



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL POLICY

## **Revised <sup>1</sup>Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006**

### ***DISCLAIMER:***

*This is a document prepared by the Commission services. On the basis of the applicable EU Law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the Cohesion policy on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission's services explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or evolving Commission decision making practice.*

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<sup>1</sup> (Revised on 08/02/2012 following the entry into force of Commission Regulation (EC) No 1236/2011 amending Commission Regulation (EC) No 1828/2006)

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## 1. INTRODUCTION

### 1.1. Objectives and Scope

1.1.1 This note was prepared by the Directorate-General for Regional Policy in consultation with other Commission services. Its purpose is to provide guidance and to clarify some issues regarding the setting-up and implementation of financial engineering instruments, pursuant to Article 44 of Regulation (EC) No 1083/2006, hereafter referred to as the "General Regulation", Articles 3(2)(c), 4(1), 5(1)(d) and 6(2)(a) of Regulation (EC) No 1080/2006, hereafter referred to as the "ERDF Regulation", Article 11(1) of Regulation (EC) No 1081/2006 hereafter referred to as the "ESF Regulation" and Articles 43 to 46 of Regulation (EC) No 1828/2006, hereafter referred to as the "Implementing Regulation". Throughout this note these regulations will also be referred to as the "SF Regulations".

1.1.2 The guidance and clarifications provided in this note revise, expand and systematise the guidance provided in two earlier notes (COCOF/07/0018/01 and COCOF/08/0002/03) and take account of ad hoc consultations submitted to the Commission services by Member States, Managing Authorities and relevant European and national bodies concerned. This note was revised on 08/02/2012 to take account of the modifications introduced to Article 45 of the Implementing Regulation, as amended by Commission Regulation (EC) No. 1236/2011 of 29/11/2011.

1.1.3 In addition the note also recalls principles of sound financial management which should be followed by Member States, managing authorities and relevant parties in the preparation and implementation of financial engineering instruments financed pursuant to SF Regulations.

1.1.4 Regarding sound financial management, Article 14 of the General Regulation (on shared management) recalls the applicability to the implementation of Structural Funds of Article 48(2) of the Financial Regulation<sup>2</sup>, which states: "Member States shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management".

1.1.5 Sound financial management entails the need for the Union's budget appropriations to apply the principles of economy, efficiency and effectiveness. The principle of effectiveness is in particular concerned with the attainment of the specific objectives set and with the achievement of the intended results (cf. Article 27 of the Financial Regulation)<sup>3</sup>.

1.1.6 As with all other forms of assistance co-financed by the Structural Funds, the structure and implementation of financial engineering instruments pursuant to Article 44 of the General Regulation, must in all circumstances respect fully all applicable provisions of the Structural Funds regulations and other EU and national rules and regulations (in

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2 Regulation n° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002 p.1).

3 Article 27 (3) and (4) of the Financial Regulation also refer to the fact that measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. Achievement of these objectives shall be monitored by performance indicators. In addition, institutions shall undertake ex-ante and ex-post evaluations in line with guidance provided by the Commission.

particular regarding State aid and public procurement) as well as the principle of sound financial management.

1.1.7 This note, as updated in February 2011 and revised on 08/02/2012, also provides additional technical guidance and good practice recommendations which were not covered in the guidance provided in the two earlier notes (COCOF/07/0018/01 and COCOF/08/0002/03) and in ad hoc consultations. Member States, in particular the managing authorities and other competent bodies, should take full account of these elements and apply them to existing financial engineering instruments and in the setting up of new financial engineering instruments. However, provided that all applicable provisions of the Structural Funds regulations and other EU and national rules have been fully respected, the Member States, subject to the later assessment by the Commission of the compatibility with the relevant EU and national legislation, may leave unadjusted the agreements for financial engineering instruments for which legal and financial commitments were made before the date of this updated note.

1.1.8 The structure of the note has been established as follows: sections 1 to 9 of the present note cover the various issues which may arise throughout the different stages of preparation and implementation of financial engineering instruments, from the initial set-up and decisional processes, to closure of the operational programmes. Annex I provides a glossary of specific terms used in this note, Annex II provides an indicative template for monitoring of implementation of financial engineering instruments, as provided for by Article 43(3)(b) and 44(2)(f) of the Implementing Regulation.

## **1.2. Definitions**

### *a) Operation*

1.2.1 Article 2(3) of the General Regulation defines operation as a project or group of projects selected by the managing authority of the operational programme concerned or under its responsibility according to criteria laid down by the monitoring committee and implemented by one or more beneficiaries allowing achievement of the goals of the priority axis to which it relates.

1.2.2 Furthermore, Article 44 of the General Regulation states that Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments. However, as regards the eligibility of expenditure, Article 78(1) of the General Regulation sets out the principle that eligible expenditure is the expenditure paid by beneficiaries in implementing the operations.

1.2.3 Regarding financial engineering instruments, eligible expenditure at partial or final closure of the operational programme comprises the payments made from the funds for actual investments pursuant to Article 78(6) of the General Regulation. Finally, the second subparagraph of Article 78(7) of the General Regulation refers to resources returned to the operation from investments undertaken by funds or after all the guarantees have been honoured.

1.2.4 Investments made by the financial engineering instruments (including holding funds) may take the form of: equity, loans, guarantees or other forms of repayable investments provided to enterprises, public private partnerships, urban development projects; or loans, guarantees for repayable investments, or equivalent instruments provided to legal or natural persons carrying out specific investment activities in energy

efficiency and use of renewable energy in buildings. Since it is the effective realisation of such investments at the successive levels that allows the achievement of the goals of the priority axis (within the operational programme), the investments must be considered to form part of the operation.

1.2.5 It follows from the above that, in respect of assistance implemented through financial engineering instruments, the operation is constituted by the financial contributions from an operational programme to financial engineering instruments (including holding funds) and the subsequent investments made by the financial engineering instruments, which ultimately constitute eligible expenditure in accordance with Article 78(6) of the General Regulation.

*b) Beneficiary*

1.2.6 Article 2(4) of the General Regulation defines beneficiary as an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations. Article 78(6) of the General Regulation also specifies that, at the partial or final closure of the operational programme, eligible expenditure is that effectively paid by any of the financial engineering instruments in implementing the operations referred therein and that the co-financing rate shall be applied to the eligible expenditure paid by the beneficiary.

1.2.7 For operations falling within the scope of Article 44 of the General Regulation and Articles 43 to 46 of the Implementing Regulation, it is the financial engineering instrument itself which implements the operation, through the provision of repayable investments to enterprises, public-private partnerships or other projects included in an integrated plan for urban development, as well as to the recipients of assistance in the form of repayable investments or equivalent instruments for energy efficiency and use of renewable energy in buildings, including existing housing.

1.2.8 It follows from the above that, for operations falling within the scope of Article 44 of the General Regulation and Articles 43 to 46 of the Implementing Regulation, the beneficiary is any of the financial engineering instruments described in the first paragraph, points (a), (b) and (c) of Article 44 of the General Regulation. Where such operations are organised through a holding fund, to the extent that the holding fund is responsible for initiating or initiating and implementing the operation, the holding fund is the beneficiary.

*c) Final recipient*

1.2.9 For a matter of facility in the present note, the term final recipient will be employed as referring to enterprises, public-private partnerships, projects and any legal or natural person receiving repayable investments (namely through equity participations, loans, guarantees and other forms of repayable investments implemented through similar transactions, with the exception of grants) from an operation implementing any of the financial engineering instruments described in the first paragraph, points (a), (b), and (c) of Article 44 of the General Regulation and in Articles 43 to 46 of the Implementing Regulation. For the avoidance of doubt, the terms "final recipient" or "final recipients" are employed in this note exclusively for a matter of facility and without any other effects, they must not be confused with the terms "beneficiary" or "beneficiaries" as employed by the SF Regulations and as defined in paragraphs 1.2.6 to 1.2.8 of this note.

#### *d) Financial engineering instrument*

1.2.10 According to Article 44 of the General Regulation, "as part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support any of the following:

- (a) financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds;
- (b) urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development;
- (c) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing."

1.2.11 Furthermore Article 43(1) of the Implementing Regulation states that financial engineering instruments have the form of "...actions which make repayable investments or provide guarantees for repayable investments" in enterprises, public private partnerships or other urban projects included in integrated plans for sustainable urban development, and funds or other incentive schemes for energy efficiency and use of renewable energy in buildings, including in existing housing.

1.2.12 To qualify as a financial engineering instrument under the SF Regulations, it is necessary therefore that the contributions from the operational programmes are (i) targeted to the specific final recipients or specific type of investments referred to in Article 44 of the General Regulation, such as enterprises, public private partnerships, urban projects or legal or natural persons implementing actions for energy efficiency and use of renewable energy and (ii) take the form of repayable investments, namely equity, loans and/or guarantees for such repayable investments in accordance with the specific provisions of Article 44 first paragraph (a), (b) or (c) of the General Regulation.

1.2.13 Repayable investments are distinguished from non-repayable assistance or grants, defined for the purpose of this note as "a direct financial contribution by way of donation" (recital 41 and Article 44 second paragraph (b) of the General Regulation).

## **2. SETTING UP FINANCIAL ENGINEERING OPERATIONS**

### **2.1. Decisional process**

2.1.1 Financial engineering instruments must be regarded as vehicles for delivery of repayable investments which contribute to the achievement of the goals set out under specific priority axes of the operational programme. As such they must form part of the implementation strategy for the operational programme concerned, as agreed between the Member State and the Commission. This being said, the decision regarding the specific instruments to be used falls entirely within the competences of the Member State or the managing authority concerned.

2.1.2 According to Article 44 of the General Regulation, as part of the decisional process the Member State or the managing authority must assess whether they want to implement the financial engineering operation through a holding fund or through a direct contribution from the operational programme to a financial engineering instrument as described in the first paragraph, points (a), (b), and (c) of Article 44 of the General

Regulation. In conformity with Article 65(a) of the General Regulation, the monitoring committee must consider and approve the criteria for selecting the relevant operation (but not for individual funds or financial intermediaries in the case of holding funds, nor individual investments in final recipients by the financial engineering instruments) while ensuring the quality of the implementation of the operational programme.

2.1.3 Financial intermediaries and financial institutions are among the bodies which may subsequently be selected to implement financial engineering instruments. The Member State or the managing authority must assess whether the contribution from the operational programme should be implemented through a grant to a financial institution - if that is in accordance with a national law compatible with the Treaty - or through the award of a public contract in accordance with applicable public procurement law.

2.1.4 In case the Member State or the managing authority decides to implement the operation through a holding fund, they may also decide to implement it through the award of a contract directly to the EIB or the EIF

2.1.5 Throughout the entire selection and decisional process the Member State and the managing authority must ensure that transparent procedures for selecting financial engineering instruments (including inter alia funds, financial intermediaries, financial institutions and fund managers) and for taking decisions on contributions from operational programmes are followed. In this process the Member State and the managing authority must ensure that all applicable laws are complied with, including State aid rules as well as national and EU legislation on grants and public procurement.

2.1.6 In case the financial engineering operations are implemented through holding funds, the funding agreement to be concluded between the Member State or the managing authority and the holding fund must also include provisions to ensure that the same transparent procedures and observance of selection criteria are applied by the holding fund.

## **2.2. Selection of funds**

### *a) General principle*

2.2.1 Article 44 of the General Regulation provides a definition of holding funds and lays down certain rules for implementing financial engineering operations organised through such funds. However, similar definitions and rules for implementing second level funds (such as venture capital funds, guarantee funds, loan funds and urban development funds, etc.) are not provided.

2.2.2 Selecting more than one financial engineering instrument may produce the best possible leverage effects for public resources contributed by the operational programme, to involve as much as possible available resources and expertise from the private sector and to maximise opportunities to achieve the investment and development objectives of the operational programme. It is however not a regulatory requirement to select more than one financial engineering instrument and it is acknowledged that for specific purposes and local conditions a single financial engineering instrument could be the most appropriate set-up.



## *b) Holding funds*

2.2.3 Article 44 of the General Regulation defines “holding funds” as a “funds set up to invest in several venture capital funds, guarantee funds, loan funds, urban development funds, funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing”.

2.2.4 To the extent that holding funds are responsible for initiating or initiating and implementing the operation, they are considered to be beneficiaries. They act on the basis of a funding agreement concluded with the managing authority. Therefore their role is not to be confused with the role of intermediate bodies. Accordingly holding funds are not covered by the requirements for ex-ante compliance assessment foreseen by Article 71 of the General Regulation. This is also valid *mutatis mutandis* for financial engineering instruments which are not holding funds.

2.2.5 Article 44 second paragraph of the General Regulation lays down three possible forms for their implementation: (a) through the award of a public contract in accordance with applicable public procurement law, (b) through the award of a grant, defined for this purpose as a direct financial contribution by way of donation to a financial institution without a call for proposals, if this is in accordance with national law compatible with the Treaty, or (c) through the award of a contract directly to the EIB or the EIF.

2.2.6 A grant from the operational programme to a holding fund implies no loss, reduction or waiver of responsibility by the relevant authorities for those resources under the SF Regulations. Therefore such grants to holding funds have no impact on the definition of the functions and exercise of responsibilities of the managing, certifying and audit authorities concerning investment in financial engineering instruments of contributions from operational programmes and the subsequent investment of such contributions in enterprises, urban development projects or schemes for investments in renewable energy/energy efficiency in buildings.

2.2.7 In this context attention is drawn to the specific control and audit requirements set out by the Structural Funds regulations, with a view to ensuring the legality and regularity of expenditure, and sound use of public funds.

