

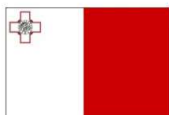
**Further Studies Made Affordable  
(FSMA)  
Republic of Malta**

**Capped Portfolio Guarantee and Interest Rate Subsidy  
Agreement**

Blueprint

Version 1.0

03<sup>rd</sup> June 2019



Operational Programme II – European Structural and Investment Funds 2014-2020  
*“Investing in human capital to create more opportunities and promote the well-being of society”*

Project part-financed by the European Social Fund  
Co-financing rate: 80% European Union Funds; 20% National Funds



## Disclaimer

This document is a brief summary of the main provisions of a Guarantee and Interest Rate Subsidy Agreement relating to the FSMA Financial Instrument in Malta and does not include the detail of many of the provisions described therein. It is not meant to be an exhaustive enumeration and description of the Financial Institution's obligations under the FSMA Operational Agreement. This document is being provided for guidance and information purposes only and does not commit the MDB. Whilst every effort has been made to faithfully reflect in summary the main provisions of the Guarantee and Interest Rate Subsidy Agreement at the time of publication, these provisions may be subject to change in the final version of the said Guarantee and Interest Rate Subsidy Agreement. Therefore this document does not, and is not intended to, replace the need to thoroughly review the terms of the standard FSMA Operational Agreement and is without prejudice to the actual provisions included in the final version of the Agreement entered into with the Financial Institution). In accepting [or in signing] this document, the [applicant] agrees that the MDB cannot be held responsible for any consequences arising from said final version of the Agreement.

This document does not constitute an offer of any nature whatsoever and does not create any binding obligations on the Malta Development Bank to enter into a contract with any third party on the terms set out in this document or otherwise.

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## I. Introduction

The purpose of this document is to provide general information about the standard terms of the Guarantee and Interest Rate Subsidy Operational Agreement (the ‘**Agreement**’) to be ultimately concluded with the Malta Development Bank (the ‘**MDB**’) in the context of the implementation of the Further Studies Made Affordable (FSMA) scheme in Malta.

Section II of this document contains the background information on the purpose of the Agreement, while Section II provides information on the key terms and conditions of the Agreement.

## II. Background

The MDB is collaborating with the Ministry for European Affairs and Equality (MEAE) and the Ministry for Education and Employment to launch the FSMA Financial Instrument (FI) that supports people in further developing their potential through further and higher education. The FI is financed under the Operational Programme II – “Investing in human capital to create more opportunities and promote the wellbeing of society” which is co-funded by the European Social Fund Programme 2014-2020.

The MDB has been entrusted with the implementation of the FI by the Managing Authority (The Planning and Priorities Co-ordination Division) within the MEAE. The initial fund allocated by the Managing Authority to the FSMA has been set at an amount of up to EUR 2 million with the possibility of increasing this amount to EUR 3 million should there be a demand.

The objective of the FI is to support the development of human capital and is aimed to meet the financing needs of students seeking to pursue a full-time or part-time study programme for accredited courses in MQF levels 5, 6, 7 and 8 as well as internationally-recognised certificates. The eligible students will be entitled to receive support through the FI to cover tuition fees, accommodation costs and other substances to further their studies in Malta and abroad.

The MDB is launching an open call for the selection of one or two eligible Financial Institutions for the implementation of the FSMA FI in Malta and Gozo. This FI is designed to improve access to finance for eligible students pursuing further education. The selected Financial Institution/s shall benefit from capital relief and loss protection via the provision of a capped guarantee on a portfolio of Student loans (the “Eligible Student Transaction/s”) originated to eligible students. This shall translate into more favourable terms for the students’ Eligible Student Transactions. The FI shall mitigate the difficulties that students face in accessing finance because of the lack of sufficient collateral in combination with the risk they represent.

The proposed FI will also include an Interest Rate Subsidy element which covers the full interest payments due by the final recipients during the moratorium period. The moratorium on the payment of interest is equal to the duration of the academic course plus one year, subject to a maximum of 5 years. The duration of the guarantee is for the

moratorium period plus a minimum of 2 times the course duration but limited to a maximum of 15 years. The portfolio shall be managed by the Financial Institution selected through the Call.

