





WORKING ARRANGEMENT BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND THE EUROPEAN INVESTMENT BANK AND THE EUROPEAN INVESTMENT FUND

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Preamble

The European Public Prosecutor's Office (EPPO) on the one side and the European Investment Bank (EIB) and the European Investment Fund (EIF), both collectively, or individually, referred to as the 'EIB Group' – as applicable – for the purpose of this Working Arrangement, on the other side, together referred to as 'the Parties',

Having regard to the Treaty on European Union, and in particular to Article 51 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular to Articles 86, 308, 309 and 325 thereof,

Having regard to Protocol no 7 on the privileges and immunities of the European Union,

Having regard to Protocol no 5 on the Statute of the European Investment Bank, hereinafter referred to as the 'EIB Statute', and in particular to Articles 18 and 28 thereto,

Having regard to the Statutes of the European Investment Fund, hereinafter referred to as the 'EIF Statutes', and in particular to Articles 2, 35 and 36 thereto,

Having regard to the respective legal framework applicable to EIB and EIF staff, and in particular the duty of care towards their staff incumbent on the EIB and the EIF respectively,

Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the EPPO (hereinafter referred to as 'the EPPO Regulation'), and in particular to Articles 22-25, 34(8), 43(2), 54, 99 and 103(2) thereof,

Having regard to the Internal Rules of Procedure of the EPPO (2021/C 22/03) adopted by the College of the EPPO on 12 October 2020, and in particular to Articles 38-42, 43, 57 and 66 thereof,

Having regard to Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (hereinafter referred to as 'the PIF Directive'), and in particular to Articles 2, 3 and 4 thereof,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council 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,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, hereinafter referred to as 'Regulation 2018/1725',

Having regard to the Policy on preventing and deterring prohibited conduct in European Investment Bank activities,

Having regard to the Policy on preventing and deterring prohibited conduct in European Investment Fund activities,

Considering that, in light of the principle of sincere cooperation, the EPPO and the EIB Group shall establish and maintain a close relationship based on mutual cooperation within their respective mandates and competences, in an effort to make the fight against fraud, corruption, money laundering and any other criminal offences affecting the Union's financial interests as efficient as possible and to avoid duplication of efforts,

HAVE DECIDED as follows:

CHAPTER I GENERAL PROVISIONS

Article 1 Purpose

This Working Arrangement aims at facilitating cooperation between the EPPO and the EIB Group within the existing limits of their respective legal frameworks and mandates, through the exchange of information, including personal data, and other cooperative activities as set out in the present Working Arrangement.

Article 2 Definitions

For the purpose of this Working Arrangement:

- a. 'European Delegated Prosecutor' means the staff of the EPPO referred to in Articles 17 and 96(6) of the EPPO Regulation;
- b. 'IG/IN' means the Fraud Investigations Division of the Inspectorate General of the EIB Group;
- c. 'Personal data' shall mean any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Article 3 Areas of crime

The cooperation as established in this Working Arrangement shall relate to the relevant areas of crime within the mandate of the EPPO, including specifically criminal offences affecting the financial interests of the European Union that are provided for in the PIF Directive.

CHAPTER II EXCHANGE OF INFORMATION

Article 4 General provisions

- 1. The Parties may share information, including personal data, which might be relevant to the other Party for the purpose of this Working Arrangement and the exercise of their respective mandates.
- 2. Pursuant to Article 24(1) of the EPPO Regulation, the EIB Group shall without undue delay report to the EPPO any suspected criminal conduct in respect of which the EPPO could exercise its competence, by using the template agreed between the Parties.
 - During the time the EPPO has not taken a decision on whether to open an investigation and during its duration, the EIB Group shall not report that information to any other party, except when required by the EIB Group reporting obligations. The EPPO should be informed of such reporting to any other party beforehand.
- 3. During the time the EPPO conducts a criminal investigation in accordance with the EPPO Regulation, the EIB Group's Fraud Investigations Division shall not take any active investigation steps into the same facts, except when requested by the EPPO in accordance with Article 9 of this Working Arrangement.
- 4. The EIB Group, shall deal with requests for information expeditiously and, in any case, within 10 working days from reception of the request, within 5 working days for urgent requests, and within 2 working days for very urgent requests. For requests of a complex nature (including requests requiring the availability of specific EIB Group staff), the EIB Group and the EPPO shall agree on an extended deadline.

