor(s), however under control of the External AIFM and the Adviser to ensure sufficient due diligence and implementation of required conditions to be included in the investment documentation.
- 2.7.4. The EIC Accelerator focusses on innovators and entrepreneurs, and complements the financial products offered by implementing partners under the InvestEU, which is investor and financial intermediary driven. It aims at directly de-risking selected operations in order to better bridge these two worlds and crowd-in investors. For that purpose, the EIC Accelerator is designed to fulfil the role of initial or first risk-taker, where needed.
- 2.7.5. Without prejudice to the provisions of Section **Error! Reference source not found.** of this Special Section, when investing in direct equity, hence for this Section excluding the investments in quasi-equity instruments, the Compartment will systematically seek co-investment from and syndication with other investors, at least on a matching basis 1:1 (and seeking a leverage effect of 1:3 throughout the investment horizon), and even alternate investors. It will aim to crowd-in significant and fit-for-purpose additional or alternate funding needed to successfully develop an innovation, deploy it to the market and scale-up, whilst ensuring its sustainability. In these cases, the Compartment should only invest if market support including from InvestEU cannot be secured.
- 2.7.6. In addition to enhancing the impact of the EU support and contributing to stimulate the overall European investment ecosystem, bridging with and crowding-in Qualified Investors at the earliest stage is essential for the success of the investee companies and their innovations. More

than funding only, “Qualified Investors” can add critical value to a company: they also have the knowledge, the expertise, the teams and the networks of contacts needed to help investee companies reinforce their teams and business strategies, and achieve a successful commercialisation and scale up in the specific verticals, in accordance with their high-growth potential and ambition.

- 2.7.7. Depending on the starting stage of the operation and its nature, investors may include Business Angels, Venture Capital funds, Impact investment funds, Family offices, Venture debt funds, National Promotional Banks and Institutions (NPBIs) or corporate venture arms.
- 2.7.8. Following an initial assessment implying some level of due diligence, including KYC compliance checks (led by the External AIFM and the Adviser), and market consultation (led by the Adviser), a transactions’ categorisation will be done by the Adviser into the “buckets” presented below.
- 2.7.9. This classification will not be static, as cases may be moved from one bucket to the other as the due diligence process evolves, based on its findings, or on the initiation of co-investment interest - resulting inter-alia from the de-risking operated by the EIC Accelerator support, or at later stage as the project evolves and milestones are reached.
- 2.7.10. **Bucket 0:** will include cases for which initial assessment or due diligence, at any stage, reports substantial negative issues preventing any investment.
- 2.7.11. Compared to the evaluation and selection process run by EISMEA, the due diligence that will be performed by the External AIFM and the Adviser is by definition a more in depth examination of an operation. Whilst its purpose is not to re-evaluate the proposal or question the rationale of the EIC Accelerator support awarded by the EU Commission but to implement its investment component, findings may lead to question the legality or the rationale of the operation.
- 2.7.12. Negative issues include but are not limited to: fraud, money issues listed in Article 155 (2) and (3) of the EU Financial Regulation like money laundering or tax avoidance, non-compliance issues including in relation to the Sanctions, exclusion criteria, misrepresentation, refusal or failure to submit requested information or lack of sufficient information for the Investment Committee to be able to take, in its professional judgement, a sufficiently informed decision, manifest error at the evaluation and selection process, substantial negative changes of circumstances (Material Adverse Changes - MAC) as compared to those existing at the time of the initial EU Commission

award, reputational risk for the EU, and other findings affecting the financial interests of the EU. For example:

- 2.7.13. The innovation does not show the expected solid, long-lasting competitive advantage and impact on the basis of which the operation was selected.
- 2.7.14. The team has changed since the evaluation and does not anymore gather the strong skills, capabilities and motivation needed to get the company off the ground and scale-up.
- 2.7.15. Other examples of MAC (Material Adverse Changes) have occurred since the initial assessment of the company undertaken by EISMEA, including major changes in management, changes in control, use of bad leaver provisions, serious litigation situations, including among Shareholders, or loss of major suppliers or clients or partners on which the company is heavily dependent.
- 2.7.16. The cap table evidences strong misalignment of existing shareholder's interest vis-a-vis the company, lack of sufficient incentive for founders and key team, etc.
- 2.7.17. The EIC Selected Beneficiary refuses or is unable to provide information considered necessary by the Investment Committee, in its professional judgement, to take a sufficiently informed decision, including information on an existing investor/shareholder and their ultimate beneficial owner(s), in relation among others to a possible reputational risk for the EU.
- 2.7.18. An existing shareholder and/or its ultimate beneficial owner (UBO) falls under the cases of exclusion from Union support in accordance with the EU Financial Regulation.
- 2.7.19. Financial data and documentation submitted at proposal stage contradicts company's books.
- 2.7.20. Alleged intellectual property is not directly owned by or accessible to the company or is the subject of litigation
- 2.7.21. An existing shareholder and/or its ultimate beneficial owner (UBO) is established in / is a national of a non-eligible country for the purposes of the award decision by the EU Commission related to the specific case in question aiming to protect European interests in strategic areas, or in the case a legal entity, is effectively controlled by companies or nationals from such countries.
- 2.7.22. Where no remedies are possible, the External AIFM will decide not to proceed with such investment, a decision that may lead the EU Commission to reconvene a jury of external independent experts to re-evaluate the proposal, condition its grant (only) support, but also

terminate or even cancel the already concluded EIC Accelerator contract depending on the case.