### III. The Agreement

The terms of the FSMA FI are set out in the Agreement and divided into five parts:

- **Part I Portfolio Guarantee** on the general provision of the FSMA Guarantee Facility and which will be common to all selected Financial Institution(s).
- **Part II Interest Rate Subsidy** on the general provision of the FSMA Interest Rate Subsidy which will be common to all selected Financial Institution(s).
- **Part III General conditions regulating the Portfolio Guarantee and the Interest Rate Subsidy** on the general provisions regulating the FI.
- **Part IV Loan Eligibility and Inclusion and Exclusion Process** on the Eligibility Criteria, Portfolio Inclusion and Exclusion Processes.
- **Part V Miscellaneous** on the Representations and other conditions.

The following are the key terms applicable to the Agreement:

#### 1. Eligible Criteria

- a. For the purposes of the FSMA FI, to be eligible, students must fulfil the following criteria:
  - be a Maltese citizen who is an employed or self-employed person in Malta; **OR**
  - be a national of an EU/EEA Member State who is in Malta exercising his/her Treaty rights as an employee, self-employed person or person retaining such status in accordance with SL460.17; **OR**
  - be a third country national that has been granted long-term residence status under SL217.05
  - (note: in case of married couples where the facility needs to be issued in the joint names under the Family Law, one of the applying parties needs to comply with at least one of the categories above).
  - The student is not in an exclusion situation (see section 2.c below).

- b. For the purposes of the FSMA FI, the Student Transaction must comply with the ‘Student Transaction Criteria’
- The Eligible Student Transaction shall be newly originated;
  - The amount committed by the Financial Institution under the Eligible Student Transaction shall not be higher than the Maximum Eligible Student Transaction Committed Amount;
  - Purpose: The Eligible Student Transaction shall specifically finance the costs for tuition fees, living expenses (in line with a pre-established budget), accommodation fees, transport expenses, text books and other course related expenses;
  - The Eligible Student Transaction is aimed to meet the needs of eligible students interested in pursuing a study programme for MQF levels 5 to 8 and Internationally Recognised Certifications;
  - The Eligible Student Transaction shall specifically finance both full time and part time students;
  - The Eligible Student Transaction shall not refinance or restructure existing facilities;
  - The Eligible Student Transaction shall be a term loan facility and have a fixed repayment schedule;
  - The Eligible Student Transaction’ maturity shall other than as a result of a Permitted Eligible Student Transaction Amendment, not exceed the Maximum Eligible Student Transaction Maturity;
  - The Eligible Student Transaction shall not be affected by an irregularity or fraud;
  - The Eligible Student Transaction shall be denominated in Euro;
  - Any moratorium period to be granted for an Eligible Student Transaction shall not exceed the Maximum Moratorium Period; and
  - The Interest Rate Subsidy will only cover those Eligible Student Transactions for which the student is an active student and up to one month after the discontinuation of the course by the student.

Certain Eligibility criteria must be complied with at all times, whilst others must only be complied with at the moment of entering into the relevant Eligible Student Transaction, as specified in the Agreement.

Under the FSMA, the Financial Institution is obliged to pass on the financial benefit derived from the FI to the eligible student. In particular, the Financial Institution shall

reduce the interest rate charged on each Eligible Student Transaction, reflecting the risk reduction from the guarantee.

## 2. Portfolio

The Eligible Student Transactions will be covered by the Agreement upon their inclusion in the portfolio in accordance with the following principles:

### a. Inclusion process

In order to be included in the portfolio, an Eligible Student Transaction must:

- (i) comply with eligibility criteria;
- (ii) be internally approved and fully disbursed by the Financial Institution during the 'Availability period', that is until 31 December 2023.

The Financial Institution must include the Eligible Student Transaction in the portfolio by submitting to MDB inclusion notices by each 'Report Date' in respect of the Eligible Student Transaction entered into the preceding calendar quarter. The Eligible Student Transactions so included in the portfolio are covered by the Agreement as from the date on which they have been entered into.

Eligible Student Transactions can be included in the portfolio in accordance with the above procedures until a specific volume (the '**Maximum Portfolio Volume**') is reached.