### *b.1) Holding funds implemented through the EIB/EIF*

2.2.8 Article 44 second paragraph point (c) of the General Regulation stipulates that the mandate which the EIB or EIF may receive from Member States or managing authorities to implement operations organised through holding funds can be given through a direct award of a contract. Therefore, in this context, the EIB or EIF mandate is not subject to public procurement rules. Indeed, Article 175, first subparagraph of the Treaty on the Functioning of the European Union (TFEU) empowers the Union to support the achievement of the objectives set out in Article 174 by actions which it takes, inter alia, through the European Investment Bank. The EIB may thus be mandated by the Union to assume special financial tasks in support of economic and social cohesion.

2.2.9 The foregoing also applies, *mutatis mutandis*, to holding fund mandates given to the European Investment Fund (EIF). The EIF has its legal basis under primary Community law in Article 30 of the Statute of the European Investment Bank. It was established by the Board of Governors of the EIB through the approval of its Statutes,

published in the Official Journal of the European Communities No C225 of 10 August 2001. Its tasks are set out in Article 2 of these Statutes and comprise its contribution "to the pursuit of Community objectives". As another "existing Financial Instrument" it is referred to in Article 175, first subparagraph of the Treaty on the functioning of the EU, alongside the EIB. Likewise, it is mentioned alongside the EIB in Article 44 second paragraph (c) of the General Regulation.

#### *b.2) Holding funds implemented through financial institutions other than the EIB/EIF*

2.2.10 When a financial institution other than the EIB or EIF is selected to implement operations organised through a holding fund, this selection may be made either by way of public procurement or by way of a grant, without a call for proposals, if this is pursuant to a national law compatible with the Treaty.

2.2.11 Regarding national law compatible with the Treaty, allowing the direct award of a grant, for the purpose of Article 44 second paragraph (b) of the General Regulation, to a national or regional financial institution, it is expected that the law will: a) designate the financial institution in question; b) present the public policy objectives which justify the direct award of a grant to it and c) justify the existence within this financial institution of the expertise necessary for the successful accomplishment of the holding fund tasks.

#### *c) Funds other than holding funds*

2.2.12 As mentioned above, the General Regulation and the Implementing Regulation do not set specific provisions for selecting funds other than holding funds.

2.2.13 Managing authorities and holding funds must assess whether their contribution to a financial engineering instrument (as described in the first paragraph points (a), (b), and (c) of Article 44 of the General Regulation) is a public procurement of services governed by EU or national public procurement law and comply with any such applicable law. The conditions for contributions to financial engineering instrument other than holding funds are set out in Article 43 of the Implementing Regulation.

2.2.14 When selecting operations and beneficiaries in the context of assistance involving contributions from the Structural Funds, Member States and managing authorities are bound by the general principles and obligations of transparency and respect for EU and national law, namely regarding public procurement and State aid, while taking into account exceptions and special regimes provided for by the same laws. These same principles and obligations must be applied in selecting funds, financial intermediaries or any other vehicle for the implementation of repayable investments as well as managers of the financial engineering instrument.

2.2.15 Furthermore, the procedure for selecting funds, financial intermediaries or any other vehicle for the implementation of repayable investments, as well as managers of the financial engineering instrument, should be based on specific and appropriate selection criteria relating to the objectives of the operational programme, as approved by the monitoring committee, within the limits expressed in paragraph 2.1.2.

### **2.3. Legal structures of financial engineering instruments**

2.3.1 The SF Regulations do not specify any particular legal structures to be established for operations implementing financial engineering instruments. However, the regulations - more specifically Article 43(2) of the Implementing Regulation - require that financial

engineering instruments receiving financing from Structural Funds programmes must be set up either 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.

2.3.2 In case a financial engineering instrument is set up as a separate block of finance within a financial institution, it must be subject to specific implementation rules within the financial institution. They must stipulate, 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 (but also those contributed by the financial institution itself or other partners in the instrument) from the resources initially available in the financial institution.

2.3.3 The SF Regulations do not specify which of the above forms (independent legal entity or separate block of finance) should be used for which type of fund. In any event, what is important to note is that, once they have been set-up, the financial engineering instruments in either form are governed by specific rules, usually reflected in the applicable bylaws and/or other relevant documents applicable specifically to the financial engineering instruments concerned, and operating on the basis of a business plan or other appropriate document agreed with the managing authority or the holding fund.

2.3.4 These requirements denote the specific character of financial engineering instruments operations co-financed from the Structural Funds. They also ensure that financial resources contributed from Structural Funds programmes will be disbursed in compliance with the applicable rules and regulations and that financial flows and transactions can be adequately recorded, monitored and audited.

2.3.5 Provided that the requirements of the Structural Funds regulations and other applicable EU and national rules and regulations are met, Member States and managing authorities have ample freedom to select legal structures and arrangements for financial engineering instruments, including holding funds, which are best fit for purpose.

## **2.4. Funding agreements**

2.4.1 Articles 43(3) and 44 of the Implementing Regulation provide for the conclusion of funding agreements at two levels:

- Level I - between the Member State or the managing authority and the holding fund, where financial engineering instruments are organised through holding funds,
- Level II - between the Member State or the managing authority (or the holding fund where applicable) and the individual financial engineering instruments.

2.4.2 Such funding agreements must ensure the correct implementation of the strategy, - including goals to be achieved, target sectors and beneficiaries/final recipients to be supported - as set out in the operational programme through a coherent investment strategy, range of products, likely project types and targets to be achieved through the financial engineering instruments. Moreover the funding agreements must also contain a corpus of rules, obligations and procedures, to be observed by the parties concerned, regarding the financial contributions made by the operational programme.

2.4.3 The SF Regulations do not prescribe a particular form for the funding agreements. Member States and managing authorities have therefore ample freedom to negotiate and

conclude funding agreements. They may choose to follow existing models for other operations financed under the Structural Funds programmes or models used by the industry. In addition to ensuring that the funding agreements respect applicable EU and national law, as well as regulatory provisions applicable to the industry, the funding agreements must, as a minimum, include the provisions indicated in Articles 43(3) and 44(2) of the Implementing Regulation.

2.4.4 Accordingly, the funding agreements would cover the following provisions as appropriate:

- the terms and conditions for making contributions from the operational programme to the holding fund and to the financial engineering instruments;
- the investment strategy or policy and target recipients and actions (enterprises, urban development projects, renewable energy/energy efficiency schemes, etc);
- the financial engineering products / instruments to be supported;
- the exit policy for the operational programme contribution to the financial engineering instrument(s) concerned;
- the winding-up provisions for both the financial engineering instrument(s) and the holding fund, including for the re-utilisation of resources returned from investments made or left over after all guarantees have been honoured, attributable to the contribution from the operational programme.
- monitoring of the implementation of investments and of deal flows including reporting by the financial engineering instruments to the holding fund and/or the managing authority;
- audit requirements, such as minimum requirements for documentation to be kept at the level of the financial engineering instruments and at the level of the holding fund in order to ensure a clear audit trail, – including provisions and requirements regarding access to documents by national audit authorities, Commission auditors and European Court of Auditors.

2.4.5 In addition, it is recommended that the funding agreements also cover inter alia the following:

- requirements and procedures for managing the financial proceeds provided by the operational programmes (including where applicable provisions for the phased transfer of funds based on agreements signed with financial intermediaries and forecasts of deals flows);
- treasury management of funds and counterparty risks, including type of acceptable treasury operations/investments, responsibilities and liabilities by parties concerned, record keeping and reporting, etc);
- provisions regarding the utilisation of interests and other gains generated by payments from the operational programmes to the financial engineering instruments concerned and for the utilisation of returns and resources returned to funds from investments at the level of final recipients, as referred to in Section 5

of this note in compliance with Article 78(7) of the General Regulation and Article 43(5) of the Implementing Regulation..

2.4.6 For operations implemented through holding funds, it is up to the parties to the funding agreement to determine how the holding fund will be organised and what level of control or supervision the managing authority will retain over the activities of the holding fund, without prejudice to the responsibilities of both parties under the regulations.

2.4.7 In addition to the provisions indicated above, in line with Article 44(2) (b) and (c) of the Implementing Regulation, the funding agreement between the Member State or the managing authority and the holding fund must also make provisions for the appraisal and selection of financial engineering instruments and as regards calls for expression of interest or other applicable public procurement procedures.

## **2.5. Contributions to financial engineering instruments**

### *a) General issues*

2.5.1 A standard operation comprises contributions from a given operational programme to a financial engineering instrument for use within the scope of that operational programme. However, it is also possible to have contributions from more than one operational programme or from more than one priority axis to the same financial engineering instrument.

2.5.2 In such cases, the holding fund and the financial engineering instrument must keep separate accounts or maintain an adequate accounting code for the contribution from each operational programme and from each priority axis, for reporting and audit purposes, in order to ensure compliance with Article 60(d) of the General Regulation and Article 15 of the Implementing Regulation.

2.5.3. It should be reminded that a legal commitment to invest in financial engineering instruments or in a final recipient cannot be considered as meeting the requirements of Article 78(6) of the General Regulation. The financial transfer to the financial engineering instruments or an investment in a final recipient must be effected to be considered as meeting these requirements.

2.5.4 For the avoidance of doubt, it is recalled that, in accordance with Article 44 of the General Regulation, only "the Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments...". Since the definition of Structural Funds in Article 1 of the General Regulation only includes the ERDF and the ESF, financial engineering instruments cannot receive contributions from the Cohesion Fund.

### *b) Phased contributions from operational programmes*

2.5.5 Payments from operational programmes to holding funds or to financial engineering instruments may be phased and successive. Indeed, there is no obligation that contributions to holding funds or financial engineering instruments are done through a single instalment by each partner or simultaneously by the different partners, but such contributions must comply with applicable national and European legislation, in particular State aid rules.

2.5.6 On the basis of Articles 77 and 78(6) of the General Regulation, each individual payment from an operational programme to a financial engineering instrument or to a holding fund may be included in an interim statement of expenditure submitted to the Commission.

*c) National private and public contributions*

2.5.7 National private and public contributions to financial engineering instruments can be provided at the level of the financial engineering instrument proper or, under certain conditions, at the level of final recipients. The following guidance applies to private and public contributions in cash and in kind.

*c1) National private and public contributions at the level of financial engineering instruments*

2.5.8 Where the contribution from the Structural Funds, at the level of the operational programme, is calculated with reference to the total eligible expenditure, including public and private expenditure - Article 53 (1) (a) of the General Regulation - the financial plan of an operational programme includes an indicative breakdown of the national counterpart, i.e. a breakdown between the national public funding and the private funding.

2.5.9 In such cases, the normal situation would be that the private contribution to a financial engineering instrument is paid simultaneously with the public contribution, to the fund proper. Another possibility (e.g. in venture capital) is that the public or private contributions are paid into an escrow account or to another appropriate type of account for subsequent investment in final recipients.

2.5.10 However, for the avoidance of doubt, it must be underlined that the private or public contribution to a financial engineering instrument paid into an escrow account per se is not eligible expenditure at the closure of the operational programme.

2.5.11 It is only investments in final recipients, paid to them before the final date of eligibility and management costs and fees effectively paid by that date that are taken into account in the final statement of expenditure at closure. Thus, at the closure, the private/public contribution which is not invested in final recipients by the end of 2015 cannot be included in the final statement of expenditure of the operational programme concerned (c.f. Articles 56 (1) and Article 78(6)).

2.5.12 Where the contribution from the Structural Funds, at the level of the operational programme, is calculated with reference to the public eligible expenditure - Article 53(1) (b) of the General Regulation - private funding is not part of the expenditure used to calculate the contribution from the Structural Funds. In this case there is no specific requirement in the Structural Funds rules about the timing or conditions applicable to private contributions investing in operations including in financial engineering instruments.

*c2) National private and public contributions at the level of final recipients*

2.5.13 Article 78(6) of the General Regulation may, under certain conditions (please see also 2.5.15), allow private or public co-financing to be effectively paid in cash or in kind at the level of final recipients, without having to be paid at the level of the financial engineering instrument.

2.5.14 Namely, when a payment or investment is made directly in or to a final recipient by a body providing private or public co-financing, further to a legally binding agreement with a financial engineering instrument, such expenditure may be declared to the Commission as having been contributed to the financial engineering instrument, but only at the time of effective payment to the final recipient. For the purposes of Article 78(6) of the General Regulation, a legal commitment to pay or to make an investment in a final recipient is not sufficient to constitute eligible expenditure.

2.5.15 Private or public co-financing in the context of financial engineering instruments paid at the level of final recipients by co-investing parties would only be eligible and should only be included in a statement of expenditure if it fully complies with the conditions set out in the following points:

- there must be documentary evidence of the legal agreement between the private/public parties and the financial engineering instrument concerning their contribution to the implementation of the co-financed investment operation;
- the financial engineering instrument must retain overall responsibility for the investment operation including subsequent monitoring of the contributions from the operational programme according to the funding agreement;
- the expenditure paid by such private or public entities is supported by receipted invoices or, where this cannot be done, by accounting documents of equivalent probative value;
- the expenditure paid by such private or public entities is reported formally to the financial engineering instrument which is responsible for verifying the reality and eligibility of the expenditure claimed before declaring it to the managing authority or certifying authority and
- the audit trail is maintained down to the level of the payment of private/public co-financing to the final recipient (please also see chapter 6 for further guidance concerning the availability of documents and the levels of audit verifications).

## **2.6. Management costs and fees**

2.6.1 The expression "management costs and fees" is used in this note as comprising any and all fees, costs, expense and other proceeds paid from the operational programme to the managers of holding funds or of financial engineering instruments, as reimbursement or compensation for managing the funds provided from operational programmes for effective investment in final recipients and which can be declared as eligible expenditure for reimbursement from Structural Funds in accordance with Article 78(6) of the General Regulation. While management costs refer to cost items reimbursed against evidence of expenditure, management fees refer to an agreed price or compensation for services rendered.