Article 5 EPPO's access to information

- 1. Where the EPPO wishes to verify whether relevant information falling within its competence is stored in the EIB Group's databases, it shall submit a request to the EIB Group by using the template agreed between the Parties.
- 2. The request referred to in the previous paragraph shall be satisfied by the EIB Group by providing the relevant requested information necessary for the performance of the tasks of the EPPO, if available to the EIB Group.

Article 6 Best practice in reporting of potential cases to the EPPO

In order to ensure and reflect upon best practice in the manner and form of reporting to the EPPO under Article 24(1) of the EPPO Regulation, the Parties shall meet regularly, or at the request of either of them.

Article 7 Exercise of competence by the EPPO

- 1. Pursuant to Article 24(7) of the EPPO Regulation, where, upon verification of information provided by the EIB Group, the EPPO decides that there are no grounds to initiate an investigation, the EPPO shall inform the EIB Group thereof without undue delay.
- 2. Pursuant to Article 26(2) of the EPPO Regulation, where upon verification of information provided by the EIB Group, the EPPO decides to initiate an investigation, the EPPO shall inform the EIB Group thereof without undue delay.
- 3. Pursuant to Article 34(8) of the EPPO Regulation and where resulting from information provided to the EPPO by the EIB Group, the EPPO shall inform the EIB Group without undue delay of any decision to transfer a case file based on that information to the competent national authorities.

Article 8 Precautionary measures

- 1. The EPPO shall without delay provide sufficient information to the EIB Group to allow it to take appropriate measures in accordance with Article 103(2) of the EPPO Regulation.
- 2. Where the EIB Group has reported information to the EPPO pursuant to Article 24(1) of the EPPO Regulation, but the EPPO has not yet taken a decision on whether to open an investigation, the EIB Group shall avoid undertaking any activities that may compromise potential evidence and shall consult the EPPO before taking any precautionary measures, unless immediate action is required. In each case, this is without prejudice to the duties and obligations foreseen in the EIB Statute and the EIF Statutes.
- 3. In accordance with Article 103(2) of the EPPO Regulation, the EIB Group may take administrative measures to protect the financial interests of the Union, including disciplinary action and recovery of funds. Without prejudice to the proper conduct and confidentiality of its investigations, the EPPO shall without undue delay provide information allowing the EIB Group to take such measures. The EPPO may recommend specific measures.

Article 9 Support provided by the EIB Group to the EPPO

1. In the course of EPPO investigations and in accordance with the law governing them, the EPPO may request the EIB Group to support or complement the EPPO's activity in relation to cases in which the EIB Group is also involved, in particular by:

- a. Providing operational support, including the participation of staff from the EIB Group in EPPO investigations as experts, expert witnesses, advisers or any other equivalent capacity, as applicable;
- b. Conducting analyses, including forensic analyses, of documents or data in any format, acquired by the EPPO or the EIB Group in the course of their investigations;
- c. Providing the EPPO with information and expertise in relation to projects and activities of the EIB Group of relevance to EPPO investigations, as well as the application of EU rules and procedures in such projects and activities;
- d. Conducting administrative investigations, as applicable;
- e. Any other activity, relevant to EPPO investigations, which the EIB Group may perform in accordance with its mandate.
- 2. The EPPO and the EIB Group may consult each other on the content of the request or on the proposed timeframe at any time before or after sending the request, and during its execution. Where appropriate, intermediate reporting, including its frequency and its content, may be agreed between the Parties.
- 3. The Parties will agree, on a case-by-case basis, on the further use of information arising out of this operational assistance.

