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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
Subject:	EFSI 2.0 updated compromise proposal on subordination

Delegations will find attached the EFSI 2.0 updated compromise proposal on subordination as submitted by the EP on 1 September 2017, following the technical trilogue on 29 June 2017, including inter alia changes proposed by the EP lawyer linguists. This is for the Financial Counsellors' Working Party meeting on 4 September 2017.

Re-drafting suggestion on subordination (as proposed by technical trilogue of 29 June)

Outcome of technical trilogue:

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 typically, as a preferred way and if duly justified, have features such as of subordination, including taking junior positions vis-à-vis other investors, **and have characteristics such as** participation in risk-sharing instruments, cross-border characteristics, exposure to specific risks or other identifiable aspects as further described in Annex II.

Rationale:

The outcome of the technical trilogue on subordination inserts the words 'and have characteristics such as' in the article 5 para 1 subpara 5a. This insertion, proposed to make the sentence more readable, could lead to a drawback, though, as it may imply that all the elements enumerated behind the insertion need to apply simultaneously if features of subordination apply to the EFSI operation in question. This is, however, not the intention of the EP. For the EP, all the different elements should apply if they add value to the operation in question. Conversely, the application of the elements should not be mandatory if they do not add value to the operation. Therefore, the EP suggests to break up the paragraph into subparagraphs listing the different elements individually. This way, it is made clear that all items are individually placed under the general reservation introduced by the wording 'as a preferred way and if duly justified' which states that their application should be considered on a case-by-case basis if this adds value to the operation. **Moreover, the proposal contains a more exact reference to the provisions in Annex II that relate to the same subject matter as in Art. 5 in order to add precision to the text. The new drafting proposal also contains a modified punctuation in the first sentence of the Article that was suggested by the EP lawyer linguists to increase the readability of the text.**

Drafting proposal of 01 September 2017:

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 typically, as a preferred way and if duly justified, have features of:

- a) **have features of** subordination, including the taking of junior positions vis-à-vis other investors;
- b) ~~participation~~ **participate** in risk-sharing instruments;
- c) **demonstrate** cross-border characteristics;
- d) ~~exposure~~ **be exposed to** specific risks; or
- e) have other identifiable aspects as further described in **point (d) of Section 3 of Annex II.**

Background: Line 165 after the 29.06.17 technical trilogue:

No.	Re f. EF SI I	EFSI - II(consolidated version)*	Ref. EFSI II	EFSI II COM proposal	COUNCIL**	PARLIAMENT	Compromise
165.			Art. 5 <i>para 1</i> - <i>sub para 5a</i> (new)			To better address market failures or sub-optimal investment situations, <i>thereby ensuring complementarity and thus avoiding crowding out vis-à-vis participants in the same market</i> , EIB special activities supported by the EFSI shall, <i>as a preferred way and if duly justified</i> , have the features of subordination and take a junior position 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.	Outcome of technical trilogue of 29/06 and technical suggestions from lawyers-linguists To better address market failures or sub-optimal investment situations <u>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</u> , EIB special activities supported by the EFSI shall typically, <i>as a preferred way and if duly justified</i> , have features such as <i>of subordination, including taking junior positions vis-à-vis other investors, and have characteristics such as</i> participation in risk-sharing instruments, cross-border characteristics, exposure to specific risks or other identifiable aspects as further described in Annex II.