2.6.2 The question of what constitutes eligible expenditure regarding management costs and fees is dealt with in the first instance by national rules pursuant to Article 56(4) of the General Regulation. Such eligible expenditure may include costs incurred by the financial engineering instrument as part of the preparation of investment decisions and the subsequent monitoring and follow-up of investments (e.g. technical studies, audit, legal expertise, etc) but should not include costs which are directly imputable to the preparation and/or implementation of individual projects or investment plans by final

recipients, such as the costs of obtaining planning consent, technical feasibility studies, project management expenses, etc which are part of the cost of the investment.

2.6.3 As simple and non-exhaustive examples, in the past the Commission services have considered the following categories of costs of financial engineering instruments or holding funds as eligible management costs compatible with the principles of sound and efficient financial management:

- staff costs, including travel and subsistence expenses, the cost of offices, equipment, IT systems, consumables and supplies, directly linked to the management and investment of contributions from operational programmes to financial engineering instruments and holding funds; such costs being incurred in carrying out activities such as selection and tendering procedures, controls, monitoring and reporting, consultancy, information and publicity;
- overheads of the financial institution acting as a financial engineering instrument or holding fund in the management and investment of the contribution from the operational programme(s) provided that the overheads are based on actual costs and are allocated pro rata to the operations according to a duly justified fair and equitable method.

2.6.4 The eligible amounts of management costs and fees which can be declared as eligible expenditure for reimbursement from the Structural Funds are calculated having regard to contributions from the operational programme to the holding fund or financial engineering instruments, as the case may be.

2.6.5 In Accordance with Article 53 (1) (a) and (b) of the General Regulation, the term "contributions from the operational programme" should be understood as referring to the (EU and national) public expenditure, or as referring to the total eligible expenditure (including EU and national public expenditure as well as private expenditure), depending on the reference basis for calculating eligible expenditure for the operational programme.

2.6.6 Article 43(4) of the Implementing Regulation sets out certain thresholds for management costs and fees, established as a percentage of the capital contributed from the operational programme which may not be exceeded, on a yearly average. The rates referred to in this Article to calculate the ceilings of management costs and fees are applicable to contributions from operational programmes to holding funds, or from the operational programme or the holding funds to any of the funds or instruments referred to in paragraphs (a), (b) and (c) of the same Article. These rates are maximum rates which should not be exceeded for each category of funds or instruments, unless a competitive tendering procedure reveals that higher rates are necessary.

2.6.7 The funding agreement may envisage front-loaded payments of management costs and fees which exceed the limits set out by Article 43(4) of the Implementing Regulation for one or more years, such as for example the first years of the programming period. This payment structure might be justified by the fact that holding funds or fund managers may incur significant costs before actual investments effectively take place and that amounts paid into funds at the beginning may be lower than the amounts committed to the funds.

2.6.8 However, the eligible management costs and fees in relation to financial engineering instruments, pursuant to Article 44 of the General Regulation, at the partial or final closure of operational programmes, should not exceed the limits set out in Article



43(4) of the Implementing Regulation, averaged on a yearly basis over that part of the programming period for which the holding fund or financial engineering instrument effectively manages an operation.

2.6.9 Since management costs and fees are calculated having regard to "capital contributed from the operational programme to the [...] fund...", it is important to clarify that only amounts paid by operational programmes to holding funds or financial engineering instruments should be taken into account for this purpose (not "amounts committed").

2.6.10 Management costs and fees are eligible from any date after the signature of the relevant funding agreement. Management costs and fees incurred for preparatory work in relation to a specific financial engineering instrument are therefore recoverable only after signature of the related funding agreement.

2.6.11 The Commission expects the managing authorities and holding funds to ensure that management costs and fees are agreed in accordance with the principles of sound financial management.

2.6.12 It is also recommended therefore that the funding agreements at all levels establish a structure for the remuneration of fund managers linked to performance, namely through formulae which take into account benchmarks for effective investments in financial engineering instruments and from these to repayable investments effectively paid to final recipients.

2.6.13 It is recommended that performance based remuneration should also be linked to the quality of investments effectively made, namely measured through their contribution to the achievement of the strategic objectives of the operational programme, as well as the value of the resources returned to the operation from investments undertaken by the funds, in line with the specific objectives and investment strategy of the financial engineering instrument.

2.6.14 In all cases appropriate evidence should be kept by holding funds or financial engineering instruments, allowing them to demonstrate that management costs and fees paid by operational programmes effectively correspond to sound and efficient management principles.

2.6.15 In certain cases, arrangement fees (i.e. the transaction costs such as legal and accounting advisers' fees and monitoring fees) or any portion thereof may be charged to final recipients by the financial engineering instrument. These arrangement fees (or any portion thereof) should not overlap with the management costs or fees declared as eligible expenditure for reimbursement from Structural Funds. Therefore, if these arrangement fees are charged by the fund to the final recipient, the corresponding amount will have to be deducted from eligible expenditure in order to avoid double financing of management costs or fees.

2.6.16 For the sake of clarity, the arrangement fees charged by the financial engineering instrument to the final recipient will have an effect of reducing the net amount of assistance for the benefit of the final recipient. If the financial engineering instrument wishes to charge final recipients with such arrangement fees, the same amount of arrangement fees is to be deducted from eligible expenditure claimed from Structural Funds.

2.6.17 If the financial engineering instrument charges the final recipients with such arrangement or other fees, the amount of these fees is to be deducted from eligible expenditure claimed from the Structural Funds under Article 78(6) (d) of the General Regulation. Therefore, at closure, the amount charged by the financial engineering instrument to final recipients, which has been taken into account as eligible expenditure as part of the management costs under Article 78(6) (d), should not be part of the eligible expenditure of this instrument under Article 78(6) (a), (b), (c) and (e) of the General Regulation.

## **2.7. Monitoring**

2.7.1 As indicated in section 2.4 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, or the holding fund where applicable. The funding agreement shall include provisions for monitoring of implementation in accordance with Article 43(3) (b) of the Implementing Regulation, as well as general reporting requirements under the SF regulations.

2.7.2 It must be underlined that when, according to Article 43(3) (b) and/or Article 44(2) (f) of the Implementing Regulation, a financial engineering instrument carries out the "monitoring of implementation" as prescribed by the relevant funding agreement, the checks and reporting activities it carries out - inter alia on the final recipients - do not replace or waive the functions and verification tasks of the managing authority under Article 60 of the General Regulation and Article 13 of the Implementing Regulation.

2.7.3 Provisions in the relevant funding agreements should enable monitoring of disbursements of financing at the level of final recipients and financial engineering instruments, as well as returns from equity, loans and other repayable investments, and performance of guarantees for repayable investments. Annex II to this note provides a template for recording monitoring information for use by monitoring authorities, holding funds and financial engineering instruments.

2.7.4 The Commission will seek to consolidate aggregate monitoring information provided by managing authorities, with a view to provide a global assessment of the performance of financial engineering instruments supported under Structural Funds programmes.

## **2.8. Foreign Exchange Risk**

2.8.1 For Member States situated outside the euro-zone, when a contribution is made to a holding fund or financial engineering instrument and declared to the Commission, it is declared in Euros in accordance with the provisions of Article 81 of the General Regulation.

2.8.2 At final closure, the Commission services consider that the sum to be justified for the purposes of sub-paragraphs (a) to (d) of Article 78(6) as having been invested in final recipients should be the amount in national currency that was contributed to the holding fund or financial engineering instrument and that was the basis for the declaration to the Commission in Euros using the exchange rate specified in Article 81 of the General Regulation.

2.8.3 In the event that less than the initial amount in national currency units has been paid or invested under paragraphs (a) to (d) of Article 78(6) at closure, the shortfall (in national currency units) should be converted into Euros, using the exchange rate used when making the original declaration of the contribution to the Commission, and deducted from the application for payment of the final balance and statement of expenditure submitted to the Commission in accordance with Article 89(1) of the General Regulation.

2.8.4 The Commission services thus consider that it is not necessary for each individual payment or investment under sub-paragraphs (a) to (d) of Article 78(6) that is made in national currency to be converted into Euros.

2.8.5 For the avoidance of doubt, in the course of organising and implementing operations, a holding fund may convert into other currencies, an amount contributed to it by the operational programme in national currency, provided there are good operational reasons for doing so and the conversion is performed in accordance with the principle of sound financial management.

### **3. INVESTMENT SPECIFIC ISSUES**

#### **3.1. Common issues**

3.1.1 In accordance with Article 43 (6) of the Implementing Regulation, "Enterprises, public private partnerships and other projects included in an integrated plan for sustainable urban development, as well as operations for energy efficiency and use of renewable energy in buildings, including in existing housing, which are supported by financial engineering instruments, may also receive a grant or other assistance from an operational programme."

3.1.2 Consequently, where an operational programme provides grant assistance from either of the Structural Funds or from the Cohesion Fund as well as contributions to financial engineering instruments from the Structural Funds, final recipients may be simultaneously supported by (i) grants from the Structural Funds or from the Cohesion Fund and (ii) investments from financial engineering instruments co-financed with Structural Funds. However, since the two streams of funding fall under separate operations (and possibly different priority axis) separate accounts and records for each stream of financing must be maintained, to provide clear and independent audit trails for each operation. The same principles and procedures shall apply *mutatis mutandis* in case the two streams of funding are provided from different operational programmes.

3.1.3 For the avoidance of doubt, whenever a final recipient benefits from grant assistance delivered through aid schemes or through any other type of operation financed under an operational programme and from investments provided by financial engineering instruments, Article 54(5) of the General Regulation as well as the State aid rules regarding the cumulation of aid must be respected. In line with State aid guidelines, cumulation of different measures of assistance is possible, as long as they concern different identifiable eligible costs.

## 3.2. Investments in enterprises

a) *Eligibility of "acquisition finance" in the context of "transmission" of enterprises and viability of the target enterprise*

3.2.1 Article 45 of the Implementing Regulation provides that financial engineering instruments shall invest in enterprises primarily SMEs, only in activities which the managers of the financial engineering instruments judge potentially economically viable.

3.2.2 In this way, on the basis of Article 45 of the Implementing Regulation, investments in activities which the managers of the financial engineering instrument judge potentially economically viable, associated in general to the establishment or expansion of an enterprise, or associated more widely to the strengthening of the general activity of an enterprise, may be eligible for Structural Funds' support. The business plans to implement such investments may include *inter alia* the cost of transmission of the enterprise (i.e. the purchase price), namely when the enterprise would have otherwise closed, provided that such transmission takes place between independent investors (e.g. investors who are not family members).

3.2.3 In all cases the business plan for the establishment, expansion or strengthening of the general activity of the enterprise must be a key element in the investment decision; therefore a significant part of the plan in question should encompass investment or expenditure targeting the establishment, expansion or strengthening of the general business activity of the enterprise. Under these conditions, such an investment plan, including the necessary cost for the transmission (between independent investors) may be supported through financial engineering instruments co-financed by the Structural Funds. Operations consisting exclusively in the transmission of enterprises without the abovementioned elements of expansion or strengthening of the general business activity of the enterprise, or family transfers of business, should not be supported with assistance provided through financial engineering instruments co-financed by the Structural Funds.

3.2.4 "Mergers", "Management Buy Outs", "Management Buy Ins" or "Family Transfers" are excluded from the scope of Structural Funds' support, unless such support is provided exclusively for the implementation of a business plan for the expansion of the enterprise's business activities, with the exclusion of the financing of the acquisition of the enterprise from its previous owners<sup>4</sup>.

3.2.5 Finally, on the basis of the second paragraph of Article 45 of the Implementing Regulation, financial engineering instruments shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>5</sup>, as of 10 October 2004.

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<sup>4</sup> Where such investments involve state aid, it should be noted that management buy-outs or management buy-ins are excluded from the scope of application the Community Guidelines on state aid to promote risk capital investment in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2) which might have to be notified to the Commission in order to assess its compatibility with the internal market.

<sup>5</sup> OJ C 244, 01.10.2004, p. 2.

*b) Conditions for co-financing of working capital of enterprises by the ERDF under financial engineering instruments*

3.2.6 For the purpose of this note working capital is understood to be the difference between current assets and current liabilities of an enterprise. In this context, as a matter of principle, financing of working capital that is not aimed at strengthening the business activity of an enterprise, through existing or new activities which the managers of the financial engineering instrument judge potentially economically viable, should not be supported through financial engineering instruments.

3.2.7 Financial engineering instruments can thus be used to provide a stable working capital base to allow enterprises to finance liabilities associated with their trading cycle, as part of their normal activities, in particular for investments associated in general to the setting-up or expansion of an enterprise or of an establishment. Categories financed can include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, labour, inventories and overheads, funding to finance trade receivables and non-consumer sales receivables. The justification for using financial instruments supported through Structural Funds for financing a stable working capital has to be related to situations where there is a lack of liquidity provided by the financial sector. The justification regarding the lack of liquidity is not required in the case of working capital in early stages of enterprises, namely as seed capital and start-up capital or in the cases of the expansion of an enterprise when associated to a plan of activities of an enterprise (expansion plan).

3.2.8. Financial engineering instruments for enterprises should not be used to finance enterprises or related activities which the managers of the financial engineering instrument do not judge potentially viable. They should also not be used to finance pure financial activities or real estate development (when undertaken purely as a financial investment activity, not as part of a productive investment), or to allow the final recipient to provide consumer finance.

**3.3. Investments in urban development projects and public-private partnerships (PPPs)**

*a) Projects and PPPs forming part of an Integrated Plan for Sustainable Urban Development*

3.3.1 According to Article 44 first paragraph (b) of the General Regulation, urban development funds shall invest in public-private partnerships or other (public or private sector-led) projects included in integrated plans for sustainable urban development.