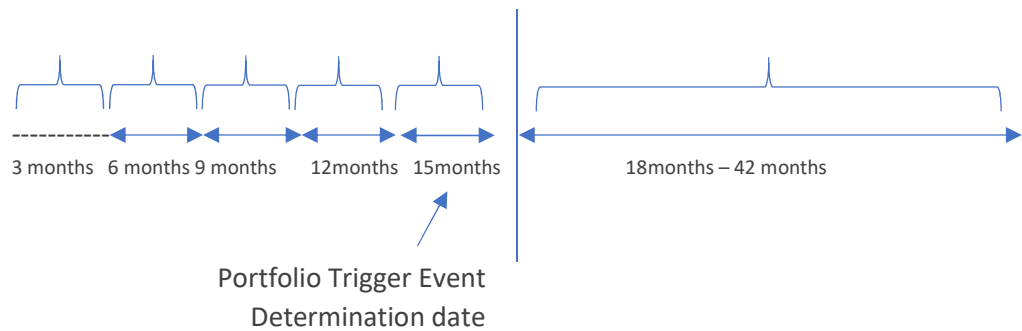
The Actual Portfolio Volume, that is, the aggregate amount of the principal committed under the newly originated and disbursed Eligible Student Transactions included in the Portfolio from time to time may in no circumstances exceed the Maximum Portfolio Volume.

The MDB has the option (in its absolute discretion) to increase the Maximum Portfolio Volume by a maximum of 50% of the agreed Portfolio Volume.

If the Financial Institution benefiting from MDB's guarantee has not disbursed the planned Agreed Portfolio Volume to the final recipient, the guarantee and Interest Rate Subsidy amount shall be reduced proportionally.

### b. Trigger Events

Notwithstanding the above, the Availability Period may terminate before the 42nd month from date of signing the agreement or if earlier the 31<sup>st</sup> December 2023 if a trigger event has occurred on a relevant reporting date and the MDB has delivered a trigger event notice to the Financial Institution(s). A trigger event will occur if the Financial Institution(s) has not reached a minimum of 10% of the volume of Eligible Student Transactions (based on commitments) on a specific date (the 'Portfolio Trigger Event Determination Date') diagrammatically described as follows:



If such a trigger event occurs, the Financial Institution(s) shall notify the MDB thereof. Following such notification, the MDB shall consider the situation and may send a notice to the Financial Institution to early terminate the Availability Period on the date set out in such a notice.

c. Exclusion process

Under certain circumstances Eligible Student Transactions shall or might be excluded from the portfolio, and hence will no longer be covered by the Agreement:

- (i) If an Eligible Student Transaction included in the portfolio does not comply or no longer complies with the eligibility criteria, i.e. becomes a ‘Non-Eligible Student Transaction’.

If however an Eligible Student Transaction included in the portfolio becomes a Non-Eligible Student Transaction as a result of an event or circumstance which is not within the control of the Financial Institution (and before the Financial Institution has delivered to MDB a Payment Demand as further described below) in respect of such an Eligible Student Transaction, then the Financial Institution has the choice to either:

- Accelerate the relevant Eligible Student Transaction which will in that case continue to be covered by the guarantee, but the Interest Rate Subsidy will cease to be paid; or
- Have the transaction excluded from the portfolio.

Similarly, if this occurs after the Financial Institution has delivered a Payment Demand to MDB, the relevant Eligible Student Transaction will remain covered by the guarantee but for the purpose of such Payment Demand only. The Interest Rate Subsidy will cease to be paid on the date the Payment Demand is delivered to MDB.

- (ii) If any of the eligibility criteria indicated in Section 1 above is not or no longer complied with.

Exclusion of an Eligible Student Transaction from the portfolio will result in a reduction of the actual portfolio volume.



d. Replacement

If the Actual Portfolio volume is reduced with respect to (c) or (d) above, the Financial Institution will be permitted to include new Eligible Student Transactions in the portfolio.

Replacement of the Eligible Student Transaction must, inter alia, (i) comply with the eligibility criteria and other relevant provisions of the Agreement; and (ii) be entered and disbursed during the Availability Period i.e. before 31<sup>st</sup> December 2023.

3. Target Volumes

The Agreement contains certain portfolio volumes that shall be reached by the Financial Institution by a specific date, (typically 1 year after the end of the Availability Period (or 31 December 2023, if earlier)). The volumes will be measured against the actual portfolio volume (as adjusted in accordance with the principles set out above).

a. Minimum Leverage Volume

The minimum leverage volume will be specified in the relevant Agreement and failure by the Financial Institution to meet such volumes will result in an early termination of the FI with the particular Financial Institution. In the case of this FI the minimum leverage is 5 times the Guaranteed amount, up to a maximum of EUR 5,500,000.

b. Adjustment of the Portfolio Volume

In addition to the reduction of the actual portfolio volume further to an exclusion from the Portfolio, if the Financial Institution has not fully disbursed the planned Actual Portfolio volume to the Eligible Student (Final Recipient), the Guaranteed amount and the Interest Rate Subsidy shall be reduced proportionately.

