

**BACK-TO-BACK GUARANTEE**  
**ISSUED BY THE REPUBLIC OF FINLAND**  
**IN FAVOUR OF THE EUROPEAN UNION**

IN RESPECT OF  
**THE CONTRIBUTION AGREEMENT BETWEEN**  
**THE REPUBLIC OF FINLAND AND THE**  
**EUROPEAN UNION IN RESPECT OF THE**  
**MEMBER STATE COMPARTMENT UNDER THE**  
**INVESTEU PROGRAMME**

This agreement is entered into between:

- (1) The Republic of Finland, which is represented for the purpose of the signature of this Agreement by Ms. Annika Saarikko

hereinafter referred to as “**Finland**” or as “Guarantor”

on the one part,

and

- (2) The European Union, represented by the European Commission, 200, rue de la Loi, B-1049 Bruxelles, Belgium, (the “**Commission**”), which is represented for the purpose of the signature of this Agreement by Mr. Maarten Verwey;

hereinafter referred to as the “**Union**”

on the other part,

hereinafter also separately referred to as a “**Party**” and collectively as the “**Parties**”,

#### WHEREAS

- (a) Finland intends to establish its Member State Compartment under the InvestEU Fund and to allocate resources from the Contribution from the Funds under Shared Management and an Additional Contribution to the provisioning of a part of the EU Guarantee to be used for Financing and Investment Operations addressing specific market failures and/or sub-optimal investment situations in its territory.
- (b) To such end, on the present date Finland and the Commission intend to enter into a contribution agreement (the “Contribution Agreement”) laying down the terms and conditions governing the use of the part of the EU guarantee established under the Member State Compartment of Finland (the “EU Guarantee”).
- (c) According to the Contribution Agreement, Finland makes a Contribution from the Funds under Shared Management and an Additional Contribution to the provisioning of the EU Guarantee according to the Provisioning Rate established under Clause 6.1 of the Contribution Agreement.
- (d) The Contingent Liability is defined in accordance with Clauses 5.5, 5.6 and 5.7.d of the Contribution Agreement.
- (e) According to Clause 11 of the Contribution Agreement, Finland undertakes to reimburse to the Commission any amount paid by the Commission under any guarantee calls, relating to Financing and Investment Operations benefitting from the part of the EU Guarantee provisioned through the Contribution from the Funds under Shared Management, the Additional Contribution and the Related Costs and Fees that exceeds the level of the relevant provisioning amount available in the Common Provisioning Fund, up to the total amount of the Contingent Liability. The Back-to-Back Guarantee

should be used in accordance with the definitions of the Back-to-Back Guarantee and Contingent Liability, and Clause 9.1 and 13.2 under the Contribution Agreement only in those cases where the provisioning in the Common Provisioning Fund is depleted; whereas the replenishments should be made in accordance with Clause 12.2 of the Contribution Agreement. However, all previous payments both under the Back-to-Back Guarantee and the replenishments, should be deducted from the Contingent Liability, as defined in Recital (d), to calculate the available Contingent Liability under the Back-to-Back Guarantee, as defined in Clause 4.4 of this Agreement. The prompt and due performance of the reimbursement obligation should be covered by Finland through a back-to-back guarantee of the amount equal to the available Contingent Liability under the Back-to-Back Guarantee.

- (f) Finland should provide the Commission with the Back-to-Back Guarantee prior to the entry into force of the Contribution Agreement.
- (g) In light of the above and in view of signing the Contribution Agreement, Finland, as guarantor, and the Commission, as beneficiary, enter into this Back-to-Back Guarantee in order to govern the terms and conditions relating to the guarantee coverage of Finland's reimbursement obligation referred to under Recital (e).

Now therefore,

## 1. **CONSTRUCTION**

- 1.1 The Recitals to the Back-to-Back Guarantee shall form an integral part thereof.
- 1.2 All capitalized terms under the Back-to-Back Guarantee shall have the same meaning attributed to them under the Contribution Agreement.
- 1.3 All references in the Back-to-Back Guarantee to an agreement, instrument or other document shall be construed as a reference to that agreement, instrument or other document as the same may be amended, supplemented, restated, extended, replaced or novated from time to time.