3.3.2 Where urban development funds also support, together with other projects, projects related to energy efficiency and use of renewable energy in buildings, including in existing housing, such projects should be included in integrated plans for sustainable urban development.

3.3.3 The Structural Funds regulations do not include a definition of, or specific requirements for, an integrated plan for sustainable urban development. Consequently, such plans or strategies, and conditions for inclusion of projects in such plans or strategies, should be defined by the competent authorities in the Member States and/or managing authorities, taking account of Article 8 of the ERDF Regulation and the specific urban, administrative and legal context of each region. Section 2.1 of the Community

Strategic Guidelines on Cohesion 2007-13<sup>6</sup> also provides further guidance on the notion of integrated plans for sustainable urban development.

*b) Mixed-use projects*

3.3.4 Integrated urban development actions may encompass investments in mixed-use projects, i.e. projects containing components which would not be eligible for Structural Funds assistance. PPPs or other urban projects in which urban development funds invest may therefore also implement projects including components and expenditure which is not eligible for Structural Funds assistance. However, such non-eligible components and expenditure cannot be co-financed by the Structural Funds.

3.3.5 To ensure a clear audit trail allowing expenditure eligible under the Structural Funds to be distinguished from ineligible expenditure, urban development funds must maintain a separate accounting system or use a separate accounting code for co-financed expenditure down to the level of the final recipient.

3.3.6 There should be clear identification of the capital contributed from each operational programme and each priority axis to the urban development fund and the expenditure which is eligible under the Structural Funds, to permit verification that any expenditure declared to the Commission is eligible under the Structural Funds legislation and under applicable national eligibility rules.

3.3.7 An adequate audit trail is also necessary for reporting and audit purposes, in accordance with the relevant provisions of the General Regulation and of the Implementing Regulation.

*c) Investments in commercial projects*

3.3.8 Provided that commercial projects (such as shops, offices, entertainment, cultural and sport facilities) adhere with a corresponding operational programme, investments by urban development funds in these commercial projects may be eligible for contributions from operational programmes co-financed by the ERDF, if such commercial projects: a) are part of an integrated plan for sustainable urban development, b) comply with the Structural Funds legislation and the corresponding operational programme, and c) comply with national eligibility rules within the meaning of Article 56(4) of the General Regulation.

*d) Limitation to investment in one single project*

3.3.9 Article 44 of the General Regulation describes urban development funds as "funds investing in public private partnerships and other projects included in an integrated plan for sustainable urban development". Within the meaning of this provision, urban developments funds would in general be expected to invest in a number of PPPs or other urban projects. However, it cannot be excluded that an urban development fund invests initially in one project, and that it invests only at a later stage in additional projects.

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<sup>6</sup> Council Decision of 6 October 2006 on Community strategic guidelines on cohesion (2006/702/EC), OJ L291 of 21.10.2006.

#### *e) Purchase of land*

3.3.10 In the context of integrated urban development, the activities of projects or PPPs may include the purchase of land. According to Article 7(1)(b) of the ERDF Regulation, the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation<sup>7</sup> concerned shall not be eligible for a ERDF contribution. In exceptional and duly justified cases, a higher percentage may be permitted by the managing authority for operations concerning environmental conservation.

3.3.11 Where national eligibility rules within the meaning of Article 56(4) of the General Regulation also allow for the purchase of other assets (such as existing buildings), the limits defined under Article 7(1)(b) of the ERDF Regulation shall only apply to the purchase of land and not to eligible expenditure incurred for the purchase of such assets.

### **3.4. Investments in energy efficiency/renewable energy funds**

3.4.1 Article 44 first paragraph (c) of the General Regulation created the possibility for financing investments in energy efficiency and use of renewable energy in buildings, including in existing housing, by opening up the possibility of supporting such investments through funds or other incentive schemes providing loans, guarantees for repayable investments or equivalent instruments.

3.4.2 This support can take the form of direct contributions to such funds or other incentive schemes, or through holding funds, as defined in paragraph 2.2.3. The expression "other incentive schemes" should be understood, for the purpose of this note, as referring to financial engineering instruments as defined in section 1.2, or to other schemes which provide loans, guarantees for repayable investments or equivalent instruments, to promote investments in renewable energy or energy efficiency in buildings, including in existing housing, as may be set up by national or regional public or private bodies.

3.4.3 Moreover, Article 43(6) of the Implementing Regulation allows operations for energy efficiency and renewable energy in buildings, including existing housing to be supported through loans, guarantees or equivalent instruments and to also receive grants. The possibility of receiving both non-repayable assistance or grants and repayable investments opens up new opportunities to address a wide range of market gaps, namely through incentives for investments with long-term financial payback periods or for beneficiaries with low self financing capacity.

3.4.4 For example, energy audit schemes in the housing sector that are supported through grants in the framework of a cohesion policy operational programme may identify the concrete investments needed and these schemes could be complemented with adapted financing instruments, such as loans, guarantees or other forms of repayable investments, implemented through existing financial intermediaries.

3.4.5 For the avoidance of doubt, where funds or other incentive schemes invest exclusively in projects for energy efficiency and use of renewable energy in buildings, including in existing housing, it is not obligatory to include them in integrated plans for sustainable urban development.

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<sup>7</sup> Please also see paragraph 1.2.5 of this note

## **4. PRODUCT SPECIFIC ISSUES**

### **4.1. Guarantees**

4.1.1 In the context of guarantee operations, the principle of sound financial management, namely as indicated in paragraphs 1.1.4 and 1.1.5 requires, in order to achieve an optimal use of the EU scarce financial resources, the presence and verifiability of an appropriate multiplier ratio between amounts contributed from the EU budget and the overall volume of additional financing made available to enterprises and other final recipients as a direct consequence of this contribution.

4.1.2 An appropriate multiplier ratio between the amounts established to cover expected and unexpected losses from loans to be covered by guarantees and the corresponding new loans issued and disbursed which are covered by these guarantees is indeed inherent in the nature and objectives of guarantee products. The target range of values for this multiplier ratio depends on the specific market conditions when market type products are concerned, and/or the characteristics of the guarantee operations, or of the new underlying loans or loan portfolios and the inherent target investments.

4.1.3 Accordingly, in the context of guarantees, or guarantee funds established pursuant to Article 44 of the General Regulation, the normal (market) practice is to carry out a risk assessment taking into account the specific market conditions when delivering the guarantee products in question.

4.1.4 When deciding to provide a contribution from the operational programme to guarantees or guarantee funds in accordance with Article 44 of the General Regulation, managing authorities should follow sound financial management principles and (market) best practices, as the basis to determine the target range of values for the expected ratio between amounts contributed from the operational programme to guarantees or guarantee funds and the respective amounts of new loans, which will be covered by such guarantees or guarantee funds.

4.1.5 Article 78(6)(c) of the General Regulation provides that "at the partial or final closure of the operational programme, eligible expenditure shall be the total of (...) any guarantees provided including amounts committed as guarantees by guarantee funds". At the moment of partial or final closure guarantees may face the following situation as regards new loans or loan portfolios:

- guarantees covering a multiple amount of disbursed loans which have already come to their expiry date of repayment term of the underlying loans and for which no guarantee calls were made or in respect of which, as the case may be, the guarantees have already been honoured (referred to as "guarantees provided" in Art 78(6)(c) of the General Regulation);
- guarantees covering a multiple amount of disbursed loans in respect of which the guarantees will have to or might still need to be honoured after the closure because the expiry date of repayment of the underlying loans falls after the closure (referred to as "amounts committed as guarantees" in Art 78(6)(c) of the General Regulation);
- guarantees covering certain amounts for which the financial intermediary has failed to issue and disburse new loans at the closure.



4.1.6 In accordance with Article 78(6)(c) of the General Regulation and in line with the principle of sound financial management, at partial or final closure, the value of the "guarantees provided" is eligible for co-financing if it reflects that the principles of sound financial management and (market) best practices have been taken into account in order to avoid over-guaranteeing (i.e. setting aside more EU financial resources for guarantees or guarantee funds than necessary to cover expected and unexpected losses from loans).

4.1.7 The same provisions and principles apply at closure to determine the value of the "amounts committed as guarantees" as eligible for co-financing if it reflects an appropriate multiplier ratio and the financial intermediary issued and disbursed the agreed new loans.

4.1.8 If the financial intermediary has not issued and disbursed the agreed amount of new loans to final recipients that justify the full use of the guarantees, the eligible expenditure will have to be calculated by taking into account the appropriate ratio between planned (or agreed) and effectively disbursed loans.

## **4.2. Micro-credit**

4.2.1 Structural Funds support to enterprises targets new business creation, business development and expansion and, in case of serious disturbances in the economy of a Member State, also general business activities which are potentially economically viable, including strengthening, development and expansion of existing business activity. Therefore individuals who are going to establish a small enterprise may be eligible to obtain micro-credit through financial engineering instruments established under Article 44 (a) of the General Regulation.

## **4.3. Other**

### *Interest rate subsidies, guarantee fee subsidies and equivalent measures<sup>8</sup>*

4.3.1 Interest rate subsidies, guarantee fee subsidies and equivalent measures can be considered to be a part of the financial engineering instrument and of the repayable investment, in the sense of Article 44 and 78(6) of the General Regulation, only when associated and combined with ERDF loans or guarantees in a single financing package.

4.3.2 In the context of ERDF pure interest rate subsidies or pure guarantee fee subsidies are similar to grants, they are not repaid as such, nor do they support risk-sharing as such. They should be treated as grants under the operational programme.

4.3.3 Measures such as loan discounts or capital rebates can be assimilated to interest rate subsidies provided that the overall amount reimbursed by the final recipients until maturity is not expected to be lower than the principal of the loans on which interest was calculated.

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<sup>8</sup> The interpretation and guidance provided in this section do not apply to the ESF possibility of granting interest rate rebates in line with the relevant ESF technical working group note

## **5. INTEREST GENERATED BY PAYMENTS FROM OPERATIONAL PROGRAMMES AND RESOURCES RETURNED TO THE OPERATION FROM INVESTMENTS**

### **5.1. Interest generated by payments from operational programmes to financial engineering instruments**

5.1.1 The first subparagraph of Article 78(7) of the General Regulation provides that interest generated by payments from the operational programmes to financial engineering instruments as defined in Article 44 of the General Regulation must be used to finance either urban development projects in the case of urban development funds, financial engineering instruments for small and medium-sized enterprises or actions for energy efficiency and use of renewable energy in buildings, including in housing.

5.1.2 The underlying principle of the above-mentioned provision is that interest and other gains generated by payments from operational programmes to financial engineering instruments supporting repayable investments for certain types of actions and final recipients, must be used for the benefit of the same type of actions.

5.1.3 Interest and other gains generated by a prudent treasury and investment management of payments by operational programmes to the financial engineering instruments, including holding funds, are independent from the shareholders' contributions to such financial engineering instruments.

5.1.4 In accordance with the sound financial management principle and the first subparagraph of Article 78(7) of the General Regulation, the Commission considers that interest and other gains that should accrue to the financial engineering instrument itself must be added to the investment capital of the fund or used for the payment of management costs or fees.

5.1.5 For the avoidance of doubt, interest and other gains attributable to the Structural Funds' contribution generated by payments from the operational programmes to financial engineering instruments as well as those accrued to the financial engineering instruments themselves, including holding funds, should not be used for the purpose of contributing the national match-funding to the financial engineering instrument nor to cover the cost of borrowing money in the financial market for that purpose.

5.1.6 Interest earned on payments from the operational programme to the financial engineering instrument, including holding funds, which are attributable to the Structural Funds' contribution and which at the partial or final closure of the operational programme have not been used in accordance with the provisions of Article 78 (6) and the first subparagraph of Article 78 (7) of the General Regulation must be deducted from the eligible expenditure.

### **5.2. Resources returned to the operation from investments undertaken by funds**

5.2.1 According to the second subparagraph of Article 78(7) of the General Regulation: "[r]esources 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, of small and medium-sized enterprises or for energy efficiency and use of renewable energy in buildings, including in existing housing."

5.2.2 As indicated in section 2.4 of the note, according to Articles 43 and 44 of the Implementing Regulation, when managing authorities or holding funds select financial engineering instruments, a funding agreement must be concluded between the managing authority or the holding fund and the financial engineering instrument, setting out the terms and conditions for contributions from operational programmes to the financial engineering instrument.

5.2.3 This funding agreement must include an exit policy for the contribution from the operational programme out of the financial engineering instrument - Article 43(3)(c) of the Implementing Regulation. This exit policy must include provisions regarding the reutilisation of the 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 – Article 43(3)(d) of the Implementing Regulation.

5.2.4 Similarly, when the Structural Funds support financial engineering instruments organised through holding funds, the funding agreement to be concluded between the managing authority and the holding fund must include an exit policy for the holding fund out of the financial engineering instruments. This exit policy must include provisions regarding the reutilisation of resources returned from investments made or left over after all guarantees have been honoured which are attributable to the contribution from the operational programme - Article 44(2)(h) and (i) of the Implementing Regulation.

5.2.5 In accordance with the second subparagraph of Article 78(7) of the General Regulation the managing authority should ensure that any resources returned to the financial engineering instrument which are attributable to the Structural Funds contribution are either re-used by the instrument for further investments or are used to cover management costs and fees of the financial engineering instrument or must be allocated to the competent authorities for further utilization to the benefit of the same type of action(s) in line with Article 78(7) of the General Regulation. The re-use of the resources returned as foreseen by this paragraph can take place until and beyond the end of the eligibility period (31 December 2015).

5.2.6 It is for the parties to the funding agreements to determine the exact time when resources, which are attributable to the Structural Funds contribution, returned to funds can be returned to the competent authority to be re-used for urban development projects, small and medium-sized enterprises or energy efficiency and use of renewable energy in buildings, including in existing housing. It would be reasonably expected that this would happen between the end of the investment period and the winding up of the fund.