Article 10 Exchange of strategic information, trainings and staff exchanges

- 1. The Parties may exchange information of strategic nature, such as typologies and challenges, lessons learned and other observations and findings related to their respective activities, which could support their work.
- 2. The Parties may invite each other to seminars, workshops, conferences and other similar activities that are relevant to their respective areas of competence.
- 3. The Parties may consider staff exchanges, as appropriate, which may be regulated in a separate instrument.

Article 11 Channels of communication

- 1. Each Party shall designate a contact point within their respective organisation for the implementation of this Working Arrangement.
- 2. When transmitting information or processing requests in accordance with this Working Arrangement, the EPPO shall address the EIB Group through IG/IN.
- 3. When transmitting information or processing requests in accordance with this Working Arrangement, the EIB Group through IG/IN shall address the EPPO through the Central Office or the relevant European Delegated Prosecutor.

CHAPTER III PROCESSING OF PERSONAL DATA

Article 12 General provisions

- 1. Personal data may only be processed by the EPPO or by the EIB Group, in their respective roles as independent controllers, in full compliance with the respectively applicable data protection framework applicable to such processing
- 2. The provisions on data protection in this Working Arrangement shall not in any event be read or applied in isolation from the respectively applicable legal framework governing the processing, including exchanging, of personal data by the Parties.

Article 13 Exchange of personal data

- 1. Any exchange of personal data shall be in accordance with and based upon the Parties' respective legal frameworks.
- 2. Both Parties shall ensure that all receipts of personal data, as well as any transfers thereof, are duly logged and traceable, including, where required, in line with these or other implementing rules, the grounds for their transfer.
- 3. No personal data shall be kept longer than necessary for the purpose for which it has been processed, or than required due to other legal obligations.
- 4. Where a Party has reason to believe that personal data previously transmitted by it is incorrect, inaccurate, no longer up to date or has been unlawfully transmitted, it shall duly inform the other Party which shall correct or delete the personal data and provide notification thereof.
- 5. Where a Party has reason to believe that personal data previously received by it is incorrect, inaccurate, no longer up to date or has been unlawfully transmitted, it shall duly inform the other Party which shall provide its position on the matter.

Article 14 Rights of data subjects

- 1. Where a data subject exercises its rights pursuant to Regulation (EU) 2018/1725 or the EPPO Regulation in relation to personal data transmitted by the Parties on the basis of the present Working Arrangement, the transmitting Party should be consulted before a decision on the data subject's request is taken. The final decision shall be subsequently notified to the other party.
- 2. At the moment that Parties exchange personal data under this Working Arrangement, and the relevant data subject has already been notified of the processing of their data by the transmitting party, this shall be notified to the receiving party.

Article 15 Personal data breach

- 1. As soon as one of the Parties becomes aware of a data breach concerning personal data transmitted on the basis of the present Working Arrangement, it should inform the other Party accordingly. The communication should describe the nature of the personal data breach as well as any remedial action taken, as appropriate.
- 2. In accordance with their respective legal frameworks, the Parties shall take all the necessary steps to notify the European Data Protection Supervisor of any breach of personal data unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.

Article 16 Use of the information

- 1. Personal data shall be transmitted with a purpose and shall not be processed in a manner incompatible with the purpose for which it was transmitted.
- 2. Any restriction on the use of information exchanged, or instructions relating to deletion or destruction, including possible access restrictions in general or specific terms, shall be respected by the Parties.

Article 17 Onward transfers

Any onward transfer, including to Union bodies and agencies, Member States, third countries and international organisations, shall obtain the prior explicit authorization of the transmitting Party, in specific or general terms. Such prior authorization may only be given when allowed under the applicable legal framework of the transmitting Party.

