



Council of the European Union
General Secretariat

Brussels, 07 June 2017

WK 6322/2017 INIT

LIMITE

ECOFIN

UEM

POLGEN

EDUC

SOC

EMPL

EF

COMPET

RECH

ENER

AGRI

TELECOM

TRANS

ENV

JAI

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party of Financial Counsellors
Subject:	EFSI 2.0 - EP drafting suggestions on taxation and subordination

Delegations will find attached compromise proposals of the European Parliament following the trilogue on EFSI 2 that took place on 6 June 2017.

SUBORDINATION

(covers line 165 in the 5column table)

Rationale

The amendment aiming to reinforce the use of subordination features by the EIB when structuring EFSI projects should be sufficiently flexible to ensure that all forms of subordination are included. Taking a junior position represents only one form of subordination and in some cases investors might even prefer for the EIB not to take a junior position (e.g. depending on their risk/reward appetite).

The pure focus on taking a junior position might unnecessarily rule out projects where additionality comes through other means (e.g. long tenors, exposure to specific risks, new counterparts, etc.).

Compromise proposal

The compromise proposal put forward by the Commission – while stressing the preference for subordination – leaves open the possibility for the EIB to decide, on a case-by-case basis, which form of subordination is most suitable for the specific project in terms of crowding in investors and/or allowing for the realisation of investment platforms and smaller projects.

Article

'To better address market failures or sub-optimal investment situations and to facilitate in particular the use of investment platforms for smaller projects, thereby ensuring complementarity and thus avoiding crowding out vis-à-vis participants in the same market, EIB special activities supported by the EFSI shall, as a preferred way ~~and if duly justified~~, typically have features of subordination, including – when duly justified – take junior positions vis-à-vis other investors, as well as participation in risk-sharing instruments, cross-border characteristics, exposure to specific risks or other identifiable aspects as further described in Annex II.'

TAXATION

(covers lines 488 to 494 in the 5 column table)

Compromise proposal

Article

'Prevention of money laundering, fight against terrorism, taxation, non-cooperative jurisdictions

In their financing and investment operations, the EIB, the EIF and all financial intermediaries 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.

In addition the EIB, the EIF and all financial intermediaries 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 internationally agreed tax standards on transparency and exchange of information and shall not maintain business relations with entities incorporated or established in such jurisdictions. ~~The EIB, the EIF and all financial intermediaries 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.~~

When concluding agreements with financial intermediaries, the EIB, the EIF and all financial intermediaries shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries a country by country reporting to ~~report~~ on their observance. The EIB and the EIF shall publish and update on running basis the list of intermediaries with whom they cooperate.

The EIB and the 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. Every year thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation of those policies.'

Recital

'The relevant EU policy on non-cooperative jurisdictions for tax purposes is laid down ~~in~~ in the legal acts of the Union, Council conclusions, Commission communications and any formal notice by the Commission ~~Council Conclusions, notably those of 8 November 2016, in particular in their Annex, and any subsequent updates.'~~