5.2.7 It is recommended therefore that the funding agreements referred to in section 2.4 of the note lay down adequate provisions regarding exit policies and winding-up provisions, to allow for the appropriate recycling of the resources attributable to the Structural Funds' contribution during consecutive investment cycles in order to maximise the effect of resources contributed to the financial engineering instrument.

5.2.8 The Commission considers as good practice that resources returned from investments attributable to the Structural Funds contribution to financial engineering instruments shall be re-used in the region(s) covered by the operational programme and that re-use should be through financial engineering instruments, with a view to ensuring further multiplier and recycling of public money.

5.2.9 The "competent authorities of the Member States" referred to in the second paragraph of Article 78(7) of the General Regulation need not be managing authorities and can be other national authorities (including at regional or local level) namely those responsible for implementing national policy objectives in the relevant areas.

5.2.10 For the avoidance of doubt, resources attributable to the Structural Funds contribution to financial engineering instruments as defined in Article 44 of the General Regulation (including grants to such instruments), returned to the operation from investments undertaken by the funds or left over after all guarantees have been honoured should not be used for the purpose of contributing the national match-funding to the financial engineering instrument nor to cover the cost of borrowing money in the financial market for that purpose.

5.2.11 The same guidance as provided in this section should apply regarding the returns from equity, loans and other repayable investments, and from guarantees for repayable investments, pursuant to Article 43(5) of the Implementing Regulation and without prejudice of the preferential allocation of returns as foreseen in the same Article.

### **5.3. Withdrawal of contributions from operational programmes to financial engineering instruments**

5.3.1 The conditions for a possible withdrawing (in part or in full) of resources contributed from operational programmes to financial engineering instruments should be included in the funding agreement. Such conditions should also foresee situations such as possible conflict between the managing authority and the financial engineering instrument or the holding fund, incapacity of the financial engineering instrument to carry out investments, or other situations where the normal implementation of the operation will not be possible.

5.3.2 Where the managing authority proceeds with a payment from an operational programme to a financial engineering instrument, but does not declare this expenditure to the Commission and hence does not receive a corresponding interim payment from the Structural Funds, the Commission services consider that it would not be irregular for the managing authority to withdraw resources from the holding fund or financial engineering instrument.

5.3.3 Once the contribution has been paid from an operational programme to a holding fund or financial engineering instrument, and it has been included in a statement of expenditure submitted to the Commission, it will be considered as "expenditure" within the meaning of Article 78 of the General Regulation and will be reimbursed by the Commission.

5.3.4 Where in such cases the contribution that has been paid from an operational programme is later withdrawn from a holding fund or a financial engineering instrument, the Member State will have received an interim payment by the Commission for expenditure which in fine has not been spent to implement the underlying operations for which it was declared. This may constitute an irregularity, unless the statement of expenditure is subsequently modified to withdraw or replace the expenditure in question.

5.3.5 There is also a question of whether any such withdrawal would comply with the principle of sound financial management. In particular, there is a risk that such a practice

would result in an improper circumvention of the provisions of Article 93 of the General Regulation.

5.3.6 The Commission recommends therefore that Member States or managing authorities proceed prudently, with payment of contributions from operational programmes to holding funds and financial engineering instruments in phases in line with the underlying investment strategy and/or business plan.

## **6. AUDIT AND CONTROL**

### **6.1. Availability of documents**

6.1.1 The retention of supporting documents for expenditure by the Structural Funds is required in order to establish an adequate audit trail and to provide evidence on the use of the funds for the purposes intended to, observance of the applicable EU and national rules and legislation as well as criteria and conditionality attached to the funding provided under the relevant operational programmes.

6.1.2. An adequate audit trail is necessary for reporting and audit purposes in accordance with Articles 60(c), (d) and (f), 78(6) and 90 of the General Regulation and Articles 15,19 and 43 to 46 of the Implementation Regulation.

6.1.3 The documents available should allow to verify the legality and regularity of the expenditure declared to the Commission and should demonstrate that sound financial management principles have been consistently applied.

6.1.4 Funding conditions, as provided for under Articles 43 to 46 of the Implementing Regulation, under the operational programme concerned, as well as eligibility rules and other requirements and criteria for funding as may have been decided by the Member State or the managing authority, may impose certain requirements and obligations to be fulfilled by final recipients receiving Structural Funds contributed from operational programmes. The fulfilment of these conditions must be properly documented in the records to be maintained at the appropriate levels of the operation as indicated hereunder.

6.1.5 To determine what supporting documents have to be kept and by whom, it is necessary to look at the funding conditions attached to each operation and how their observance is documented, provided that they comply with the Community and national requirements.

6.1.6 It must be established through appropriate records and documentary evidence that the equity investments, loans, guarantees or other forms of repayable investments provided to final recipients were effectively used primarily for SME support or for the implementation of urban development projects or for investments in renewable energy/energy efficiency in buildings.

6.1.7 The supporting documents attesting the observance of Community and national rules and of the funding conditions should include as appropriate:

- supporting documents of the establishment of the financial engineering instruments (i.e. state aid rules, public procurement rules, legal agreements, etc.);
- supporting documents of the functioning of the financial engineering instruments (i.e. use of interest and returns, etc.);

- supporting documents on the management costs and fees;
- application forms submitted by final recipients with supporting documents, including business plans and previous annual accounts, checklists and reports of the financial intermediaries (including financial institutions, venture capital fund, ...);
- declarations made in connection with receipt of *de minimis* aid;
- signed agreements in relation to the repayable investments (including equity, loans, guarantees or other forms of repayable investments provided to enterprises, public private partnerships, urban development projects, or to legal or natural persons carrying out specific investment activities in energy efficiency and use of renewable energy in buildings);
- evidence that the objectives for which the repayable investments were used have been achieved according to the intended purpose (e.g. documents provided by final recipients as appropriate, reports on the spot verifications by fund managers, visits and board meetings, annual accounts, and reports by the loan intermediary to the guarantee fund supporting claims).

6.1.8 There must be proof of the financial transfers from the financial engineering instrument to the final recipients or in the case of guarantees proof that underlying loans were disbursed. Evidence of expenditure to be kept at the level of the managing authorities or of the financial engineering instruments is required as part of the audit trail to justify financial assistance from the Structural Funds.

6.1.9 Furthermore, the audits may be conducted at the level of the final recipients only when the documents are not available at the level of the financial engineering instrument or at the level of the managing authority or in case of insufficient monitoring and verifications, or of legitimate doubt that the documents do not reflect the reality of the repayable investments.

6.1.10 It is the responsibility of the managing authority to ensure that supporting documents are kept for three years after the partial or final closure of the operational programme (Article 90 of the General Regulation). These supporting documents can be kept either by the financial engineering instrument (e.g. fund managers, financial intermediaries, holding funds), by the managing authorities or both.

6.1.11. The normal expectation is that these entities must keep all the documents required, including those to evidence compliance with the conditions attached to individual investments, including proof of purchase of certain goods or services, recruitment and/or training of staff or otherwise the effective realisation of the investments for which Structural Funds support has been received.

## **6.2. Audit procedures**

6.2.1. The scope of the audits covers the establishment of the financial engineering instruments (i.e. state aid rules, public procurement rules, legal agreements, etc.), the functioning of the financial engineering instruments (i.e. use of interest and returns, etc...), and the repayable investments. The audits by the Commission auditors will be based on the DG Regional Policy audit methodology that will be discussed with the Member States. Further guidance will be provided on this matter.

6.2.2 The different levels that can be audited are the managing authority and the financial engineering instruments. Within the limits set out in 6.1.9 verifications can be carried out at the level of the final recipients.

6.2.3 In the framework of financial engineering instruments, an adequate audit trail should allow the verification of the provisions of Article 78(6) of the General Regulation. Indeed, while the expenditure paid in establishing or contributing to the financial engineering instrument can be included in an interim statement of expenditure, the eligibility of this expenditure will be ultimately verified at final or partial closure.

6.2.4 For this reason, the Commission considers that adequate supporting documents to allow the verification of respect of the provisions of Article 78(6) of the General Regulation should be kept at the appropriate levels, i.e. by financial engineering instruments including holding funds. This should be done under the responsibility of the competent managing authority, according to Article 60(f) of the General Regulation and Article 19 of the Implementing Regulation.

6.2.5 It is possible that individual projects implemented by final recipients with financial support received from financial engineering instruments, include components that would not be eligible for Structural Funds assistance. To ensure a clear audit trail allowing expenditure eligible under the Structural Funds to be distinguished from ineligible expenditure, financial engineering instruments must maintain a separate accounting system or use a separate accounting code for co-financed expenditure down to the level of individual investments made into the final recipients.

6.2.6 There should be clear identification of the capital contributed from each operational programme and each priority axis to the financial engineering instrument and the expenditure which is eligible under the Structural Funds, to permit the verification that any expenditure declared to the Commission is eligible under the Structural Funds regulations and under applicable national eligibility rules.

## **7. MANAGEMENT CONTROL BY THE MANAGING AUTHORITY**

7.1 The managing authority should ensure that, both during the appraisal and selection process and during the running of the financial engineering instrument, the operation complies with the relevant Community and national rules (structural funds, state aid, public procurement, environment, etc.), the operational programme and the agreed investment policy.

7.2 As regards the Structural Funds rules, the managing authority should ensure that Articles 44, 60, 90 of the General Regulation and Articles 13, 15, 19 and 43 to 46 of the Implementing Regulation are adhered to.

7.3 Furthermore, the managing authority is required to ensure that the eligible expenditure declared at the partial or final closure of the operational programme in accordance with Article 78(6) of the General Regulation (EC) is evidenced by adequate supporting documents.

7.4 Taking into account the complexity of such a financial engineering operation, special attention should be carried out during the appraisal and selection process of the operation to ensure that the relevant Community and national rules, especially as regards State aid and public procurement rules, are adhered to.

7.5 The funding agreement between the managing authority and the financial engineering instrument (including the holding fund) should clearly lay down the rules to be adhered to and the categories of documents required to be kept as audit trail.

7.6 The funding agreement between the managing authority and the financial engineering instrument (including the holding fund) should also include provisions on the monitoring and follow-up of investments to be carried out by the holding fund or the financial engineering instrument.

7.7 According to Article 13 of the Implementing Regulation, the management verifications should verify the establishment of the holding fund (state aid rules, public procurement, etc.), the functioning of the financial engineering instruments (i.e. use of interest and returns, *pari passu* principle, etc.), and the repayable investments as well as the management costs and fees (i.e. threshold, etc.).

7.8 The management verifications of financial engineering instruments should be carried out throughout the programming period in accordance with COCOF Guidance document on management verifications COCOF 08/0020/04 of 5 June 2008.

## **8. HORIZONTAL ISSUES**

### **8.1. State aid <sup>9</sup>**

8.1.1 Recital 26 of the Implementing Regulation acknowledges that contributions to financial engineering instruments from an operational programme or other public sources as well as the investments made by them in individual enterprises are subject to rules on State aid.<sup>10</sup> In all cases any specific conditions, resulting from applicable EU state aid legislation must be respected.

#### *a) Contributions to funds as provided for in Article 44 of the General Regulation*

8.1.2 The Commission clarified in point 3.2 of the Community Guidelines on State Aid to promote Risk Capital investments in Small and Medium Sized Enterprises (“Risk Capital Guidelines”)<sup>11</sup>, that it considers that "in general, [...] an investment fund or an investment vehicle is an intermediary vehicle for the transfer of aid to investors and/or enterprises in which investment is made, rather than being a beneficiary of aid itself. However, [...] measures involving direct transfers in favour of an investment vehicle or an existing fund with numerous and diverse investors with the character of an independent enterprise may constitute aid unless the investment is made on terms which would be acceptable to a normal economic operator in a market economy and therefore provide no advantage to the beneficiary".

8.1.3 Where Member States or managing authorities implement an operation comprising contributions to support financial engineering instruments through holding funds without following a competitive tender, provided that the conditions enunciated in Article 44 second paragraph (b) of the General Regulation are respected, the holding fund would be

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<sup>9</sup> This Guidance Note does not in any way replace State aid rules

<sup>10</sup> Handbook on the EU State aid rules and paper "Common principles for an economic assessment of the compatibility of State aid under Art 107(3) of the TFEU"

<sup>11</sup> OJ C 194, 18.8.2006, p. 2.



considered as simply initiating investments being therefore an intermediary vehicle (unless evidence shows differently) and as such would not be a beneficiary of aid, as is set out in the abovementioned point 3.2 of the Community Guidelines on Risk Capital.

8.1.4 Point 3.2 of the Community Guidelines on Risk Capital also sets out the Commission's view that, "aid to the fund's managers or the management company will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations. On the other hand, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public tender procedure or if they do not receive any other advantages granted by the State".

*b) Investments in final recipients*

8.1.5 State aid may be present where contributions from operational programmes to financial engineering instruments are invested, loaned or committed for guarantees for projects implemented by enterprises, primarily SMEs, urban development projects, or for energy efficiency and use of renewable energy in buildings, including in existing housing. State aid rules must then be respected by Member States and managing authorities, assisted by the holding fund where appropriate.

8.1.6 It should also be recalled that, Article 43(7) of the Implementing Regulation requires managing authorities to "take precautions to minimise distortion of competition in the venture capital or lending markets and the private guarantee market".

*c) Pari passu investments*

8.1.7 On the basis of state aid legislation in force, the Commission would consider that public and private investments in risk capital funds are effected *pari passu*, where public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination - see Community guidelines on state aid to promote risk capital investments in SMEs, point 3.2, fourth subparagraph, "Aid to investors"<sup>12</sup>).