- 2.7.23. **Bucket 1:** will include cases that are not investor ready for regular investors yet, due to remaining very high risk despite the awarded EIC Accelerator support.
- 2.7.24. This lack of traction may result from various shortcomings, such as the very early stage of the underlying technology, a too long planned time to market, a too small market compared to the investment needed, the low readiness of the company to absorb additional equity in terms of its team or cap table, etc.
- 2.7.25. Three types of cases are envisaged – they do not constitute an exhaustive list of possible cases and are not mutually exclusive:
- 2.7.26. The EU Commission has awarded the support on the condition that it acquires a blocking minority, in order to protect European interests in strategic areas, as identified by the award decision by the EU Commission related to the specific case in question.
- 2.7.27. The External AIFM and the Adviser will perform due diligence on the potential EIC Fund Final Recipient and will proceed in principle with the awarded investment using quasi-equity or a combination of quasi-equity and equity or direct equity.
- 2.7.28. Without prejudice to the necessary flexibility required in each case, the External AIFM may offer to make its investment in at least two tranches in Bucket 1 cases, besides the possibility to provide a single tranche in the form of a convertible instrument.
- 2.7.29. In the first tranche, the Compartment would invest upon signature the maximum of either i) fifty per cent (50%) of the estimated Compartment investment, or ii) the unfunded cash needs of the company over a period of generally up to eighteen (18) months in the form of a convertible loan to be converted at the next qualified round. Consequently, and generally speaking, such convertible loan will have a maturity of generally eighteen (18) months, interest rates of eight per cent (8%) (eight per cent (8%) fixed interest, accruing and capitalized at prepayment or upon conversion) and standard discount rates at conversion depending on the length of its maturity (twenty per cent (20%) discount for eighteen (18) months maturity). The valuation to be taken into account if no round is achieved by maturity will in general be the post-money valuation resulting from the last round into the company or a lower amount if conditions have materially changed since the last investment round. The External AIFM, upon recommendation from the Adviser, may, on a case-by-case basis, decide to introduce a cap for the conversion of the Compartment convertible loan at the next round. In case the convertible loan reaches its maturity without occurrence of a qualified round sufficient to convert the full amount, the External AIFM, upon recommendation from the Adviser, will engage with the founders and other investors on a way forward. In addition, the External AIFM, upon recommendation

from the Adviser, may advise on potential co-investment opportunities for the subsequent round.

- 2.7.30. In the second tranche, the Compartment would invest in an equity round in principle the remaining estimated investment subject to the co-investment by private investors of an amount fully matching the totality of the Compartment investment, including the convertible loan provided by the Compartment in the first tranche. The EIC Fund may require that such private investors co-investing with the Compartment are Qualified Investors – with the purpose of both valuing the company on market terms and providing it with subsequent crucial support for a successful market entry and scale-up. The External AIFM, upon recommendation from the Adviser, may also decide on a minimum size of the round for the Compartment to invest its second tranche – considering the financing needs estimated by it for the company to successfully reach the market and scale up, based on the outcome of the due diligence and the Adviser’s recommendation.
- 2.7.31. It will include an adequate package of support measures to address shortcomings to a sufficiently high degree.
- 2.7.32. In such cases, operating as a major investor, the Compartment will ensure a board member seat in the target companies. External mentoring will be sought.
- 2.7.33. The innovation has the potential to have a high impact by addressing a societal need or an EU priority.
- 2.7.34. The Compartment may decide to proceed as in case 1 using quasi-equity or a combination of quasi-equity and equity. It will include an adequate package of support measures to address shortcomings to a sufficiently high degree.
- 2.7.35. In such cases, operating as a major investor (equal or more than 10% ownership), the Compartment will pursue a board member seat in the target companies. External mentoring will be sought.
- 2.7.36. In all other cases, the Compartment may either invest with quasi-equity or a combination of quasi-equity and equity, or equity in a future round (led by a qualified investor) on Compartment own standard terms (see footnote 20 above), or propose to the EU Commission to revert to “grant only” support to cover up to seventy per cent (70%) of total eligible costs of the pre-TRL9 activities, and recommending milestones that once reached, may attract co-investors and may hence trigger the investment component initially awarded by the EU Commission.
- 2.7.37. **Bucket 2:** will include cases where potential investors, including a Qualified Investor, show immediate interest in co-investing into EIC selected companies.
- 2.7.38. The Compartment will seek that the equity investment is at least matched by these potential investors (i.e. which will cover at least fifty

per cent (50%) of the round), having an objective of 1:3 leverage for the full EIC investment cycle. To this end, the Compartment may rely on financial, commercial and technology due-diligence performed by them and should seek alignment to their terms.

- 2.7.39. The Compartment may also reserve a part of the initially awarded investment as possible top-up investment for a subsequent investment step of an future investment in steps.
- 2.7.40. Where the awarded EIC support is conditioned to the acquisition of a blocking minority by the Compartment in order to protect European interests in strategic areas, as identified by the award decision by the EU Commission related to the specific case in question and in order to align interests, the EIC Fund may opt to substitute direct blocking minority by a shareholder agreement⁶ providing for similar guarantees regarding European interests.
- 2.7.41. On behalf of the Compartment, the Adviser will negotiate the terms with potential co-investors, including possible mentoring tasks, to be approved by the External AIFM.
- 2.7.42. **Bucket 3:** will include cases where potential investors show immediate interest in providing the full investment into EIC candidate companies including the case of listed companies.
- 2.7.43. The External AIFM, upon recommendation from the Adviser, could nevertheless decide to co-invest, in particular to secure a blocking minority in order to protect European interests in strategic areas, as identified by the award decision by the EU Commission related to the specific case in question.
- 2.7.44. The External AIFM, upon recommendation from the Adviser, may also reserve the initial investment authorised by the EU Commission as a possible top-up Investment for a subsequent investment step.
- 2.7.45. The terms to be negotiated by the External AIFM would seek to ensure sufficient incentives of the founders/employees while applying market terms to attract private investors. Equally, they would seek to ensure investor friendly terms to attract potential private capital. While the EIC Accelerator may potentially disrupt the investment ecosystem by enhancing risk-taking attitude among investors, it remains of the utmost importance that it does not create

⁶ The External AIFM will agree with other shareholders on modalities to safeguard EU interest as an alternative to take a blocking minority on their own.

market distortion in filling the financing gap for its high-risk targets.