CHAPTER IV FINAL PROVISIONS

Article 18 Technical implementation

The Parties may agree on appropriate technical and practical measures for the implementation of this Working Arrangement, where so required for the purposes of exchanging information or implementing provisions of the respective legal frameworks. This may be regulated in a separate instrument.

Article 19 Liability for the unauthorised, incorrect or inaccurate processing of data

- 1. Each relevant Party may be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in the information stored, processed or communicated by a Party.
- 2. If as a result of own fraud, wilful misconduct or gross negligence, the information is erroneously communicated by a Party or constitutes a failure to comply with their

obligations, the relevant Party shall be bound to repay, on request, any amounts paid as compensation under paragraph 1 above, unless the information was used by the other Party in breach of this Working Arrangement.

3. The Parties shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

Article 20 Expenses

The Parties shall bear their own expenses that arise in the course of implementation of this Working Arrangement.

Article 21 Settlement of disputes

- 1. The Parties shall promptly meet at the request of either Party to solve amicably any disputes concerning the interpretation or implementation of this Working Arrangement that may affect the cooperative relationship between the Parties.
- 2. In the event of serious failings of either Party to comply with the provisions of this Working Arrangement, or if a Party is of the view that such a failing may occur in the near future, either Party may suspend in writing the application of this Working Arrangement temporarily, pending the application of paragraph 1 of this Article. Obligations inherent upon the Parties under the Working Arrangement will nonetheless remain in force.
- 3. If a dispute cannot be settled by means of consultation in accordance with paragraph 1, either Party may request entering into negotiations for the amendment of this Working Arrangement in accordance with Article 25.

Article 22 Confidentiality and Disclosure

- 1. Information communicated or acquired under this Working Arrangement is protected by professional secrecy in conformity with Articles 339 and Article 15(3) fourth indent of the Treaty on the Functioning of the European Union.
- 2. The Parties shall at all times keep confidential all information acquired as a consequence of their involvement in the implementation of this Working Arrangement.
- 3. Disclosure of information acquired as a consequence of cooperation in accordance with the present Working Arrangement can be considered and/or made in the following circumstances:
 - (a) Where the disclosure is made within the EIB Group;
 - (b) Where the Parties are entitled or required to disclose such information by virtue of law, regulation, or where the disclosure of such information is requested by regulatory or fiscal authorities or any court of competent jurisdiction, including disclosure of such information to the Commission, the European Anti-Fraud Office, and/ or the European Court of Auditors; and

- (c) Where disclosure is necessary in accordance with Regulation 1049/2001 or the Transparency Policy of the EIB Group after prompt consultation with the Party which has provided the information.
- 4. For the purposes of this Working Arrangement, consultants, advisers and other service providers employed by the Parties shall be considered as full staff members of the Party receiving the information, it being understood that the consultant, adviser or service provider concerned shall have given that Party an undertaking to treat such information with the appropriate confidentially and not to disclose it to third parties.

Article 23 Waiving of immunities

- 1. For the purposes of Article 29(2) of the EPPO Regulation, where the immunity of a person protected by privileges or immunities under Union law, in particular the Protocol on the privileges and immunities of the European Union, presents an obstacle to the conduct of a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.
- 2. The reasoned written request of the European Chief Prosecutor will be addressed to the contact point of the EIB Group.
- 3. Where the EPPO considers that the person whose immunity is requested to be waived cannot, in accordance with applicable case-law¹, be informed and heard on the request to waive the immunity, the reasoned written request will contain the detailed grounds for not hearing the person concerned.
- 4. The EPPO will preferably use the template in Annex I when submitting requests pursuant to this Article. The EIB Group may request additional information or explanations from the EPPO.
- 5. The EIB Group will provide a written reply within the shortest possible timeframe according to the principle of mutual sincere cooperation in principle after having heard the person whose immunity is requested to be waived.

The reply will be provided within 30 working days after reception of the request in cases where the person concerned is heard, and within 20 working days in cases where the person is not heard.