8.1.8 In line with this principle any interest earned, any revenue or return generated by both the public and the corresponding private contribution to financial engineering instruments, along with the investment risks, should therefore be shared proportionately between public and private investors, without prejudice to the provisions of Article 43(5) of the Implementing Regulation regarding the preferential allocation of returns to investors operating under the market economy investor principle. Different arrangements might be applicable where a specific state aid measure approved by the Commission allows for them.

8.1.9 If the public contribution and its private match funding are not paid to a financial engineering instrument concomitantly (i.e. in case of subordination of the public sector investment to the private sector investment), this could be considered as involving state aid, therefore an approved state aid measure may be required to allow for such arrangements.

*d) Specific issues regarding guarantees*

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<sup>12</sup> OJ C 194, 18.8.2006, page 10

8.1.10. Under the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (“Guarantee Notice”<sup>13</sup>), for guarantees granted for loans to SMEs it can be accepted, under certain conditions, that a State guarantee would be deemed as not constituting state aid if the minimum annual premium (‘safe-harbour premium’) set out in the table laid down in Subsection 3.3 of the Guarantee Notice is charged on the amount effectively guaranteed by the State, based on the rating of the borrower (SME).

8.1.11 According to Article 2(4)(d) of Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid<sup>14</sup>, guarantees granted under a guarantee scheme covering a loan amount of up to EUR 1.5 million and not exceeding 80 % of the underlying loan, do not involve state aid. For the purpose of applying the provisions of this Regulation, it is necessary to consider the level at which such aid could be present.

## **8.2. Public procurement/selection procedure**

8.2.1 A transparent procedure for the selection of financial engineering instruments and for taking decisions on contributions from operational programmes to them should be applied by the managing authority or the holding fund, as the case may be. This selection procedure should be based on specific and appropriate selection criteria relating to the objectives of the operational programme, criteria which should be approved by the monitoring committee (for clarification, as indicated in paragraph 2.1.2, the approval of these criteria refer to selection of the relevant operations but not for individual funds or financial intermediaries, nor for individual investments in final recipients by financial engineering instruments).

8.2.2 The selection of private partners in financial engineering instruments established on the initiative of public entities may correspond to the procurement of public services. Member States and managing authorities must assess this, and comply with applicable legislation. Article 44 of the General Regulation should not be read as meaning that where holding funds are not used to organise financial engineering instruments, there is no obligation to comply with applicable public procurement law.

8.2.3 The managing authority or the holding fund, as the case may be, should examine whether their contributions to specific financial engineering instruments corresponds to public procurement of services governed by the EU or national public procurement law. In this event, managing authorities or holding funds should act in accordance with applicable European Union and national rules.

8.2.4 Where public procurement law is not applicable (since the contribution to a financial engineering instrument does not entail a procurement of services), and if there is no holding fund, a managing authority can award a grant to a financial institution for implementing and running a financial engineering instrument. In this case, the managing authority must ensure that all applicable laws are complied with, including State aid rules and national legislation on grants (notably ensuring a transparent selection procedure for the selection of the financial engineering instruments).

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<sup>13</sup> OJ C 155, 20.6.2008, p. 10.

<sup>14</sup> OJ L 379, 28.12.2006, p. 5.

### **8.3. Durability**

8.3.1 After the amendment introduced to Article 57 of the General Regulation by Regulation (EC) No 539/2010, the durability requirement is applicable to operations "comprising investment in infrastructure or productive investment" which fall within the scope of respectively Article 3 (2) (a) and (2) (b) of the ERDF Regulation.

8.3.2 Operations related to "...creation and development of financing instruments such as venture capital, loan and guarantee funds, local development funds, interest subsidies, ..." are, according to the same Article 3 (2) (c), characterised as "development of endogenous potential" which are outside the scope of Article 57 of the General Regulation.

8.3.4 Furthermore, in the context of financial engineering instruments co-financed by the Structural Funds pursuant to Article 44 of the General Regulation and Article 3 (2)(c) of the ERDF Regulation, the operation is constituted by the financial contributions to the financial engineering instruments and the subsequent investments made by the financial engineering instruments. Such investments are made through repayable equity or debt (or related guarantees) and the related resources returned to the operation must be reused for the benefit of similar actions and final recipients, pursuant to Article 78(7) of the General Regulation.

8.3.5 It follows from the above that, in principle, Article 57 of the General Regulation (hence "durability") does not apply to financial engineering instruments co-financed by the Structural Funds pursuant to Articles 44, 78(6) and 78(7) of the General Regulation and Article 3 (2)(c) of the ERDF Regulation.

8.3.6 Regulation (EU) No 1310/2011 of 13 December 2011 amending the General Regulation, definitely clarified in its Article 44a that Article 57 "*Durability of Operations*" does not apply to operations falling under Article 44.

### **8.4. Revenue-generating projects and financial engineering**

8.4.1 Paragraphs 1 to 5 of Article 55 of the General Regulation do not apply to financial engineering instruments within the meaning of Article 44 of the same General Regulation and Section 8 of the Implementing Regulation.<sup>15</sup>

8.4.2 Regulation (EU) No 1310/2011 of 13 December 2011 amending the General Regulation, definitely clarified in its Article 44a that Article 55 "*Revenue-generating projects*" does not apply to operations falling under Article 44.

### **8.5. Major projects**

8.5.1 As indicated in section 1.2 of this note, when contributions from operational programmes co-finance financial engineering instruments pursuant to Article 44 of the General Regulation and Article 3 paragraph 2(c) of the ERDF Regulation, the operation as defined in Article 2(3) of the General Regulation, is constituted by the financial contributions to the financial engineering instruments and the subsequent investments made by the same instruments.

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<sup>15</sup> Specific guidance on the interpretation of Art. 55 of the General Regulation was provided by a specific note [COCOF 07/0074/08 updated in November 2010]

8.5.2 It should be recalled here that such investments are made through repayable equity or debt (or related guarantees) and that investment decisions are made by independent financial institutions, financial intermediaries or fund managers, on the basis of due diligence and investment criteria and processes similar to commercial practices for the same type of investments.

8.5.3 Furthermore, the resources attributable to Structural Funds, returned to the operation from such investments, must be reused for the benefit of similar actions and final recipients, pursuant to Article 78(7) of the General Regulation.

8.5.4 For the above reasons, the contributions to financial engineering instruments directly from operational programmes or through holding funds do not constitute an "indivisible task(s) of a precise economic or technical nature" within the meaning of Article 39 of the General Regulation, and hence they cannot be considered to be major projects.

8.5.5 Regulation (EU) No 1310/2011 of 13 December 2011 amending the General Regulation, definitely clarified in its Article 44a that Article 39 "*Major projects*" does not apply to operations falling under Article 44.

## **8.6. Information and publicity**

8.6.1 In accordance with the provisions of Article 8 of the Implementing Regulation, and paragraph 4 in particular, the beneficiary shall ensure that those taking part in an operation receiving funding under an operational programme have been informed of that funding. Consequently, in line with the definition of "beneficiary" in section 1.2.b) of this document, the financial engineering instruments and, where applicable, the holding fund are responsible for meeting the information and publicity requirements as laid down in Article 8(4).

## **9. CLOSURE OF PROGRAMMES**

### **9.1. Eligibility of expenditure**

9.1.1 Article 78(6) of the General Regulation makes a clear distinction between expenditure which can be included in interim statements of expenditure submitted by Member States to the Commission, and expenditure eligible at closure of operational programmes.

9.1.2 By way of derogation from the general rule that statements of expenditure should only include expenditure actually paid by beneficiaries, the (interim) statements of expenditure for financial engineering instruments may include the total expenditure paid from the operational programme in establishing or contributing to such funds or holding funds.

9.1.3 However, at closure eligible expenditure is the amount paid out by 31<sup>st</sup> December 2015 by the holding fund or financial engineering instrument for concrete investments to the benefit of the final recipients (e.g. SMEs, urban development projects, energy efficiency and use of renewable energy in buildings) or the amount of guarantees provided including the amounts committed as guarantees (corresponding to underlying loans issued and disbursed). The implementation of the investment activities by the final recipient may continue beyond 31<sup>st</sup> December 2015. Also, management costs or fees incurred until 31

December 2015 are eligible expenditure pursuant to Article 78(6)(d) of the General Regulation, within the limits set out in the Article 43(4) of the Implementing Regulation.

## **9.2. Legacy resources (residual funds)**

9.2.1 Article 43(3) of the Implementing Regulation sets out requirements regarding the inclusion of an exit policy and winding-up provisions in the funding agreement signed between a managing authority or the holding fund and a selected financial engineering instrument.

9.2.2 Such exit policy and winding-up provisions must set the conditions for returning to the managing authority, or to another designated competent public authority, any resources attributable to the Structural Funds contribution to the operation concerned. These resources comprise the contributions from the operational programme invested in financial engineering instruments, as well as any return earned by it, after one or more full cycles of investment in enterprises, urban projects or energy efficiency/ renewable energy schemes have been made and completed by the financial engineering instrument.

9.2.3 Subject to the above conditions, resources returned attributable to the Structural Funds, under the responsibility of the managing authority, are to be reutilised according to the stipulations of the documents setting out the investment strategy, the exit policy and the winding-up provisions of the financial engineering instruments. The Commission considers as a good practice that resources returned attributable to the Structural Funds as well as any contributions left over after honouring guarantees which are attributable to the Structural Funds should be reallocated for the same type of action(s) in line with Article 78(7) of the General regulation and in the same region covered by the operational programme.

9.2.4 The General Regulation and the Implementing Regulation do not set out a specific duration of this obligation of re-use for the resources returned, for example after the closure of the programming period. While it is recommended that resources returned should be used until exhaustion of the funds for the same type of action(s) and in the same fashion, after the closure of the programming period, there is no specific legal obligation to use the residual funds in the context of interventions of the Structural Funds.

9.2.5 However, the documents setting out the exit policy of the financial engineering instrument may contain specific provision on the use of such legacy resources, which should be complied with.

9.2.6 In the light of the above, it is primarily a responsibility of Member States to make sure that the provisions of the General Regulation and Implementing Regulations are complied with as regards in particular the obligation to make again available the resources returned attributable to the Structural Funds contributions to the operations concerned (legacy or residual funds) for the same type of action(s) in line with Article 78(7) of the General Regulation. It is recommended that this re-use takes place in the same area covered by the operational programme.

9.2.7 In addition, based on the documents setting out the investment strategy and exit policy of the financial engineering instrument, Member States are responsible for ensuring that the legacy resources or residual funds as well as any recycled funds attributable to the Structural Funds contributions are used to achieve the goals set out in such documents,

according to sound financial management principles and in compliance with the objectives of Cohesion policy.

## **ANNEXES**

**(1) Glossary**

**(2) Template monitoring report**

## Annex I Glossary

The following glossary provides explanations of specific (technical) terms used in the context the Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 (COCOF Document No. XXXX)

For a matter of facility the glossary includes specific terms for which a definition is provided in the main text of the note; in such cases the glossary forwards to the appropriate Section of the note.

**This glossary provides definitions and explanations of certain terms used in the Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006. The glossary is purely illustrative. The Commission services cannot be held responsible for the accuracy and completeness of the glossary or for use that may be made of the information contained therein. The views expressed herein cannot be taken to reflect the official opinion of the European Commission.**

Specific term	Definition / Explanation
Acquisition	An acquisition is a corporate action in which an enterprise or individual buys most, if not all, of the target enterprise's ownership stakes in order to assume control of the target enterprise.
Beneficiary	Please see Section 1.2.b) of the Guidance Note
Business plan	A summary of a business's prospects and plans for the future, typically including discussion and analysis of market opportunities, business strategy, key operational issues, and finances, including cost and revenue projections.
Early-stage capital	Financing for enterprises before they initiate commercial manufacturing and sales or generate any profit. Includes seed and start-up financing.
Equity	Equity is the (ordinary) share capital of an enterprise. Typical features of equity capital include an entitlement to the profits of the enterprise, a proportionate share of the proceeds upon liquidation and subordination to creditors.
Equity investment	An equity investment refers to the acquisition of an equity participation (ownership) in an enterprise (or a start-up enterprise).
Escrow account	In Section 2.5.10 it is stated that the public or private contributions may be paid into an escrow account or to another appropriate type of account for subsequent investment in final recipients. In this context an escrow account refers to a contractual arrangement where an independent trusted third-party receives and disburses the contributions for the transacting parties, with the timing of such disbursement by the third-party dependent on the performance by the parties of agreed-upon contractual provisions.