2.8. (Pre-) Due diligence process

- 2.8.1. Compliance and some due diligence checks will be performed by the External AIFM based on standard compliance rules⁷ (including in order to identify existing shareholders and/or UBOs established in/nationals of (non-eligible) countries for the purposes of the award decision by the EU Commission related to the specific case in question aiming to protect European interests in strategic areas, or in the case a legal entity, is effectively controlled by companies or nationals from such countries), anti-money laundering (AML), anti-terrorism financing, tax-avoidance, non-compliant/non-cooperative jurisdictions (NCJ) and Sanctions.
- 2.8.2. Compliance and KYC checks will be performed prior to the initial investment⁸, as well as prior to possible subsequent tranches, top-up and Follow-on Investments. They will be extended to shareholder and their ultimate beneficial owners (UBO).
- 2.8.3. Non-compliance issues could also be linked to political or integrity aspects creating a high reputational risk for the EU as assessed, after consultation with the EU Commission, by the External AIFM, on the basis of the Adviser's recommendation on a case-by-case basis, and at

⁷ The External AIFM shall apply EU rules, policies and procedures, addressing the requirements in respect of money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion that are contained in Article 155(2)(a) of the EU Financial Regulation. Such rules also reflect the prohibition to enter into new or renewed operations with entities incorporated or established in jurisdictions: (i) listed under the relevant Union policy on non-cooperative jurisdictions; such as the list of non-cooperative jurisdictions (as amended from time to time) for tax purposes issued by the Council (OJ C 438, 19.12.2017, p. 5); or (ii) that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and EU Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73), as may be amended; or (iii) that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information, as well as the possibility to derogate from this requirement when the action is physically implemented in one of those jurisdictions, contained in Article 155(2)(b) of the EU Financial Regulation.

⁸ A compliance KYC self-certification may be collected together with the full accelerator proposal. However, it will not be considered during the evaluation, only by the External AIFM where the proposal is retained by the EU Commission.

may hence recommend to the EU Commission to terminate or even cancel its support (see Bucket 0).

2.8.4. The breach of any of these obligations and at any stage may lead to the interruption or cessation of the EIC Accelerator support in all its components, and even its cancellation.

2.8.5. The financial and commercial due diligence process will focus on the following aspects related to the detailed risk assessment of the potential investment:

- Governance and quality of the company's management
- Capital structure and financial planning
- Business strategy
- Competition
- Market assessment
- Value creation
- Legal form and jurisdictions

2.8.6. Additional technology due diligence may be required by the Investment Committee on a case-by-case basis in addition to the systematic technology due diligence to be performed in the context of the initial assessment. Whilst technology is assessed prior to the EU Commission single award decision, it may need to be complemented by a more in depth and "investor angle" due diligence, in order to have a more complete view of the operation as well as to investigate any concerns that may have been raised in the initial due diligence concerning misrepresentation or manifest error in respect to the technology and market prospects.

2.8.7. The Advisory Committee the Adviser or the Investment Committee may call for different options in this regard, including when appropriate, by EU Commission staff with the relevant technology experience, EIC Programme Managers or technology expertise in national innovation agencies.

2.9. Rejection

2.9.1. Some applications must be dismissed following the due diligence process where fraud, misrepresentation, exclusion, ineligibility or non-compliance, including in relation to the Sanctions, issues are established. In such cases, any grant agreement that may have been entered into will also be terminated by the EU Commission.

2.9.2. The eligibility of the EIC Fund Final Recipient, including any possible fraud, misrepresentation and non-compliance, including in relation to the Sanctions, will be checked at each tranche disbursement by the

External AIFM as well as the EISMEA in a coordinated manner. Ineligibility may lead the Compartment to terminate the investment contract and hence any further investment step from the Compartment will stop and the Compartment will exit from the EIC Fund Final Recipient. Where fraud is detected the EU Commission may terminate and even cancel the EIC Accelerator support and recover all amounts paid, in addition to additional sanctions provided for by the EU Financial Regulation.

- 2.9.3. The investment documentations concluded by the EIC Fund will contain protection clauses for the EIC Fund in case of, for example, material breach/fraud, or non-compliance, including with the Sanctions, as well as in case the company has fallen under the control of investors from non-eligible countries for the purposes of the award decision by the EU Commission related to the specific case in question aiming to protect European interests in strategic areas, or in the case a legal entity, is effectively controlled by companies or nationals from such countries. In such cases, the EIC Fund Final Recipient may have to fully reimburse/cash settle the EIC support received. Regarding the equity component, the remedial measures shall include, but shall not be limited to, the disposal of Compartment's interest in the investing scheme via a secondary sales transaction, including the right to sell its share in the equity for one Euro (EUR 1) to the remaining shareholder/owners that are established in/nationals of an EU Member State/ AC to HE Pillar III Equity component, provided that in the case of legal entities, they are not controlled by companies or nationals from the above-mentioned (non-eligible countries).
- 2.9.4. Non-compliance issues could be linked to tax, political or integrity aspects. Information provided by the EIC Selected Beneficiaries at application and during due diligence will be assessed in detail.

2.10. Possible forms of equity-type financial instruments to be used

- 2.10.1. There are different types of instruments an emerging business may use to finance its growth. The financial instruments used by the Compartment will take, in priority, the form of equity or quasi-equity investments.
- 2.10.2. Standard equity and quasi-equity instruments are summarized as follows:
- 2.10.3. Common shares: represent an ownership interest in a corporation, including an interest in earnings and dividends. They may be voting or non-voting and may be divided into classes with special voting

privileges assigned to each class. In the VC market, founders and management team usually hold common shares.