4. Guarantee rate and extent of guarantee cover

The Guarantee shall partly cover the credit risk associated to underlying, new Eligible Student Transaction to eligible students included in the guarantee portfolio. The Eligible Student Transaction shall be covered by the MDB at a guarantee rate of 80% of each Eligible Student Transaction subject to a maximum liability in respect of Eligible Student Transaction losses expressed as a guarantee cap amount of a maximum of EUR 1.1 million calculated on a portfolio basis as 25% of the

portfolio. The Managing Authority will reserve the right to increase the funding allocated to this FI.

The duration of the guarantee is for the term of the Eligible Student Transaction up to a maximum of fifteen (15) years.

MDB and the Financial Institution agree and acknowledge that at any one time, the aggregate amount which the MDB may be liable to pay pursuant to the Guarantee shall be an amount equivalent to the product of (a) the Actual Portfolio Volume; (b) the Guarantee Rate; and (c) the Guarantee Cap Rate, provided that:

- (i) The maximum aggregate amount which MDB may be liable to pay under the Guarantee is limited up to the Maximum Guarantee Amount;
- (ii) The maximum aggregate amount which MDB may be liable to pay under the Guarantee in respect of any one Covered Student Transaction is limited up to the Individual Guarantee Amount.

#### **5. Interest Rate Subsidy and extent of Interest Rate Subsidy cover**

The Interest Rate Subsidy will be awarded to support the Eligible Student Transactions issued by the Financial Institution. The interest element during the moratorium period of each Eligible Student Transaction will be fully covered by the Interest Rate Subsidy provided by the FI and will be paid by MDB. The interest is to be charged by the Financial Institution to the individual Eligible Student Transaction account on a monthly basis. The Financial Institution will send a claim to MDB on a quarterly basis covering the Interest Rate Subsidy due on the Eligible Student Transactions for the previous quarter.

#### **6. Payment Demand**

##### **(a) Against the guarantee**

The Financial Institution may claim payment for Defaulted Amounts under the Agreement by sending a payment demand to the MDB in the form set out in the Agreement.

A Payment demand can be sent any time after the occurrence of the Defaulted amount (until the termination of the Agreement), but the Defaulted Amounts must be reported to MDB (as further specified below) by no later than the Report Date following the calendar quarter during which they occurred.

Only one payment demand may be made per quarter, and the payment demand must be made within 10 calendar days following the end of the quarter.

(b) Against the Interest Rate Subsidy

The Financial Institution may claim payment for the Interest Rate Subsidy under the Agreement by sending a payment demand to the MDB in the form set out in the Agreement.

Only one payment demand may be made per quarter, and the payment demand must be made within 10 calendar days following the end of the quarter.

7. Recoveries

The Recovery amount is net of recovery and foreclosure costs, received by the Financial Institution in relation to a Defaulted Amount in respect of which the MDB has paid amount under the Agreement. The Financial Institution shall be required to pay to the MDB on a *pari passu* basis, subject to the percentage amount claimed on the guarantee against the individual Eligible Student Transaction.

8. Clawback

In addition to Recoveries, the Financial Institution shall be required to pay to the MDB any amount that has been paid by MDB to a Financial Institution in excess of the amount guaranteed, and/or Interest Rate Subsidy, or any amount paid by the MDB in relation to a Eligible Student Transaction that has become an excluded Student Transaction.

9. Guarantee fee

No guarantee fee is applicable under this FI.

10. Events of Default

The Agreement contains certain standard events of default, including non-payment, breach of obligations, insolvency, unlawfulness and misrepresentation.

Occurrence of any of the events of default regarding one of the parties to the Agreement entitles the other party, after due notification to suspend its obligations thereunder. If such event of default is not remedied within a certain grace period (if any) or explicitly waived by the other party, the other party will be allowed to terminate the Agreement immediately and accelerate payment.

11. Reporting

The Financial Institution will be required to report on a monthly and quarterly basis. Monthly reporting shall include information at portfolio level while the quarterly reporting shall contain information about each Eligible Student Transaction included in the portfolio. The reports must be provided within 10 calendar days from month or quarter end. In addition, the Financial Institution shall be required to (i)

supply information reasonably requested by the MDB to enable the MDB to comply with its own reporting obligations to the European Commission, and to the national authorities of Malta and otherwise; and (ii) upon request, monthly volume information in the form of the schedule attached to the Agreement.