## Annex I Glossary

Exit	Liquidation of investments by a private equity or venture capital investor. The most common exits are (1) trade sale to another company; (2) public offering (including an initial public offering) on a stock market ; (3) sale to another investor; (4) repayment of the investment (when part of the investment agreement); or (5) the write-off of the investment.
Exit policy/strategy	Exit policy means a policy/strategy for the liquidation of holdings by a venture capital or private equity fund according to a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another venture capitalist, sale to a financial institution and sale by public offering (including Initial Public Offerings).
Expansion Capital	Expansion capital is the financing provided for the growth of an enterprise, which may or may not break even or be profitable. Expansion capital may be used to finance increased production capacity, market or product development, or to provide working capital as set out in a Business Plan.
Expected loss	In loans and guarantees, losses of interest and principal on loans occur because there are some borrowers that default on their payment obligations. The losses that are actually experienced may vary from year to year, depending on the number and severity of default events. A lender can forecast the average level of credit losses it can reasonably expect to experience. Expected losses are a cost component; lenders (such as banks) or guarantors manage them by a number of means, including through the pricing of credit exposures and risk mitigation instruments (collaterals) . The risk assessment of expected loss is common market practice and can be performed according to various methodologies.
Expiry date of repayment term	A loan of a specific amount has a specified repayment schedule and specified maximum term (maturity). The expiry date refers to a date in the future upon which the borrower has to fulfill its last and final repayment obligation.
Final recipient	Please see Section 1.2.c) of the Guidance Note
Financial institution	The classic example of a financial institution is a bank that transforms bank deposits into bank loans.
Financial intermediary	A financial intermediary refers to the function of acting as intermediary between the supply and demand of financial products.
Financial engineering instrument	Please see Section 1.2.d) of the Guidance Note



## Annex I Glossary

Firms in difficulty	There is no Community definition of what constitutes «a firm in difficulty». However, for the purposes of the "Community guidelines on State aid for rescuing and restructuring firms in difficulty, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.
Funding agreement	Please see Section 2.4 of the Guidance Note
Fund manager	The individual(s) or entity(ies) responsible for implementing the investment strategy and managing the portfolio of investments related to the holding fund or to the financial engineering instruments (being equity funds, loans funds, guarantee funds), as the case may be, referred to under Article 44 of the General Regulation in accordance with the stated goals and provisions as set out in the funding agreement.
Grant	<p>For the purpose of this Guidance Note, in general a grant will have the following features:</p> <ul style="list-style-type: none"> <li>• a contribution is made either to an action or project carried out by a grantee which falls primarily within the scope of the grantee's activities or direct to the grantee because its activities contribute to policy aims of the grantor, such action or project of the grantee normally being in the interest of the grantor;</li> <li>• the application for financing originates with the grantee, who submits a proposal for support for activities it is carrying out or plans to carry out; its proposal sets out the specifications for the action to be performed, which may be within a pre-set legal or other framework laid down in advance by the grantor;</li> <li>• ownership will normally remain with the grantee, although it is possible in some cases for the financial contribution to revert to the grantor at the end of an action;</li> <li>• the grant does not necessarily finance the total cost of the action;</li> <li>• the financial contribution of the grantor should not be in consideration of any product or service provided by the grantee to the grantor;</li> <li>• conditions can be attached to the grant awarded, but there is no direct and specific link between individual obligations on either side (grantor and grantee), although the grantor has the right to monitor technical implementation of the action and the use made of the funds granted;</li> <li>• the grant must not have the purpose or effect of producing a profit for the grantee;</li> <li>• the outcome of a grant award procedure is a grant agreement or a grant decision.</li> </ul>

## Annex I Glossary

Guarantee	A guarantee is a commitment by a third party called the guarantor to pay the debt of a borrower when the latter cannot pay it himself. The guarantor is liable to cover any shortfall or default on the borrower's debt under the terms and conditions as stipulated in the agreement between the guarantor, the lender and/or the borrower.
Holding fund	Please see Section 2.2.b) of the Guidance Note
Implementation Regulation	Please see Section 3.3.a) of the Guidance Note
Integrated plan for sustainable urban development	Please see Section 3.3.a) of the Guidance Note
Loan	A loan is a type of debt. In a loan, the borrower initially receives or borrows an amount of money, called the principal, from the lender, and is obligated to pay back or repay an equal amount of money to the lender at a later time. Typically, the money is paid back in regular installments, or partial repayments; in an annuity, each installment is the same amount. A loan is generally provided at a cost, referred to as interest on the debt.
Management buy-in (MBI)	A management buy-in is a corporate action in which an outside manager or management team purchases an ownership stake in an enterprise and replaces the existing management team.
Management buy-out (MBO)	A management buy-out occurs when the managers and/or executives of an enterprise purchase a controlling interest in that enterprise from the existing shareholders.
Merger	A merger is the combining of two or more enterprises, generally by offering the stockholders of one enterprise, securities in the acquiring enterprise in exchange for the surrender of their stock.
Micro-credit	Small loans, usually up to €25,000, granted either by institutions specialising in microcredit or by other financial intermediaries. In the context of this Note the purpose of the micro-credit needs to be related to economic activities.
Operation	Please see Section 1.2.a) of the Guidance Note
Principal of the loan	The amount of a loan borrowed, or the part of the amount borrowed which remains unpaid (excluding interest).

## Annex I Glossary

Public Contract	<p>In general, a <u>public contract</u> will have the following features:</p> <ul style="list-style-type: none"> <li>• a product or service is procured, by a contracting authority (or entity) for needs falling within its remit in return for consideration (i.e., price or other consideration);</li> <li>• the terms of the service or product are set out in detail by the contracting authority in the tender documents;</li> <li>• the successful tenderer will be contractually bound to comply with the terms of the award;</li> <li>• the contracting authority or entities will normally bear 100% of the contract consideration;</li> <li>• the contract is bilateral: it imposes reciprocal obligations on the contracting authority and the product or service provider, with the latter providing the contracting authority or a third party or parties designated by it with the product or service it has ordered. The contracting authority monitors provision of the product or service it has ordered;</li> <li>• the result of a procurement procedure is a contract.</li> </ul>
Public-private partnership	<p>According to the EC Communication on PPPs (COM(2009)615, 19.11.2009), PPPs are forms of cooperation between public authorities and the private sector that aim to modernise the delivery of infrastructure and strategic public services. In some cases, PPPs involve the financing, design, construction, renovation, management or maintenance of an infrastructure asset; in others, they incorporate the provision of a service traditionally delivered by public institutions. Whilst the principal focus of PPPs should be on promoting efficiency in public services through risk sharing and harnessing private sector expertise, they can also relieve the immediate pressure on public finances by providing an additional source of capital. In turn, public sector participation in a project may offer important safeguards for private investors, in particular the stability of long term cash-flows from public finances, and can incorporate important social or environmental benefits into a project.</p>
Repayable investment	<p>For the purpose of this note, repayable investments shall mean repayable financial assistance or support wholly or partially financed through Structural Funds' programmes, to address Cohesion policy objectives, by way of loans, guarantees or equity.</p>

## Annex I Glossary

Resources returned/returns	<p>Resources returned/returns as referred to in Section 5.2. of the Guidance as hereunder clarified.</p> <p>Resources returned/returns to the financial engineering instrument from investments in final recipients can be categorised as ‘capital receipts’ and ‘income receipts’. Capital receipts tend to mean payments or distributions or other amounts received or to be received by the relevant financial engineering instrument (or holding fund) representing the repayment or return of all or part of the principal or capital element of any investment. Income receipts tend to mean payments to, distributions to or other receipts by the relevant financial engineering instrument representing the payment of income, or the earning of revenue by, the relevant financial engineering instrument in respect of its investments other than capital receipts, which could include:</p> <ul style="list-style-type: none"> <li>(i) interest (including any capitalised interest);</li> <li>(ii) dividends; and/or</li> <li>(iii) capital gains”</li> </ul>
Risk assessment	<p>Risk assessment is a step in a risk management procedure and relates to the determination of the quantitative or qualitative value of the credit risk ("valuation"). This exercise is specifically (but not only) relevant for the issue of guarantees. Quantitative credit risk assessment will require the estimation and calculation of risk (including "expected loss" and "unexpected loss"): the magnitude of the potential loss and the probability that the loss will occur. For the purpose of Section 4.1. (Guarantees) of the Guidance Note a risk assessment involves undertaking a valuation of risk assessment conditions when deciding to set up guarantees or guarantee funds with Structural Funds' financing under Art 44 of the General Regulation</p>
Seed capital (Section 3.2.9.. of the Guidance Note)	<p>Seed Capital is the financing provided to study, assess and develop an initial concept. The seed phase precedes the start-up phase. The two phases together are called the early stage.</p>
Start-up capital	<p>Provided to enterprises for product development and initial marketing. Enterprises may be in the process of being set up or may exist but have yet to sell their product or service commercially.</p>
Unexpected loss	<p>Losses above expected levels are usually referred to as unexpected losses. One of the functions of a lender's or guarantor's own capital is to provide a buffer to protect against peak losses that exceed expected levels. Interest rates on loans or guarantee fees charged on guarantees may absorb some components of unexpected losses but the market will not support prices sufficient to cover all unexpected losses. Risk assessment of unexpected loss is common market practice which reflects sound financial management.</p>

## Annex I Glossary

Venture Capital	Investment in unquoted enterprises by venture capital firms who, acting as principals, manage individual, institutional or in-house money. In Europe, the main financing stages included in venture capital are early-stage (covering seed and start-up) and expansion. Strictly defined, venture capital is a subset of private equity. Venture capital is thus professional equity co-invested with the entrepreneur to fund an early-stage (seed and start-up) or expansion venture. Offsetting the high risk the investor takes is the expectation of a higher-than-average return on the investment.
Winding up	A process that entails selling all the assets of a fund, paying off creditors, distributing any remaining assets to the principals, and then dissolving the fund. Essentially, "winding up" is to be understood as "liquidation".
Working capital	Working capital relates to the liquid assets an enterprise has available to build its business, but also a measure of its efficiency and financial health. Working capital can be positive or negative, depending on how much short-term debt the company is carrying. A negative working capital means that a company currently is unable to meet its short-term liabilities with cash, accounts receivable, and inventory. Working capital is calculated as Current assets minus current liabilities.

## Annex II Template Monitoring Report

### Template Monitoring Report for Financial Engineering Instruments established under Article 44 of Council Regulation (EC) No 1083/2006

#### **BACKGROUND INFORMATION**

This template monitoring report is provided with the aim of enabling Managing Authorities (i) to monitor instruments established under Article 44 of Council Regulation (EC) No 1083/2006 and (ii) to voluntarily report implementation progress to the Commission on an annual basis.

Intended to capture the full life-cycle and the various implementation stages of financial engineering instruments, the modular structure of the monitoring report allows for the reporting on the full range of instruments that can be implemented under Article 44.

Consequently, based on the specific nature of the underlying instrument(s) and their implementation progress over time, only certain parts of the template will be applicable and information can be provided where considered appropriate.

While Form I refers to Holding Funds, Form II is covering an individual financial engineering instrument receiving contributions from a HF or a Managing Authority directly. Therefore, for Holding Fund architectures, each financial engineering instrument at financial intermediary level should be reported on individually in a separate Form II.

If deemed helpful by the members of the COCOF, an explanatory document could be made available providing further information on the i

## Annex II Template Monitoring Report

FEI (HF)

FORM I	<b>Template Monitoring Report for Financial Engineering Instruments (Holding Funds)</b> (conversion rate: xxx EUR/national currency)				
<b>A GENERAL INFORMATION ON THE HOLDING FUND</b>					
A.1	Name of the HF				
A.2	Geographical scope of HF (national/regional)				
A.3	Short description of HF (i.e. legal form, ownership structures, etc.)				
A.4	Holding Fund manager				
A.5	Procedure for selecting the HF manager (short description)				
A.6	Date of signature of funding agreement with MA				
<b>B CONTRIBUTIONS TO THE HOLDING FUND</b>					
<b>B.1 CONTRIBUTIONS FROM OPERATIONAL PROGRAMME(S)</b>					
B.1.1	Name of Operational Programme	Total	Priority 1	Priority 2	Priority ...
B.1.2	ERDF resources		ERDF amounts committed in FA (in m EUR)		
B.1.3			ERDF amounts effectively contributed to HF (in m EUR)		
B.1.4	ESF resources (if any)		ESF amounts committed in FA (in m EUR)		
B.1.5			ESF amounts effectively contributed to HF (in m EUR)		
B.1.6	National public co-financing		Public co-financing committed in FA (in m EUR)		
B.1.7			Public co-financing effectively contributed to HF (in m EUR)		
B.1.8			* of which effectively contributed to HF in cash (in m EUR, contributed by)		
B.1.9			* of which effectively contributed to HF in kind (in m EUR, contributed by)		
B.1.10	National private co-financing		Private co-financing committed in FA (in m EUR)		
B.1.11			Private co-financing effectively contributed to HF (in m EUR)		
B.1.12			* of which effectively contributed to HF in cash (in m EUR, contributed by)		
B.1.13			* of which effectively contributed to HF in kind (in m EUR, contributed by)		

## Annex II Template Monitoring Report

FEI (HF)

B.2		ADDITIONAL (LEVERAGE) RESOURCES AT HF LEVEL (BEYOND OP CONTRIBUTIONS)		
B.2.1	Additional (leverage) resources at HF level beyond OP contributions	Total amount of public leverage resources legally committed (in EUR)		
B.2.2		Total amount of public leverage resources effectively contributed to HF (in m EUR)		
B.2.3		Nature and origin of public leverage resources at HF level (please describe)		
B.2.4		Total amount of private leverage resources legally committed (in m EUR)		
B.2.5		Total amount of private leverage resources effectively contributed to HF (in m EUR)		
B.2.6		Nature and origin of private leverage resources at HF level (please describe)		
B.3		TOTALS		
B.3.1	Total volume of the holding fund as stated in the Funding Agreement (in m EUR)			
B.3.2	Total contributions effectively made to the the HF (in m EUR)			
C		INVESTMENTS IN FINANCIAL ENGINEERING INSTRUMENTS (FINANCIAL INTERMEDIARIES)		
C.1	Total number of Financial Engineering Instruments supported (no. of agreements signed)		FEI 1	FEI 2
C.2	Total amount of HF resources legally committed to FEIs (in m EUR)			FEI ...
C.3	Total amount effectively contributed to FEIs (in m EUR)			
C.4	Investments & contributions	Name of Financial Engineering Instrument		
C.5		Attributable to Art 44 first paragraph (a), (b) or (c) of (EC) 1083/2006?		
		Type of financial products offered to final recipients (please indicate: E - equity, L - loans, G - guarantees, O - other)		
C.6		Agreement signed on		
C.7		Amount of HF resources legally committed to FEI		
C.8	Amount of HF resources effectively contributed to FEI			



## Annex II Template Monitoring Report

FEI (HF)