2.10.4. Preferred shares: represent a hybrid in the sense that it is an equity interest with debt-type features such as seniority at dividend payments and liquidation proceeds. VC funds usually hold preferred shares.

2.10.5. Convertible instruments: like convertible loans/bonds/notes, participation rights, SAFEs etc. that have a convertibility feature attached to a debt instrument that is attractive to the issuing company, since they are aimed to postpone dilution until the company's next equity funding round. They offer flexibility to investors allowing them to shift the risks and rewards of their investment to some point in the future after the initial investment.

2.10.6. Other equity-type instruments appropriate to achieve the objectives of the EIC Accelerator.

2.11. Investment implementation

2.11.1. The External AIFM will proceed in a timely manner with the execution of the investment. This includes the closing of the final legal documents (including the investment agreement). The External AIFM will contract with and finance the investee companies on behalf of the Compartment.

2.12. Publication of information on EIC Fund Final Recipients

2.12.1. Each EIC Fund Agreement shall include an acknowledgment by the EIC Fund Final Recipient that the EIC Fund and/or the Adviser may communicate information regarding the EIC Fund Final Recipient, irrespective of the amount of the financial support received from the Compartment. This acknowledgement will be required because the EIC Fund may provide to the EU Commission or otherwise publish information on EIC Fund Final Recipients, including, but not limited to the name and locality of the EIC Fund Final Recipient; the amount invested by the EIC Fund in the EIC Fund Final Recipient; and the nature of the EIC Fund Final Recipient's business and the EIC Fund investment.

2.13. Visibility

2.13.1. Each EIC Fund Agreement shall include the obligation for the EIC Fund Final Recipient to provide the EIC Fund with a written acknowledgment (whether in the EIC Fund Agreement or by separate acknowledgment) in substantially the terms set out below:

2.13.2. *“[EIC Fund Final Recipient] hereby acknowledges that [this] investment [is]/[has been] provided by the EIC Fund set up under the*

European Innovation Council. The purpose of the European Innovation Council is to identify, develop and deploy breakthrough technologies and disruptive and market creating innovations, and support the rapid scale-up of innovative firms at EU and international levels along the pathway from ideas to market.”

2.14. Monitoring and follow-up investments

- 2.14.1. The External AIFM will manage individual investments. This includes monitoring and acting on milestone funding, financing events (conversions, follow-on, etc.), write-downs and restructurings, exits, etc.
- 2.14.2. Given the equity and quasi-equity nature of the Compartment’s Investments, it is recognised that the EIC Fund will typically have no or limited remedies or exit/ repayment possibilities in the event that an EIC Fund Final Recipient does not meet the applicable exclusion and eligibility criteria or otherwise breaches any term of the relevant EIC Fund Agreement, including any terms and conditions deriving from the Investment Policy or other relevant provisions of this Memorandum. This is without prejudice to the obligations set out in Section **Error! Reference source not found.** of this Special Section.
- 2.14.3. The External AIFM shall ensure, subject to the policy decided by the Board, that qualified representatives or independent experts may be appointed by the EIC Fund to sit on boards of EIC Fund Final Recipients as voting members. Such appointments may be discussed on a case-by-case basis during the due diligence and investment process and the details of such appointments, if opted for, shall be, (subject to the terms and provisions of the AIFM Services Agreement), included in the legal documents to be signed.
- 2.14.4. In addition to the above, subject to the Adviser’s internal clearances, approvals and procedures, investment officers of the Adviser will be appointed at any time and from time to time by *the External AIFM on behalf of* the EIC Fund as proxies (**Appointed EFFR Shareholder Representatives**) to carry out the voting instructions of the EIC Fund, as Shareholder of EIC Fund Final Recipients (**EFFR**), at general or extraordinary Shareholders’ meetings of an EFFR. The Appointed EFFR Shareholder Representatives will exercise the EIC Fund’s voting rights (for, against or abstention), as Shareholder in the EFFR, strictly in accordance with the prior written voting instructions received from the External AIFM, as such instructions are recorded and set out in a proxy appointment (**Proxy Appointment**). The Proxy Appointment will not authorise the Appointed EFFR Shareholder Representatives to exercise any discretion to vote on behalf of the EIC Fund on any matter of any other business, or on any resolution that does not match the resolutions of the meeting agenda that are set out in the Proxy Appointment instructions. In addition, subject to the Adviser’s internal clearances, approvals and procedures, and subject to a corresponding appointment to be effected by the External AIFM on behalf of the EIC Fund, the Adviser will nominate its investment

officers in accordance with its procedures to sit on a non-voting observer board seat of an EFFR. The appointments described in this Section **Error! Reference source not found.** of this Special Section are subject to the terms and provisions of the Advisory Agreement.

2.15. Follow-on Investments

- 2.15.1. Subject to an *ex ante* amending award decision by the EU Commission, the Compartment can do follow-on investments⁹ in those EIC Fund Final Recipients which remain eligible to EIC Accelerator support and according to the conditions set below. Such Follow-on Investments will only be possible in the following exceptional categories of cases:
- 2.15.2. the Follow-on Investment is necessary to secure a blocking minority or a majority in order to protect European interests in strategic areas, as identified by the award decision by the EU Commission related to the specific case in question; or
- 2.15.3. if subsequent funding rounds would not proceed or would proceed at less favourable terms in the absence of the Compartment's participation in the funding round in question.
- 2.15.4. Follow-on Investments will not crowd out smaller investments and will fulfil the requirements of Horizon Europe for EIC blended finance support (i.e. that beneficiaries are SME (or, in exceptional cases, small mid-caps), continued EIC support is necessary, support through InvestEU is not yet possible and consistency with state aid rules is ensured) as well as the matching requirements under the Compartment's Investment Guidelines without prejudice to the provisions of Section [1.7]. Furthermore, such support requires that a budget is still available to the EU Commission in the year in question and will be subject to a valid financing decision by the EU Commission.
- 2.15.5. Where following an EIC Call for proposals the EU Commission awards an additional investment to a Horizon 2020 EIC Pilot operation, the latter is transferred under the Compartment.