## 2. **GUARANTEED OBLIGATION**

This Back-to-Back Guarantee covers Finland's obligation to reimburse, to the Commission, the amount initially paid or to be paid by the Commission under any guarantee call relating to the Financing and Investment Operations implemented under the part of the EU Guarantee under the Member State Compartment including the Related Costs and Fees, which exceeds the provisioning amount available in the Common Provisioning Fund, (the "Due Amount").

## 3. **BACK-TO-BACK GUARANTEE**

- 3.1 Finland hereby issues an unconditional, irrevocable and independent first-demand guarantee, by which it undertakes to pay to the Commission the Due Amount.
- 3.2 The total Contingent Liability covered by this Back-to-Back Guarantee amounts to EUR 3 008 409. According to Clauses 5.5, 5.6 and 5.7.d of the Contribution Agreement,

the total Contingent Liability shall amount to EUR 8 700 000 subject to the satisfaction of the condition precedent in Clause 5.6 of the Contribution Agreement.

- 3.3 The available Contingent Liability under the Back-to Back Guarantee shall be calculated based on Clause 4.4 and in accordance with the definitions of the Back-to-Back Guarantee and Contingent Liability, Clauses 9.1 and Clause 13.2 under the Contribution Agreement.

#### **4. CALL(S) ON THE BACK-TO-BACK GUARANTEE**

- 4.1 The Commission shall be entitled to call on the Back-to-Back Guarantee by issuing a written notice to Finland requesting the payment of the Due Amount, as per the template in Annex 1. The financial liability under the Contingent Liability that the Commission shall be entitled to call on corresponds to the amount of the EU Guarantee under the Member State Compartment not covered by the Contribution from the Funds under Shared Management or by the Additional Contribution.

- 4.2 Finland shall execute the payment of the Due Amount within 15 Working Days from the reception of the written notice referred to in Clause 4.1 to the bank account therein specified.

- 4.3 Shall the payment not be received, or only a partial payment be received, the Commission shall set off the payment against any amounts due to Finland.

- 4.4 The Due Amount shall not exceed the amount of the available Contingent Liability under the Back-to-Back Guarantee.

- 4.5 The available Contingent Liability under the Back-to Back Guarantee at the time the Due Amount is due shall be determined by deducting the total amount of all the former payments to the Commission further to the calls under this Back-to-Back Guarantee as set out in Clause 11 of the Contribution Agreement, as well as the replenishments of the provisioning as set out in Clause 12 of the Contribution Agreement, from the total amount of the Contingent Liability, as defined in Clause 5.5 of the Contribution Agreement and referred to in Clause 3.1 above.

#### **5. EXCLUSION OF SET-OFF**

Finland is not entitled to set-off or deduct any amounts owed to it by the Union from any payments due by Finland under this Back-to-Back Guarantee.

Any payment shall be completely free of any deduction, interest or charges.

#### **6. OBLIGATIONS NOT DISCHARGED**

The obligations of Finland herein contained shall not be discharged, impaired or otherwise affected by:

- (a) *Indulgence, Waivers or Consents*: time or other indulgence or any waiver or consent being granted or agreed to be granted to the Union or Commission in respect of any of its obligations under or in respect of the Contribution Agreement;

(b) *Amendment*: any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement or replacement, waiver or release of, any obligation of the Union under or in respect of the Back-to-Back Guarantee or the Contribution Agreement or any security or other guarantee or indemnity in respect thereof provided that none of the foregoing shall result in any increase of Finland's liability under this Back-to-Back Guarantee.

7. **PARI PASSU**

Finland confirms that its obligations hereunder shall at all times rank *pari passu* with all other present and future, direct, unconditional, unsubordinated and unsecured obligations of Finland.

8. **ASSIGNMENT**

Finland shall not be entitled to assign or transfer all or any of their rights, benefits and obligations hereunder.

9. **EXPIRY OF THE GUARANTEE**

9.1 This Back-to-Back Guarantee shall expire upon expiration or termination of the Contribution Agreement provided all the underlying obligations under it have been discharged by Finland. The Commission shall confirm such discharge in writing.

