

**COUNCIL REGULATION (EC) No 1083/2006
of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999**

Article 36: Participation by the European Investment Bank and the European Investment Fund

1. The EIB and the EIF may participate, in accordance with the modalities laid down in their statutes, in the programming of assistance from the Funds.
2. The EIB and the EIF may, at the request of Member States, participate in the preparation of national strategic reference frameworks and operational programmes, as well as in activities relating to the preparation of projects, in particular major projects, the arrangement of finance, and public-private partnerships. The Member State, in agreement with the EIB and the EIF, may concentrate the loans granted on one or more priorities of an operational programme, in particular in the spheres of innovation and the knowledge economy, human capital, the environment and basic infrastructure projects.
3. The Commission may consult the EIB and the EIF before adoption of the decision referred to in Article 28(3) and of the operational programmes. That consultation shall relate in particular to operational programmes containing an indicative list of major projects or programmes which, by the nature of their priorities, are suitable for mobilising loans or other types of market-based financing.
4. The Commission may, if it considers it appropriate for the appraisal of major projects, request the EIB to examine the technical quality and economic and financial viability of the projects concerned, in particular as regards the financial engineering instruments to be implemented or developed.
5. The Commission, in implementing the provisions of this Article, may award a grant to the EIB or the EIF.

Article 44: Financial engineering instruments

As part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds, and for urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development.

When such operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds and urban development funds, the Member State or the managing authority shall implement them through one or more of the following forms:

- (a) the award of a public contract in accordance with applicable public procurement law;
- (b) in other cases, where the agreement is not a public service contract within the meaning of public procurement law, the award of a grant, defined for this purpose as a direct financial contribution by way of a donation:
 - (i) to the EIB or to the EIF; or
 - (ii) to a financial institution without a call for proposal, if this is pursuant to a national law compatible with the Treaty.

The implementing rules of this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Statement of the Commission on Article 44 of Regulation 1083/2006

The ability of Member States and managing authorities to select a suitable holding fund is essential for operations to improve access to finance for micro to medium enterprises under the JEREMIE initiative, and for operations to promote sustainable investment in urban projects under the JESSICA initiative. In order to ensure that this power of selection is not compromised and to give an *effet utile* to Article 44(b), the Commission encourages the Member States and managing authorities to select a holding fund by awarding a grant to the EIB, the EIF or to financial institutions pursuant to their national laws in compliance with the Treaty. Alternatively, Member States and managing authorities may select a holding fund by awarding a public service contract in compliance with public procurement law.

Article 78: Statement of expenditure

1. **All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure, in accordance with Article 56, paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value.**
However, as regards aid schemes within the meaning of Article 87 of the Treaty only, in addition to the conditions set out in the previous subparagraph, the public contribution corresponding to the expenditure included in a statement of expenditure shall have been paid to the beneficiaries by the body granting the aid.
2. By way of derogation from paragraph 1, as regards State aid within the meaning of Article 87 of the Treaty, the statement of expenditure may include advances paid to the beneficiaries by the body granting the aid, under the following cumulative conditions:
 - (a) they shall be subject to a bank guarantee or a financial public facility having an equivalent effect;
 - (b) they shall not exceed 35 % of the total amount of the aid to be granted to a beneficiary for a given project;
 - (c) they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest three years after the year of the payment of the advance or on 31 December 2015, whichever earlier; if they are not, the next statement of expenditure shall be corrected accordingly.
3. Statements of expenditure shall identify, for each operational programme, the elements referred to in paragraph 1 relating to regions receiving transitional assistance.
4. In the case of major projects as defined in Article 39, only expenditure related to major projects already adopted by the Commission may be included in statements of expenditure.
5. Where the contribution from the Funds is calculated with reference to public expenditure as provided for in Article 53(1), any information on expenditure other than public expenditure shall not affect the amount due as calculated on the basis of the payment request.
6. **By way of derogation from paragraph 1, as regards financial engineering instruments as defined in Article 44, the statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds.**
However, at the partial or final closure of the operational programme, eligible expenditure shall be the total of:
 - (a) any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; or
 - (b) any payments for investment in enterprises from each of the abovementioned funds; or
 - (c) any guarantees provided including amounts committed as guarantees by guarantee funds; and
 - (d) eligible management costs.**The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary.**
The corresponding statement of expenditure shall be corrected accordingly.
7. **Interest generated by payments from operational programmes to funds as defined in Article 44, shall be used to finance urban development projects in the case of urban development funds or financial engineering instruments for small and medium-sized enterprises in other cases. Resources returned to the operation from investments undertaken by funds as defined in Article 44 or left over after all guarantees have been honoured shall be reused by the competent authorities of the Member States concerned for the benefit of urban development projects or of small and medium-sized enterprises.**