2.16. Mentors

- 2.16.1. The EIC Fund will put the EIC Fund Final Recipient, with its consent, in contact with its network of mentors, which could also be potential investors, in order to provide advice and recommendations for the

⁹ Follow-on Investments should be considered to include only investments that would go beyond the maximum amount set out in the award decision by the EU Commission. Investments in different steps, i.e. when the Compartment decides first to invest one part of the equity amount, and subsequently – e.g. during a subsequent funding round – another part of that equity amount, are not considered as follow-on investments for the purposes of this Memorandum as long as the total equity invested remains within the equity amount set out in the award decision of the EU Commission

business development of the company and for any potential corporate actions.

2.16.2. In some cases such as those under “Bucket 1”, mandatory mentoring may be required as a condition to the investment.

2.16.3. *Duration of the investment and exit strategy*

2.16.4. The Compartment will invest patient capital, with a long average perspective on return on the investment (seven (7) to ten (10) years) with a maximum of fifteen (15) years in general. The levels of returns sought will be assessed on a case-by-case basis. The Compartment’s main objective is “impact investment” rather than maximizing return on the investment, while of course a positive return is always planned at the time of the investment as well as in compliance with general market practice.

2.16.5. The Compartment’s exit strategy for each EIC Fund Final Recipient is to be set on a case-by-case basis in close cooperation with co-investors in the EIC Fund Final Recipient given the specificities of each business plan, the founder team, industry, expected holding period as well as the development of the companies compared to the initial milestones set. Exit routes may include IPOs, management buy-outs, secondary sales or liquidations.

2.16.6. If an EIC Fund Final Recipient becomes insolvent, the Compartment may not be able to control the exit process if, for example, the Compartment is obliged to comply with restructuring arrangements approved under applicable national laws, or a liquidator is appointed to sell the EIC Fund Final Recipient’s assets and pay creditors. The Compartment will not rule out, if and to the extent possible under the relevant EIC Fund Agreement, in case of a non-performing EIC Fund Final Recipient, an exit via redemption or sale of the Investment to a third party at a symbolic price.

2.16.7. Any exit (divestment) decision is made by the External AIFM in its full discretion, in accordance with regulatory requirements, market practice and the Compartment’s Investment Guidelines. The Compartment’s approach is to act as a patient investor. This allows the Compartment to be different from the qualified lead investor who may or may not have a different investment horizon. It is meant to accompany its investees during the period when it is considered necessary to provide the public de-risking support that is requested and validated. This can mean market deployment of a technology, and the scale up to fill a financing market gap that is not addressed by private players. Thus, the Compartment should be prudent in determining when the timing is deemed right to exit. The Compartment will invest patient capital, with a long perspective on return on the investment (7-10 years) with a maximum of 15 years in general.

2.16.8. In general, the exit process should be driven by the Compartment’s co-investors, in particular, a lead investor. It follows that the Compartment should generally seek to divest of its participation in an

investee alongside the lead investor, or one of the lead investors, except if it is justified to extend the Compartment's participation, for example, for reasons that would otherwise justify obtaining a blocking minority, and always subject to the entry of a new investor as a co-investor to the Compartment. Where it is however clear that the co-investor intends staying for a very long time and EIC support is no longer needed, the Compartment should exit before, in order to make EIC funding available for new companies.

- 2.16.9. Divestment should also take place when companies can be financed from market sources including InvestEU, as EIC support is no longer needed. Other, less favourable scenarios (e.g. exiting below the initial investment amount) should be considered if the conditions for more customary exit strategies are not met, including if the investee has failed to achieve a successful development, taking into consideration the Compartment's objective of investing patient capital. Failure to find co-investors should also be taken into account in order to exit.
- 2.16.10. The Compartment should, guided by *pari-passu* investment terms, and supported by the Adviser, ensure through regular interactions with other investors that the preparation for the exit phase starts in due time. This should entail in particular:
 - 2.16.11. the initial setup of the proper conditions to ensure the alignment of investor interests, the Compartment's public service mission and investee management interest. The initial setup should also ensure the investee managements' support to the exit transaction, in particular, in the case of an envisaged trade sale whereby the management team would be replaced by the team of the strategic buyer. Such alignment will generally be ensured by the implementation of a solid incentive program in the form of an employee stock ownership plan;
 - 2.16.12. the definition of metrics deemed key to a successful exit on the sector concerned, and a related plan to optimize such metrics in view of the foreseen exit; and
 - 2.16.13. at an initial stage, except in the case of an initial public offering (IPO), the identification of a pool of potential acquirers; at a subsequent stage, direct engagement with them; and at a later stage, the initiation of the exit process either in the form of an exclusive process with one of them or in the form of an auction.

2.17. Intellectual Property management and EU interests

- 2.17.1. EIC Accelerator operations will be exempted from Horizon Europe obligations on intellectual property except:
- 2.17.2. if no investment component is awarded;
- 2.17.3. or if no investment agreement is concluded;
- 2.17.4. or if the operation is terminated by anticipation during the lifetime of the grant component.
- 2.17.5. Within applicable national legislation, the investee and co-investors will be given maximum autonomy regarding intellectual property management, to the best interests of the deployment of the innovation and the companies' development, in order to attract further investments to scale-up and to allow for an effective exit strategy for the Compartment.