Where the EIB Group is unable to respect the deadline, it will inform the EPPO as soon as practicable, and give an indication of the time within which it expects to be able to respond.

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Judgment of 18 June 2020, Commission v RQ, C-831/18P, EU:C:2020:481.

Article 24 Inviolability of premises, buildings and archives

- 1. In accordance with Article 1 of the Protocol on Privileges and Immunities, the premises and buildings used by the members of the EIB Group shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.
- 2. In accordance with Article 2 of the Protocol on Privileges and Immunities, the archives of the members of the EIB Group shall be inviolable.
- 3. Without prejudice to the privileges and immunities of the members of the EIB Group as enshrined in Articles 1 and 2 of the Protocol, and where the investigations of the EPPO require access to information relevant to their investigation and held on EIB Group premises, buildings and/or in EIB Group archives, the EPPO will address a reasoned written request to gain access to such information to the contact point of the EIB Group. Access to EIB Group premises, buildings and/or archives shall only be granted upon the agreement of a member of the Management Committee of the EIB, the Chief Executive of the EIF, the Secretary General of the EIB or a person to whom the EIB Secretary General or the Chief Executive of the EIF have delegated competence. The EPPO shall respect any conditions imposed by the person granting access.
- 4. The EPPO's Central Office will preferably submit requests in application of this Article by using the template in Annex II.
 - The EIB Group will provide a written reply to the EPPO's Central Office as soon as possible and based on the principle of mutual sincere cooperation. The reply will be provided within 15 working days after receipt of the request.
 - Where the EIB Group is unable to respect the deadline, it will inform the EPPO's Central Office as soon as possible, and give an indication of the time within which it expects to be able to respond.
- 5. In the case that access to the EIB Group buildings, premises and/or archives is granted in the context of an EPPO investigation, the latter shall request assistance from IG/IN.

Article 25 Amendments

- 1. This Working Arrangement may be amended in writing at any time by mutual consent between the Parties. Any amendment must receive the approval in line with the Parties' respective legal frameworks.
- 2. Such amendment shall enter into force on the day following the date upon which the Parties notify each other of the completion of their internal requirements or any other date as agreed between the Parties.
- 3. Two years after the entry into force of the Working Arrangement, any Party may, on the basis of experience gathered during the practical implementation thereof, suggest to the other Party to amend the Working Arrangement in line with paragraph 1.



Article 26 Entry into force

This Working Arrangement shall enter into force on the day following the date of its signature by the last signatory.

Article 27 Termination

- 1. This Working Arrangement may be terminated in writing by either Party with three months' notice.
- 2. In case of termination, the Parties shall reach agreement on the continued use and storage of the information that has already been communicated between them.
- 3. Without prejudice to paragraph 1 of this Article, the legal effects produced prior to termination of this Working Arrangement shall remain in force.

Done at Luxembourg in three identical copies in the English language.

For the EPPO:

Laura Codruța Kövesi

European Chief Prosecutor

Date: 7 DECEMBER 2021

For the EIB:

Jan Willem van der Kaaij

Inspector General

Date: 7 DECEMBER 2021

Barbara Balke

General Counsel

Date: 7 DECEMBER 2021

For the EIF:

Jobst-Joachim Neuss Chief Risk Officer Date: 7 DECEMBER 2021

Maria Leander

Secretary General
Date: 1 December 2021

Annex I

Template for requests by the European Public Prosecutor's Office (EPPO) for the waiver of immunity of a person protected by privileges or immunities under Union law

Article 23 of the Working Arrangement between the EPPO and the EIB Group provides that:

- 1. For the purposes of Article 29(2) of the EPPO Regulation, where the immunity of a person protected by privileges or immunities under Union law, in particular the Protocol on the privileges and immunities of the European Union, presents an obstacle to the conduct of a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.
- 2. The reasoned written request of the European Chief Prosecutor will be addressed to the contact point of the EIB Group.
- 3. Where the EPPO considers that the person whose immunity is requested to be waived cannot, in accordance with applicable case-law², be informed and heard on the request to waive the immunity, the reasoned written request will contain the detailed grounds for not hearing the person concerned.
- 4. The EPPO will preferably use the template in Annex I when submitting requests pursuant to this Article. The EIB Group may request additional information or explanations from the EPPO.
- 5. The EIB Group will provide a written reply within the shortest possible timeframe according to the principle of mutual sincere cooperation in principle after having heard the person whose immunity is requested to be waived.