## **12. Visibility and promotion**

The Financial Institution shall ensure that any press release, publication, advertisement and other communication or promotional material which the Financial Institution may choose to make with regard to the Eligible Student Transactions shall provide that such Eligible Student Transactions benefit from the support by the MDB, European Structural and Investment Funds and the Ministry for the European Affairs and Equality.

The Financial Institution shall ensure that any Eligible Student Transaction documentation and other communication with the final beneficiary shall contain the following:

*‘The Eligible Student Transaction benefits from the support of the European Union pursuant to the Operational Programme II (OPII), titled ‘Empowering People with More Jobs and a Better Quality of Life’, with the main objective of Investing in human capital to create more opportunities and promote the wellbeing of Society 2014-2020, through funding by European Structural and Investment Funds (“ESI Funds” or “ESIF”).*

## **13. Maintenance of records, monitoring and audit**

- (a) The Financial Institution undertakes, and shall procure that each Student undertakes, to prepare, update and subject to paragraph (d) at all times maintain available for MDB, the following documentation:
- (i) information necessary to verify that the use of the guarantee is in compliance with the relevant requirements set by the Agreement, including, without limitation, the compliance of any and all Eligible Student Transactions included in the portfolio with the eligibility criteria;
  - (ii) information necessary to verify the proper implementation of the terms of the Agreement into the contracts evidencing Covered Students Transactions;
  - (iii) information regarding the payment and recovery processes of the Financial Institution;
  - (iv) any other information reasonably required by the MDB.

- (b) If any deficiency in the maintenance of records is identified by the MDB and the Financial Institution is informed of such deficiency, the Financial Institution hereby undertakes to (and shall use its reasonable efforts to ensure that each students shall) promptly, and in any event no later than three (3) months after being informed of such deficiency, comply with the instructions given by the MDB and provide any additional information reasonably requested by the MDB.
- (c) The Financial Institution shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, on request supply certified copies to the MDB of, any authorisation required under applicable law or regulations to enable the Financial Institution to perform its obligations under the Agreement.
- (d) The Financial Institution shall maintain records relating to the Agreement and certain other matters for 10 years following the final claim on the guarantee and/or on the Interest Rate Subsidy. In addition, the Financial Institution is required to ensure that each eligible student undertakes to maintain relevant records for the time period specified herein. The Financial Institution is required to insert in its agreement documenting the Eligible Student Transactions a standard paragraph stating that the MDB or its representative are entitled to carry out audits, controls and inspection of the documentation related to the Eligible Student Transaction.

#### **14. Credit Policy**

The Financial Institution must comply with its credit policy, including when originating and monitoring covered Eligible Student Transactions and when consenting to amendments and waivers.

The Financial Institution must not make any material amendments to its credit policy in relation to the FI, without the prior written consent of the MDB.

#### **15. State Aid**

- (i) MDB and the Financial Institution acknowledge that the guarantee provided under the Agreement is to be taken account of in the context of their compliance with State Aid legislation and rules and undertake to comply with any applicable State Aid legislation and rules.
- (ii) The Financial Institution undertakes to fully pass on the state aid benefit derived from this FI to the eligible students.

- (iii) In the case of a student applying for a Eligible Student Transaction no state aid applies.

### **16. Intermediary exposure**

For the duration of the Agreement, the Financial Institution must (i) maintain an economic exposure of at least 20% of the outstanding principal amount of each Eligible Student Transaction included in the portfolio; and (ii) not enter into any credit support, guarantee or other transfer of risk arrangements with respect to such portion of each Eligible Student Transaction included in the portfolio (provided that any collateral, security or guarantee payable to the Financial Institution that qualify as Recoveries, as described above, shall not be taken into account for this purpose).

### **17. Title, security and negative pledge**

On the date on which the Financial Institution sends a payment demand, the Financial Institution must have good title of the relevant eligible Eligible Student Transaction and such transaction must be free and clear of any security. Moreover, the Financial Institution undertakes not to create security over the relevant Eligible Student Transaction after the date of a payment demand.

### **18. Transfer**

Neither MDB nor the Financial Institution shall assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the other Party.

### **19. Governing law and jurisdiction**

The Financial Institution hereby irrevocably agree that the Courts of Malta are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Agreement and the documents entered into pursuant to it and that accordingly any proceedings arising out of or in connection with the Agreement and such documents shall be brought in such courts.

The Agreement shall be governed by and shall be construed exclusively in accordance with Maltese law.