**COMMISSION REGULATION (EC) No 1828/2006 of 8 December 2006
setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general
provisions on the European Regional Development Fund, the European Social Fund and the Cohesion
Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the
European Regional Development Fund**

**CHAPTER II
IMPLEMENTING PROVISIONS OF REGULATION (EC) NO 1083/2006**

**Section 8
Financial engineering instruments**

*Article 43
General provisions applicable to all financial engineering instruments*

1. Articles 43 to 46 shall apply to financial engineering instruments in the form of actions which make repayable investments, or provide guarantees for repayable investments, or both, in the following:
 - (a) enterprises, primarily small and medium-sized enterprises (SMEs), including micro-enterprises, as defined in Commission Recommendation 2003/361/EC as of 1 January 2005, in the case of financial engineering instruments other than urban development funds;
 - (b) public-private partnerships or other urban projects included in integrated plans for sustainable urban development, in the case of urban development funds.
2. When the Structural Funds finance operations comprising financial engineering instruments, including those organised through holding funds, a business plan shall be submitted by the co-financing partners or shareholders or by their duly authorised representative.

The business plan shall specify at least the following:

- (a) the targeted market of enterprises or urban projects and the criteria, terms and conditions for financing them;
- (b) the operational budget of the financial engineering instrument;
- (c) the ownership of the financial engineering instrument;
- (d) the co-financing partners or shareholders;
- (e) the by-laws of the financial engineering instrument;
- (f) the provisions on professionalism, competence and independence of the management;
- (g) the justification for, and intended use of, the contribution from the Structural Funds;
- (h) the policy of the financial engineering instrument concerning exit from investments in enterprises or urban projects;
- (i) the winding-up provisions of the financial engineering instruments, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured, attributable to the contribution from the operational programme.

The business plan shall be assessed and its implementation monitored by, or under the responsibility of, the Member State or the managing authority.

The assessment of the economic viability of the investment activities of the financial engineering instruments shall take into account all sources of income of the enterprises concerned.

3. Financial engineering instruments, including holding funds, shall be set up as independent legal entities governed by agreements between the co-financing partners or shareholders or as a separate block of finance within a financial institution.

Where the financial engineering instrument is established within a financial institution, it shall be set up as a separate block of finance, subject to specific implementation rules within the financial

institution, stipulating, in particular, that separate accounts are kept which distinguish the new resources invested in the financial engineering instrument, including those contributed by the operational programme, from those initially available in the institution.

The Commission may not become a co-financing partner or shareholder in financial engineering instruments.