D RETURNS & RECYCLING		FEI 1	FEI 2	FEI ...
D.1	Total amount of effective repayments received from FEIs other than HFs (in m EUR)			
D.2	Total amount of interest, fees or other gains effectively paid to the HF (in m EUR)			
E MANAGEMENT COSTS & FEES				
E.1	Total amount of management costs and fees effectively paid to the HF manager (in m EUR)			
F EXITS FROM THE HF				
F.1	Total amount of exits realised and effectively paid back to the MA (in m EUR)			
F.2	Total amount of exits realised and effectively paid to other shareholders of the fund (in m EUR)			
G INDICATORS		FEI 1	FEI 2	FEI ...
G.1	Total number of final recipients supported			
G.2	Financial products supported by 1 EUR of public funds			
G.3	From amount of autonomous leverage resources mobilised at the level of the FDI and final recipients (outside the scope of the ODF(s)) (in m EUR)			
G.4	Number of jobs created or safeguarded			

## Annex II Template Monitoring Report

FEI other than HF

FORM II	Template Monitoring Report for Financial Engineering Instruments other than HF's (conversion rate: xxx EUR/national currency)					
<b>A</b>	<b>GENERAL INFORMATION ON THE FINANCIAL ENGINEERING INSTRUMENT</b>					
A.1	Name of the FEI					
A.2	Attributable to Art 44 first paragraph (a), (b) or (c) of (EC) 1083/2006?					
A.3	Geographical scope of FEI (national/regional)					
A.4	Short description of FEI					
A.5	Short description of overall investment strategy (instruments, target sectors and envisaged recipients)					
A.6	FEI manager					
A.7	Procedure for selecting the FEI manager (short description)					
A.8	Date of signature of (funding) agreement with HF or MA					
<b>B</b>	<b>CONTRIBUTIONS TO THE FINANCIAL ENGINEERING INSTRUMENT (OTHER THAN HF)</b>					
<b>B.1</b>	<b>CONTRIBUTIONS RECEIVED FROM HF (in case HF structure is implemented)</b>					
B.1.1	Total HF contribution committed in FA or equivalent contractual arrangement with the HF (in m EUR)					
B.1.2	Total HF contribution effectively received from the HF (in m EUR)					
<b>B.2</b>	<b>CONTRIBUTIONS FROM OPERATIONAL PROGRAMME(S) (where no HF structure is implemented)</b>			Total		
B.2.1	Name of Operational Programme			Priority 1	Priority 2	Priority ...
B.2.1	ERDF resources	ERDF amounts committed in FA (in m EUR)				
B.2.1		ERDF amounts effectively contributed to FEI (in m EUR)				
B.2.1	ESF resources (if any)	ESF amounts committed in FA (in m EUR)				
B.2.1		ESF amounts effectively contributed to FEI (FI) (in m EUR)				
B.2.1	National public co-financing	Public co-financing committed in FA (in m EUR)				
B.2.1		Public co-financing effectively contributed to FEI (in m EUR)				
B.2.1		* of which effectively contributed to FEI in cash (in m EUR, contributed by)				
B.2.1		* of which effectively contributed to FEI in kind (in m EUR, contributed by)				
B.2.1	National private co-financing	Private co-financing committed in FA (in m EUR)				
B.2.1		Private co-financing effectively contributed to FEI (in m EUR)				
B.2.1		* of which effectively contributed to FEI in cash (in m EUR, contributed by)				
B.2.1		* of which effectively contributed to FEI in kind (in m EUR, contributed by)				
<b>B.3</b>	<b>ADDITIONAL (LEVERAGE) RESOURCES CONTRIBUTED TO THE FEI (OTHER THAN HF)</b>					

## Annex II Template Monitoring Report

FEI other than HF

B.2.1	Additional (leverage) resources contributed at the level of the FEI (beyond OP contributions)	Total amount of leverage resources legally committed to FEI (in EUR)			
B.2.1		Total amount of leverage resources effectively contributed to FEI (in EUR)			
B.2.1		* effectively contributed by the public sector (in m EUR contributed by)			
B.2.1		* effectively contributed by the private sector (in m EUR contributed by)			
B.2.1		Nature and origin of leverage resources contributed to the FEI (brief description)			
<b>B.4</b>	<b>TOTALS</b>				
B.4.1	Total volume of contributions to the FEI as stated in the FA or equivalent contractual arrangements (in m EUR)				
B.4.1	Total contributions effectively received by the FEI (in m EUR)				
<b>C INVESTMENTS / FINANCIAL PRODUCTS PROVIDED TO FINAL RECIPIENTS (by financial product)</b>					
<b>C.1</b>	<b>LOANS PROVIDED TO FINAL RECIPIENTS (if applicable)</b>		<b>Total</b>	<b>Loan programme or product 1</b>	<b>Loan programme or product 2</b>
C.1.1	General information	Name of programme or product	---		
C.1.2		Type of final recipients targeted (brief description)	---		
C.1.3		Procedure for selecting final recipients (brief description)	---		
C.1.4		Programme or product available until (please indicate date)	---		
C.1.5	Contractual commitments	Number of loan contracts signed with final recipients			
C.1.6		Total loan amount committed in contracts with final recipients (in m EUR)			
C.1.7		Number of loans (fully or partially) disbursed to final recipients			
C.1.8	Actual utilisation (loans disbursed)	Total loan amount effectively disbursed to final recipients (in m EUR)			
<b>C.2</b>	<b>GUARANTEES COMMITTED TO FINAL RECIPIENTS (if applicable)</b>		<b>Total</b>	<b>Guarantee programme or product 1</b>	<b>Guarantee programme or product 2</b>
C.2.1	General information	Name of programme or product	---		
C.2.2		Final recipients targeted (brief description)	---		
C.2.3		Procedure for selecting final recipients (brief description)	---		
C.2.4		Programme or product available until (please indicate date)	---		
C.2.5	Contractual commitments	Average guarantee cover provided by programme of product (in relation to underlying loan, in %)	---		
C.2.6		Number of guarantee contracts signed with final recipients			
C.2.7		Total amount blocked for guarantee contracts signed (in m EUR)			
C.2.8		Number of loans to be disbursed in relation to guarantee contracts (in m EUR)			
C.2.9		Total value of loans to be disbursed in relation to guarantee contracts (in m EUR)			
C.2.10	Emrisaged multiplier (= ratio of amount blocked for guarantees / value of loans to be disbursed in relation to guarantee contracts)				

## Annex II Template Monitoring Report

FEI other than HF

C.2.11	Actual utilization (guarantees committed / loans disbursed)	Total amount of guarantees actually committed for disbursed loans in accordance with contracts signed (in m EUR)				
C.2.12		Number of loans actually disbursed in relation to guaranteed contracts (in m EUR)				
C.2.13		Total value of loans actually disbursed in relation to guaranteed contracts (in m EUR)				
C.2.14		Actual multiplier (= ratio of capital allocated to guarantees actually committed to or provided for disbursed loans / value of loans actually disbursed in relation to guarantee contracts)				
<b>C.3</b>	<b>EQUITY / VENTURE CAPITAL PROVIDED TO FINAL RECIPIENTS (if applicable)</b>		<b>Total</b>	<b>Equity / venture capital programme or product 1</b>	<b>Equity / venture capital programme or product 2</b>	<b>Equity / venture capital programme or product ...</b>
C.3.1	General information	Name of programme or product	---			
C.3.2		Final recipients targeted (brief description)	---			
C.3.3		Procedure for selecting final recipients (brief description)	---			
C.3.4		Programme or product available until (please indicate date)	---			
C.3.5	Contractual commitments	Number of shareholder agreements signed with final recipients				
C.3.6		Total amount of investments committed in line with agreements (in m EUR)				
C.3.7	Actual utilization	Number of investments made in line with agreements signed				
C.3.8		Total amount of investments effectively made in line with agreements (in m EUR)				
C.3.9		Valuation of total investments made (in m EUR, date of valuation)				
<b>C.4</b>	<b>OTHER PRODUCTS PROVIDED TO FINAL RECIPIENTS (if applicable)</b>		<b>Total</b>	<b>Programme or product 1</b>	<b>Programme or product 2</b>	<b>Programme or product ...</b>
C.4.1	General information	Name of programme or product	---			
C.4.2		Type of final recipients targeted (brief description)	---			
C.4.3		Procedure for selecting final recipients (brief description)	---			
C.4.4		Programme or product available until (please indicate date)	---			
C.4.5	Contractual commitments	Number of products legally committed to final recipients				
C.4.6		Total amount committed in contracts with final recipients (in m EUR)				
C.4.7	Actual utilization (loans disbursed)	Number of products effectively provided to final recipients				
C.4.8		Total amount effectively disbursed to final recipients (in m EUR)				
<b>C.5</b>	<b>TOTALS</b>					
C.5.1	Total number of transactions (no. of contracts or agreements signed with final recipients)					
C.5.2	Total amount of FEI resources legally committed to final recipients (in m EUR)					
C.5.3	Total amount effectively contributed to final recipients (in m EUR)					
<b>D</b>	<b>RETURNS &amp; RECYCLING</b>					
<b>D.1</b>	<b>LOANS (if applicable)</b>		<b>Total</b>	<b>Programme or product 1</b>	<b>Programme or product 2</b>	<b>Programme or product ...</b>
D.1.1	Total number of disbursed loans repaid					

## Annex II Template Monitoring Report

FEI other than HF

D.1.2	Loans (in accordance with section C.1)	Total amount of repayments on disbursed loans, fully or partially (total principal value of the loan, in m EUR)				
D.1.3		Total number of disbursed loans defaulted				
D.1.4		Total amount of disbursed loans defaulted (total principal of the loans, in m EUR)				
D.1.5		Total amount of interest effectively paid to the FEI (in m EUR)				
D.1.6		Total amount of any other gains effectively paid to the FEI (in m EUR)				
<b>D.2</b>	<b>GUARANTEES (if applicable)</b>		<b>Total</b>			
D.2.1	Guarantees (in accordance with section C.2)	Total number of guarantees provided (repayment term for underlying loans expired)				
D.2.2		Total blocked amount for guarantees provided (in m EUR)				
D.2.3		* Total blocked amount for guarantees provided and not called (in m EUR)				
D.2.4		* Total blocked amount for guarantees provided and called due to loan default (in m EUR)				
D.2.5		Total amount of guarantee fees or equivalent charges effectively paid to the FEI by the final recipient (in m EUR)				
D.2.6		Total amount of any other gains effectively paid to the FEI by the final recipient (in m EUR)				
<b>D.3</b>	<b>EQUITY / VENTURE CAPITAL (if applicable)</b>		<b>Total</b>			
D.3.1	Equity / Venture Capital (in accordance with section C.3)	Total number of full or partial exits from investment				
D.3.2		Total amount of full or partial exits from investments, sold and realised (in m EUR)				
D.3.3		* of which the following total amount is qualified as gains, income or dividends (exceeding the initial investment amount) repaid from investments and effectively realised by the FEI (in m EUR)				
		Total amount of write-offs on equity investments (in m EUR)				
<b>D.4</b>	<b>OTHER PRODUCTS (if applicable)</b>		<b>Total</b>			
D.4.1	Other products (in accordance with section C.4)	Total amount repaid to the FEI by final recipients (in m EUR)				
D.4.2		Total amount of charges effectively paid to the FEI by the final recipient (in m EUR)				
D.4.3		Total amount of any other gains effectively paid to the FEI by the final recipient (in m EUR)				
<b>D.5</b>	<b>TOTALS</b>					
D.5.1	Total amount of repayments to the FEI (in m EUR): D.1.2 + D.2.3 + D.3.2 + D.4.1					

## Annex II Template Monitoring Report

FEI other than HF

D.5.2	Total amount of interest, fees or other gains on investments returned to the FEI (in m EUR): D.1.5+D.1.6+D.2.5 + D.2.6+D.3.3+D.4.2+D.4.3)				
<b>E NATIONAL CO-FINANCING &amp; LEVERAGE RESOURCES PROVIDED AT THE LEVEL OF THE FINAL RECIPIENT</b>					
			Programme or product 1	Programme or product 2	Programme or product ...
E.1.1	Public national co-financing at the level of final recipient (related to OP)	Amount of public national co-financing effectively contributed at the level of the final recipient in accordance with underlying OP (in m EUR)			
E.1.2		* of which effectively contributed in cash (in m EUR, contributed by)			
E.1.2		* of which effectively contributed in kind (in m EUR, contributed by)			
E.2.1	Private national co-financing at the level of final recipient (related to OP)	Amount of private national co-financing effectively contributed at the level of the final recipient in accordance with underlying OP (in m EUR)			
E.2.2		* of which effectively contributed in cash (in m EUR, contributed by)			
E.2.3		* of which effectively contributed in kind (in m EUR, contributed by)			
E.3.1	Additional (leverage) resources mobilised at the level of final recipient (outside the scope of the OP)	Total amount of leverage resources mobilised at the level of final recipient (in EUR)			
E.3.2		* amount mobilised from the public sector (in m EUR, contributed by)			
E.3.3		* amount mobilised from the private sector (in m EUR, contributed by)			
E.3.4		Nature and origin of leverage resources mobilised at the level of final recipient (brief description)			
<b>F MANAGEMENT COSTS &amp; FEES</b>					
F.1	Total amount of management costs and/or fees effectively paid to the FEI manager (in m EUR)				
<b>G EXITS FROM THE FEI</b>					
G.1	Total amount of exits realised and effectively paid back to the HF or the MA (in m EUR)				
G.2	Total amount of exits realised and effectively paid to other shareholders of the fund (in m EUR)				
<b>H INDICATORS (additional indicators can be added where considered appropriate)</b>					
H.1	Total number of final recipients supported				
H.2	Financial products supported by 1 EUR of public funds				
H.3	Total amount of additional leverage resources mobilised at the level of the FEI and final recipients (outside the scope of the OP(s)) (in m EUR)				
H.4	Number of jobs created or safeguarded				