The reply will be provided within 30 working days after reception of the request in cases where the person concerned is heard, and within 20 working days in cases where the person is not heard.

Where the EIB Group is unable to respect the deadline, it will inform the EPPO as soon as practicable, and give an indication of the time within which it expects to be able to respond.

Pursuant to the above-mentioned provision, the EPPO herewith submits the following waiver request:

- 1. Name of the person concerned and all other identification details available (for example, nationality, personnel number, place of employment)
- 2. Detailed reasons for the request and expected timing of the procedure to which the request relates

Judgment of 18 June 2020, Commission v RQ, C-831/18P, EU:C:2020:481.

3. Proposed legal basis for	the	waiver
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4. In case the person concerned cannot be informed of and heard on the request to waive the immunity, the detailed grounds for not hearing the person concerned, so as to enable the EIB Group to make the necessary balance³

To ensure confidentiality, please instruct your services to share this information only if strictly necessary and on a need-to-know basis.

[If necessary, please add other relevant information.]

In case of queries, please contact «Name, function», «email», «phone number».

[Name, Surname]

 $^{^{3}}$ As per Judgment of 18 June 2020, Commission v RQ, C-831/18P, EU:C:2020:481.

Annex II

Template for requests by the European Public Prosecutor's Office (EPPO) for the waiver of inviolability of premises, buildings and archives

Article 24, paragraphs 1 and 2 of the Working Arrangement between the EPPO and the EIB Group provide that:

- 1. In accordance with Article 1 of the Protocol on Privileges and Immunities, the premises and buildings used by the members of the EIB Group shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.
- 2. In accordance with Article 2 of the Protocol on Privileges and Immunities, the archives of the members of the EIB Group shall be inviolable.
- 3. Without prejudice to the privileges and immunities of the members of the EIB Group as enshrined in Articles 1 and 2 of the Protocol, and where the investigations of the EPPO require access to information relevant to their investigation and held on EIB Group premises, buildings and/or in EIB Group archives, the EPPO will address a reasoned written request to gain access to such information to the contact point of the EIB Group. Access to EIB Group premises, buildings and/or archives shall only be granted upon the agreement of a member of the Management Committee of the EIB, the Chief Executive of the EIF, the Secretary General of the EIB or a person to whom the EIB Secretary General or the Chief Executive of the EIF have delegated competence. The EPPO shall respect any conditions imposed by the person granting access.
- 4. The EPPO's Central Office will preferably submit requests in application of this Article by using the template in Annex II.
 - The EIB Group will provide a written reply to the EPPO's Central Office as soon as possible and based on the principle of mutual sincere cooperation. The reply will be provided within 15 working days after receipt of the request.
 - Where the EIB Group is unable to respect the deadline, it will inform the EPPO's Central Office as soon as possible, and give an indication of the time within which it expects to be able to respond.
- 5. In the case that access to the EIB Group buildings, premises and/or archives is granted in the context of an EPPO investigation, the latter shall request assistance from IG/IN.

Pursuant to the above-mentioned provision, the EPPO herewith submits the following waiver request:

- 1. Precise identification of the premises, buildings and archives concerned
- 2. Detailed reasons for the request and expected timing of the next steps in the procedure

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To ensure confidentiality, please instruct your services to share this information only if strictly necessary and on a need-to-know basis.

[If necessary, please add other relevant information.]

In case of queries, please contact «Name, function», «email», «phone number».

[Name, Surname]