4. Management costs may not exceed, on a yearly average, for the duration of the assistance any of the following thresholds, unless a higher percentage proves necessary after a competitive tender:
 - (a) 2% of the capital contributed from the operational programme to holding funds, or of the capital contributed from the operational programme or holding fund to the guarantee funds;
 - (b) 3% of the capital contributed from the operational programme or the holding fund to the financial engineering instrument in all other cases, with the exception of micro-credit instruments directed at micro-enterprises;
 - (c) 4% of the capital contributed from the operational programme or the holding fund to micro-credit instruments directed at micro-enterprises.
5. The terms and conditions for contributions from operational programmes to financial engineering instruments shall be set out in a funding agreement, to be concluded between the duly mandated representative of the financial engineering instrument and the Member State or the managing authority.
6. The funding agreement referred to in paragraph 5 shall include at least:
 - (a) the investment strategy and planning;
 - (b) monitoring of implementation in accordance with applicable rules;
 - (c) an exit policy for the contribution from the operational programme out of the financial engineering instrument;
 - (d) the winding-up provisions of the financial engineering instrument, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured that are attributable to the contribution from the operational programme.
7. Managing authorities shall take precautions to minimise distortion of competition in the venture capital or lending markets. Returns from equity investments and loans, less a *pro rata* share of the management costs and performance incentives, may be allocated preferentially to investors operating under the market economy investor principle up to the level of remuneration laid down in the by-laws of the financial engineering instruments, and they shall then be allocated proportionally among all co-financing partners or shareholders.

Article 44

Additional provisions applicable to holding funds

1. Where the Structural Funds finance financial engineering instruments organised through holding funds, the Member State or managing authority shall conclude a funding agreement with the holding fund, setting out the funding arrangements and objectives.

The funding agreement shall, where appropriate, take account of the following:

 - (a) as regards financial engineering instruments other than urban development funds, the conclusions of an evaluation of gaps between supply of such instruments to, and demand for such instruments by, SMEs;
 - (b) as regards urban development funds, urban development studies or evaluations and integrated urban development plans included in operational programmes.
2. The funding agreement referred to in paragraph 1 shall, in particular, make provision for:
 - (a) the terms and conditions for contributions from the operational programme to the holding fund;
 - (b) a call for expression of interest addressed to financial intermediaries or urban development funds;
 - (c) the appraisal, selection and accreditation of financial intermediaries or urban development funds by the holding fund;
 - (d) the setting up and monitoring of the investment policy or the targeted urban development plans and actions;

- (e) reporting by the holding fund to Member States or managing authorities;
- (f) monitoring the implementation of investments in accordance with applicable rules;
- (g) audit requirements;
- (h) the exit policy of the holding fund out of the venture capital funds, guarantee funds, loan funds or urban development funds;
- (i) the winding-up provisions of the holding fund, including the reutilisation of resources returned to the financial engineering instrument from investments made or left over after all guarantees have been honoured which are attributable to the contribution from the operational programme.

The investment policy referred to in point (d) shall comprise at least an indication of the targeted enterprises and the financial engineering products to be supported.

3. The terms and conditions for contributions to venture capital funds, guarantee funds, loan funds and urban development funds from holding funds supported by operational programmes shall be set out in a funding agreement, to be concluded between the venture capital fund, guarantee fund, loan fund or urban development fund, on one hand, and the holding fund, on the other.

The funding agreement shall include at least the elements listed in Article 43(6).

Article 45

Additional provisions applicable to financial engineering instruments other than holding funds and urban development funds

Financial engineering instruments other than holding funds and urban development funds shall invest in enterprises, primarily in SMEs. Such investments may be made only at the establishment, in the early stages, including seed capital, or on expansion of those enterprises, and only in activities which the managers of the financial engineering instruments judge potentially economically viable.

They shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty as of 10 October 2004..

Article 46

Additional provisions applicable to urban development funds

1. Where Structural Funds finance urban development funds, those funds shall invest in public-private partnerships or other projects included in an integrated plan for sustainable urban development. Such public-private partnerships or other projects shall not include the creation and development of financial instruments such as venture capital, loan and guarantee funds.
2. For the purposes of paragraph 1, urban development funds shall invest by means of equity, loans and guarantees.

Urban projects receiving grant assistance from an operational programme may also be supported by urban development funds.
3. Where Structural Funds finance urban development funds, the funds concerned shall not re-finance acquisitions or participations in projects already completed.