9.2 This Back-to-Back Guarantee constitutes an original right that is independent of the relationship between the Commission and Finland and that is independent of the relationship between the Implementing Partner and the Commission.

10. **SEVERABILITY**

If any one or more of the provisions contained in this Back-to-Back Guarantee should be or become fully or in part invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this Back-to-Back Guarantee shall not in any way be affected or impaired thereby. Provisions that are fully or in part invalid, illegal or unenforceable, shall be interpreted and thus implemented according to the spirit and purpose of this Agreement.

11. **GOVERNING LAW AND JURISDICTION**

11.1 This Back-to-Back Guarantee shall be governed by and shall be construed in accordance with European Union law, supplemented if necessary by Luxembourgish law.

11.2 Any and all disputes arising between the Parties in relation to the legality, validity, interpretation or execution of this Back-to-Back Guarantee shall be exclusively referred to the jurisdiction of the Court of Justice of the European Union in accordance with Article 272 of the TFEU.

12. **ENTRY INTO FORCE**

This Back-to-Back Guarantee shall enter into force upon the date of signature by the last Party.

The Back-to-Back Guarantee shall in no event enter into force on a date after the date of the entry into force of the Contribution Agreement.

### 13. AMENDMENTS

- 13.1 Amendments to this Back-to-Back Guarantee shall be made in writing, after each Party ensures that all prior authorisations necessary for such amendments have been obtained or performed at the time when the written consent is given. Amendments shall become effective upon signature by both Parties of the document under which the amendments are agreed and upon completion of other procedures, if required by law.
- 13.2 The Parties shall negotiate and execute in good faith any amendment to the terms of this Back-to-Back Guarantee that may become necessary or desirable.

### 14. NOTICES AND COMMUNICATION

All notices, demands and other communications between the Parties shall be made by letter or e-mail and shall be considered duly made upon receipt and if addressed as follow:

For the Commission:

Address: European Commission, Directorate-General Economic and Financial Affairs, Directorate L, L-2920 Luxembourg

E-mail: ECFIN-L3@ec.europa.eu, antongiulio.marin@ec.europa.eu

Attention: Mr. Antongiulio Marin

For Finland:

Address: State Treasury - Finance/State Guarantees, PO Box 14, FI-00054 STATE TREASURY, Helsinki, Finland

Email: stateguarantees@statetresury.fi

With copy to: Ministry of Finance, Financial Markets Department, PO Box 28, FI-00023 GOVERNMENT, Helsinki, Finland

Email: valtontakaukset.vm@gov.fi, sakari.lehtio@gov.fi

Attention: Mr Sakari Lehtiö

Each Party shall update the addressees and notify the other Party hereto upon any such update.

15. **MISCELLANEOUS**

Annex 1 to this Back-to-Back Guarantee forms an integral part thereof.

*[Signature page to follow]*

\*

IN WITNESS WHEREOF, each of the Parties has caused this Back-to-Back Guarantee to be executed in two originals in the English language, each one taking one copy/copies, as of the day and the year specified below

Signed for and on behalf of

**FINLAND**

Signed for and on behalf of

**THE EUROPEAN UNION**

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Annika Saarikko  
Minister of Finance

Date

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Maarten Verwey  
Director-General

Date

## ANNEX 1

### Template for payment claim

From: **The European Union, represented by the European Commission (the "Commission");**

To: **The Republic of Finland and [administration/Unit with e-mail address to which claims shall be sent]**

Date: [•]

#### **Back-to-Back Guarantee dated [•] between the Commission and the Republic of Finland**

1. Pursuant to Clauses 3 and 4 of the Back-to-Back Guarantee dated [•] between the Republic of Finland and the Commission, we hereby:
  - request that you pay the Commission EUR [*amount of guarantee calls exceeding the provisions in the Member State Compartment in the Common Provisioning Fund but limited to the total amount of the Contingent Liability*] within 15 Working Days from the reception of this claim.
2. The payment shall be made into the following euro-denominated account:

[*Euro account details*]

Executed by

**The Commission**

**acting by:**

**Directorate-General for Economic and Financial Affairs**

**Name:** [•]

**Title:** [•]