Yet, and in particular but not only in the cases where European interests in strategic areas need to be protected in line with the award decision by the EU Commission related to the specific case in question, including when the Compartment acquires a blocking minority, they will seek to secure European ownership of intellectual property and of the company wherever it makes sense for its development. The same guiding principle will apply for Compartment's exit from investees as described in Section [1.69-1.75] above of this Special Section.

ANNEX 1. DEFINITIONS

The following words and expressions have the following meanings:

Adviser means, in respect of each Compartment, EIB (as defined below) in its capacity as adviser of the relevant Compartment or any successor to EIB in respect of that Compartment pursuant to this Memorandum.

Advisory Committee means a dedicated advisory committee created by the External AIFM at the External AIFM level and composed of staff of the External AIFM; external experts; two representatives of the EU Commission participating as observers in charge of the interpretation of the Investment Guidelines and to ensure the provision of policy steer by the EU Commission, especially in relation to matters of EU economic security; and representatives of EISMEA, accompanying the representatives of the EU Commission to ensure coordination between the grant and the equity components in accordance to EISMEA's mission in the context of the EIC Fund as described below (EISMEA). The Advisory Committee members provide advice to the AIFM Investment Committee in accordance with the Investment Strategy and Investment Objective of each Compartment as set out in the Investment Guidelines. The Advisory Committee shall be consulted by the Investment Committee prior to any decision to be taken by the latter, including all investment and divestment decisions, as well as any decision not to proceed with an investment including a subsequent investment step of an investment in steps. In agreement with the Commission observers on a case by case basis and in order not to overcharge the Advisory Committee meetings, the Investment Committee may decide not to consult the Advisory Committee in the case of decisions on post-investment events do not requiring an examination by the Advisory Committee, such as the confirmation of a subsequent investment tranche following confirmation of the milestones to which such tranche had been subject to.

AIFM means an alternative investment fund manager within the meaning of the AIFM Directive and the AIFM Act 2013.

AIFM Act 2013 means the Luxembourg act of 12 July 2013 on alternative investment fund managers, as amended.

AIFM Directive means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and regulations (EC) No 1060/2009 and (EU) No 1095/2010, as amended from time to time.

AIFM Rules means the AIFM Directive, the AIFMD-CDR, the AIFM Act 2013 as well as any implementing measures of the AIFM Directive or the AIFM Act 2013.

AIFMD-CDR means Commission Delegated Regulation 231/2013 of 19 December 2012 supplementing the AIFM Directive with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

AML Act 2004 means the Luxembourg act of 12 November 2004 relating to the fight against money-laundering and the financing of terrorism, as amended.

AML Criminal Law Directive means Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, as amended, supplemented or restated.

AML Directives means the 4th and 5th AML Directives and the AML Criminal Law Directive.

4th and 5th AML Directives means Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, and as further amended, supplemented or restated.

Appointed EFR Shareholder Representative has the meaning given to it in Section **Error! Reference source not found.** of these Investment Guidelines.

Appointed Representative means any **Appointed EFR Shareholder Representatives** or any other officer or agent of the Adviser, or any other individual person representing the Company, or acting as observer, on the board of directors or other governing body of one or more EIC Fund Final Recipients.

Associated Countries means countries as associated according to the applicable Regulation of the European Parliament and of the Council Regulation establishing the Framework Programme for Research and Innovation (Horizon Europe Regulation Pillar III Equity component).

Board means the board of directors of the Company.

Business Day means a day on which banks are generally open for business in Luxembourg during the whole day (excluding Saturdays and Sundays and public holidays).

Companies Act 1915 means the Luxembourg act of 10 August 1915 concerning commercial companies, as amended.

EIC Fund Documents means the Memorandum, the Articles, the Subscription Agreement, the Service Agreements and the other related documents of the EIC Fund.

Compartment means a separate portfolio of assets and liabilities established for one or more Classes of the Company which is invested in accordance with a specific Investment Objective. The specifications of each Compartment will be described in their relevant Special Section.

Council Decision means Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU.

EIB means the European Investment Bank.

EIC means the European Innovation Council,

EIC Accelerator has the meaning set out in the Council decision (EU) 2021/764 of 10 May 2021

EIC Call means an open invitation for funding under the EIC Accelerator issued in accordance with the EIC Work Programme.

EIC Fund Agreement means the agreement whereby the Company commits to invest in an EIC Fund Final Recipient.

EIC Fund Final Recipient means any EIC Selected Beneficiary in which the EIC Fund has made an investment, directly or indirectly through an Intermediary Vehicle. In these Investment Guidelines, it is referred to in some clauses generically as “company”.

EIC Selected Beneficiary means any beneficiary (SMEs including start-ups and in exceptional cases small mid-caps) selected by the EU Commission to be considered for funding under the EIC. In these Investment Guidelines, it is referred to in some clauses generically as “company”.

EIC Work Programme means a document adopted by the EU Commission for the implementation of the specific programme of the EIC, as described in Article 13(2) (c) of the Council Decision.

EISMEA means the European Innovation Council and SMEs Executive Agency. The EISMEA selects with the help of external experts the beneficiaries of EIC Accelerator support, carries out technical due diligence with the help of experts, manages the grant, ensures coordination between the grant and the investment components of EIC Accelerator blended finance, provides business acceleration services to the beneficiaries and supports beneficiaries to find co-investors through a co-investment platform and associated services.

EU means the European Union.

EU Commission means the European Commission.

EU Financial Regulation means Regulation (EU, Euratom) 2018/1046 of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (1).

EU Member States means the member states of the EU.

Euro, € or EUR means the single currency of the member states of the Economic and Monetary Union.

Excluded Activities means any of the following activities:

production or activities involving harmful or exploitative forms of forced labour¹⁰/harmful child labour¹¹;

¹⁰ Forced labour means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

¹¹ Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child’s education, or to be harmful to the child’s health, or physical, mental, moral or social development. In addition any labour that is performed by a person which has not yet reached the age of 15 is considered to be harmful, unless the local legislation specifies compulsory school attendance or the minimum age for working to be higher; in such cases, the higher age will be applied for defining harmful child labour.

production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements;

any business relating to pornography or prostitution;

production or trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species or Wild Fauna and Flora (CITES);

production or use of or trade in hazardous materials such as radioactive materials, unbounded asbestos fibres and products containing PCBs;

cross-border trade in waste and waste products unless compliant with the Basel Convention and the underlying national and EU regulations but for the avoidance of doubt, use of waste as a fuel in district heating is not excluded;

unsustainable fishing methods (i.e., drift net fishing in the marine environment using nets in excess of 2.5 km in length and blast fishing);

production or trade in pharmaceuticals, pesticides/herbicides, chemicals, ozone depleting substances¹² and other hazardous substances subject to international phase-outs or bans;

destruction of Critical Habitats¹³;

production and distribution of racist, anti-democratic and/or neo-Nazi media;

tobacco, if it forms a substantial part of the business activities of the proposed EIC Fund Final Recipient¹⁴;

live animals for scientific and experimental purposes, including the breeding of these animals;

ammunition and weapons, military/police equipment or infrastructure, with the exception of dual use items as defined in Article 2(1) of Regulation No 428/2009;

gambling, casinos and equivalent enterprises or hotels hosting such facilities;

commercial concessions over, and logging on, tropical natural forest; conversion of natural forest into a plantation;

purchase of logging equipment for use in tropical natural forests or high nature value forest in all regions; and activities that lead to clear cutting and/or degradation of tropical natural forests or high nature value forest;

new palm oil plantations;

any business with a political or religious content;

projects which have the effect of limiting people's individual rights and freedoms or violating their human rights; and

activities referred to in Article 19 of Horizon 2020 Regulation and Article 18 of Horizon Europe Regulation (Ethical principles).

External AIFM means Alter Domus Management Company S.A. in its capacity as external AIFM of the Company

Financial Sector Act 1993 means the Luxembourg act of 5 April 1993 on the financial sector, as may be amended from time to time.

¹² Ozone Depleting Substances: Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol lists ODs and their target reduction and phase-out dates.

¹³ Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value that meet the criteria of the World Conservation Union (IUCN) classification, including habitat required for the survival of critically endangered or endangered species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Primary Forest or forests of High Conservation Value will be considered Critical Habitats.

¹⁴ A benchmark for substantial is 5-10% of the balance sheet or the financed volume or sales revenues of the EIC Fund Final Recipient.

Fiscal Year means the twelve (12) month period ending on 31 December in each year, except for the first fiscal year which started on the date of establishment of the Company and will end on 31 December 2020.

Follow-on Investment means, in relation to a Compartment, an investment in an EIC Fund Final Recipient in which the Compartment has previously invested and which goes beyond the maximum investment amount authorised by the Commission award decision or the EIC Fund Board decision in respect of companies under the H2020 Compartment.

Horizon 2020 Regulation means Regulation (EU) No 1291/2013 of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC.

Horizon Europe means the Framework Programme for Research and Innovation established by Horizon Europe Regulation.

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

Horizon Europe Specific Programme means the Specific Programme established by Council Decision (EU) 2021/764 of 10 May 2021.

Intermediary Vehicle means any subsidiary or other company, entity or arrangement (such as a limited partnership, unit trust or trust) in which the Company, for the account of a Compartment, holds any direct or indirect interest (whether characterised as equity, debt or otherwise, including a co-investment or fractional interest) for the purpose of structuring the holding of one or more Investments.

InvestEU means the InvestEU Programme established by Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017.

Investment means, in respect of a Compartment (i) an investment made by the Company in respect of that Compartment, directly or indirectly through an Intermediary Vehicle, in any asset, including Liquid Assets, which is, in the sole judgment of the Company at the time the Company makes or commits to make such investment, an appropriate investment for the Company, (ii) any divestment made by the Company in respect of that Compartment, as the context may require.

Investment Committee means the investment committee of the External AIFM at the level of the External AIFM in charge of making all investments and divestment decisions. Such investment committee will be composed exclusively of officers, directors, delegates, members, employees or agents of the External AIFM.

Investment Period means, in respect of each Compartment, such period as set out in the relevant Special Section.

Investment Restrictions means the investment restrictions and guidelines of each Compartment as described in the relevant Special Section. **Lead Organisation** means the European Union (EU), the United Nations and the International Monetary Fund (IMF), the

Financial Stability Board, the Financial Action Task Force (FATF), the Organisation for Economic Co-operation and Development (OECD) and the Global Forum on Transparency and Exchange of Information for Tax Purposes and any successor organisations.

Luxembourg Law means the applicable laws and regulations of Luxembourg.

Non-Compliant Jurisdiction has the meaning of a jurisdiction, either:

- (a) listed in the Annex I of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, adopted by the European Council at its meeting held on 5 December 2017 and updated on a regular basis (EU list of non-cooperative jurisdictions for tax purposes - Consilium (europa.eu));
- (b) included in the OECD/G20 list of jurisdictions that have not satisfactorily implemented the tax transparency standards;
- (c) 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 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R1675-20181022>);
- (d) rated as “partially compliant” or “non-compliant”, including corresponding provisional ratings, by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes against the international standard on exchange of information on request;
- (e) 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) (<http://www.fatf-gafi.org/countries/#high-risk>); or
- (f) 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) (<http://www.fatf-gafi.org/countries/#high-risk>);

in each case, as such statement, list, directive, or annex may be amended and/or supplemented from time to time.

Person means any legal person like corporate bodies with a separate legal personality from its owner and legal arrangements, without a separate legal personality from its owner, like trusts and their equivalents. The term Persons also includes any government, state, agency, organisation or any other public entity (in each case whether or not having separate legal personality), and an individual, his estate and personal representatives and, where the

context so permits, the legal representatives, successors in interest and permitted assigns of such person.

Previous Investor has, in respect of each Compartment, the meaning set out in the relevant Special Section.

Professional Investors means Investors who qualify as professional investors within the meaning of the AIFM Directive.

Qualified Investor means an investor deploying privately sourced funds in an EIC Fund Final Recipient with demonstrable know-how and experience in the relevant market, technology and jurisdiction. Such a Qualified Investor adds to Company due diligence with the purpose of both valuing the relevant asset or Investment on market terms and providing the underlying entity, in case of an investment alongside the Company, with subsequent crucial support for a successful market entry and scale-up.

Sanctions means any of the following:

any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, as available in the official EU website: https://eeas.europa.eu/headquarters/headquarters-homepage_en/8442/Consolidated%20list%20of%20sanctions, as amended and supplemented from time to time or on any successor page;

any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to Article 41 of the UN Charter as available in the official UN website <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>, as amended and supplemented from time to time or on any successor page;

Sanctioned Persons means any individual or entity listed in or otherwise subject to one or more Sanctions.

Service Providers means the Depositary, the Administrative Agent, the External AIFM, the Adviser and any other Person who provides services to the Company from time to time.

SME means micro, small and medium-sized enterprises within the meaning of the EU Commission Recommendation 2003/361/EC of 6 May 2003.

Term has, in respect of each Compartment which is established with a fixed term, the meaning set out in the relevant Special Section.

TRL means technology readiness levels pursuant to the [Horizon Europe Work Programme](#)¹⁵.

VC means venture capital.

Voting Policy means the voting policy established by the External AIFM in accordance with the AIFM Rules with a view to determine when and how any voting rights attached

¹⁵ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/wp-call/2021-2022/wp-13-general-annexes_horizon-2021-2022_en.pdf

to instruments held in the Company's portfolio are to be exercised, to the exclusive benefit of the Company and the Shareholders.

Annex 2 – Exclusions

1. EXCLUSION IN LINE WITH THE GENERAL ANNEXES ON EXCLUSION TO THE HORIZON EUROPE WORKPROGRAMME IN ITS LATEST FORM¹⁶

1.1 The EIC Fund Final Recipient has to make the undertakings in the EIC Fund Agreement that the following exclusion situations¹⁷ are not applicable:

- (a) the EIC Fund Final Recipient –or natural or legal persons that assume unlimited liability for its debts- are not in an exclusion situation referred to in point is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;
- (b) it has been established by a final judgment or a final administrative decision that the EIC Fund Final Recipient –or natural or legal persons that assume unlimited liability for its debts- is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- (c) it has been established by a final judgment or a final administrative decision that the EIC Fund Final Recipient is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the EIC Fund Final Recipient belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
 - (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;
 - (ii) entering into agreement with other persons or entities with the aim of distorting competition;
 - (iii) violating intellectual property rights;
 - (iv) attempting to influence the decision-making of the authorising officer responsible during the award procedure;
 - (v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

¹⁶ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/wp-call/2021-2022/wp-13-general-annexes_horizon-2021-2022_en.pdf

¹⁷ See Articles 136 and 141 EU Financial Regulation 2018/1046.

- (d) it has been established by a final judgment that the EIC Fund Final Recipient is guilty of any of the following:
 - (i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council (44) and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995 (45);
 - (ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 (46), or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA (47), or corruption as defined in other applicable laws;
 - (iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA (48);
 - (iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council (49);
 - (v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA (50), respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
 - (vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council (51);
- (e) the EIC Fund Final Recipient has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the budget which has:
 - (i) led to the early termination of a legal commitment;
 - (ii) led to the application of liquidated damages or other contractual penalties;
or
 - (iii) been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;
- (f) it has been established by a final judgment or final administrative decision that the EIC Fund Final Recipient has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 (52);
- (g) it has been established by a final judgment or final administrative decision that the EIC Fund Final Recipient has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the

jurisdiction of its registered office, central administration or principal place of business;

- (h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent referred to in point (g);
 - (i) it is already in an exclusion situation as established in accordance with the above points (a)-(h).
- 1.2 The EIC Fund Final Recipient has to make the undertakings in the EIC Fund Agreement that the following persons or entities are not in one of the exclusion situations referred to in Sections **Error! Reference source not found.** to **Error! Reference source not found.** above:
- (a) natural or legal persons that are members of the administrative, management or supervisory body of the participant or that have powers of representation, decision or control with regard to the EIC Fund Final Recipient;
 - (b) beneficial owners, as defined in point (6) of Article 3 of Directive (EU) 2015/849, of the EIC Fund Final Recipient.
- 1.3 Where appropriate, the EIC Fund Final Recipient shall provide the same declarations referred to in the first and second paragraph signed by a subcontractor or by any other entity on whose capacity it intends to rely, as the case may be.
- 1.4 When such declarations have already been submitted for the purposes of an EU award procedure, provided that the situation has not changed, and that the time that has elapsed since the issuing date of the declarations does not exceed one (1) year it is sufficient the EIC Fund Final Recipient indicates in which award procedure they have been submitted.
- 1.5 The EIC Fund Final Recipient participant shall without delay inform the EIC of any changes in the situations as declared.
- 1.6 The EIC Fund Final Recipient has to confirm in the EIC Fund Agreement that the information provided in compliance with the Checklist [https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/how-to-complete-your-ethics-self-assessment_en.pdf] is still accurate or provide updated information.