Guidelines for determining financial corrections to be made to expenditure co-financed by the EU under the SF and the European Fisheries Fund for non-compliance with the rules applicable to financial engineering instruments for the 2007-2013 programming period

Comments submitted by MS	Guidance for FEI correction	Date
DK	YES	27/10/2015
ES	YES	03/11/2015
IT	YES	19/11/2015
LT	YES	05/11/2015
LV	YES	04/11/2015
PL	YES	04/11/2015
SK	YES	04/11/2015
UK	NO	04/11/2015

REFERENCE TO THE GUIDELINES	MS COMMENTS	EC ACTION	EC COMMENTS
DK COMMENTS TO THE GUIDELINES			
Chapter 2.1	According to the first paragraph on page 9, it is possible to apply a reduction on financial corrections pursuant to the principle of proportionality, if the nature and gravity of the irregularity is not considered to justify the 5 % correction rate. We want to make sure that this reduction possibility is apparent in the table where relevant, e.g. where a 5 % financial correction is recommended due to the type irregularity. In the "Type and rate of correction"-column in the table, it should be clear that it is a possibility to make a reduction on the financial correction. Nowhere in the table has the reduction possibility appeared. Our recommendation is therefor to make an explanatory footnote on page 13 (the first page of the table) with the following text and reference: "*According to page 9 of the guidelines, when a 5 % correction rate is applicable, the correction rate may be reduced to between 2 % and 5 % where the nature and gravity of the irregularity, either individual or systematic, or system deficiency although serious, is not considered to justify a 5 % correction rate confer to the principle of proportionality.*"	**TAKEN INTO ACCOUNT**	Please see changes to text on page 9 and 13.
ES COMMENTS TO THE GUIDELINES			
2.5.1. (Annex 1) Management verifications	We propose to add to this point 2.5.1. of Annex 1 an exception including the spirit of the penultimate paragraph of page 9 of the Guidance (track changes document). This	**TAKEN INTO ACCOUNT**	Since paragraph 2.1 of the guidelines already contains possibility to quantify an irregularity without need to carry-out a flat-

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Management verifications were not carried out throughout the programming period or were carried out in a deficient way, i.e. at the set up of the FEI and the implementation phase. *Financial correction of 100%, 25%, 10% or 5% of the programme contribution to the FEI, depending on seriousness of the irregularity.*	is: *Management verifications were not carried out throughout the programming period or were carried out in a deficient way, i.e. at the set up of the FEI and the implementation phase.* *Financial correction of 100%, 25%, 10% or 5% of the programme contribution to the FEI, depending on seriousness of the irregularity. This correction shall not be applied if the Member State can quantify the exact amount of expenditure wrongly charged to the Financial Instrument as a result of an exhaustive analysis of the instrument or through the extrapolation of the examination results of a representative sample, in accordance with generally accepted auditing standards.* The logic of this proposal is said in the cited paragraph of page 9 of the Guidance: *"In certain cases also systemic irregularities may be quantified precisely and corrected withdrawing the irregular expenditure following a re-evaluation by the member state of the entire activity of the FEI, without the need to carry out a flat-rate correction."* This is also in line with the introduction speech we were given by the Commission during our last EGESIF meeting, stating that, given the novelty and implementation difficulties of the FI for the 2007-2013 period, expenditure replacement of the irregularities detected would be possible.		rate correction, there is no need to add specific explanations for point 2.5.1 of the Annex. However, a footnote (no 12) referring specifically to paragraph 2.1 was added to the Annex.
2.6.2. (Annex 1) Incorrect use of interests generated	We agree with the fact that interests generated must be used with the same purpose than the principal of the financing, but interests cannot be considered as programme resources and therefore cannot be subject to financial corrections.	**NOT TAKEN INTO ACCOUNT**	The interests generated by the OP contribution are not OP resources as such but should be used for the same purpose as OP resources.

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	Hence, we propose to remove totally 2.6.2.		Please see point 5.1 of the *Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 of 8/02/2012 - COCOF_10-0014-05-EN* This means that although when interests are used correctly for the same purpose as OP resources they are not part of eligible expenditure. However, if they are not used correctly, they have to be deducted as stated in the point *3.6.4. Possible reductions of eligible expenditures of Closure Guidelines.* Incorrect or irregular use of the interests will only lead to a financial correction at closure if such interests are not deducted from eligible expenditure.
IT COMMENTS TO THE GUIDELINES			
Whole document	The document presented contains important changes compared to the previous version (EGESIF 14-0015 of 06/06/2014). **In particular, for irregularities related guarantees, the document introduces a new element in the method for calculating the financial correction, replacing the numerator of the ratio, previously given by the ineligible amount of the guarantee with the ineligible amount of the loan for which the guarantee was issued (financial correction = ineligible amount of the loan for which the guarantee was issued (E)/rate multiplier).**	**NOT TAKEN INTO ACCOUNT**	The reference in the numerator to "**ineligible amount of the guarantee"** provided in the version of 2014 Guidelines contained was always meant to be understood as the amount of the guaranteed loan and this is also reflected in point 4.1. of the Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 of 8/02/2012 - COCOF_10-0014-05-EN for definition of multiplier.

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	Due to a change in the method of calculation, liable to cause a significant financial impact, it is considered that this method should be applied to future financial corrections relating to financial instruments implemented under the programmes 2014/2020. The new wording is a lack of precision in terminology, as in the case of the guarantee funds the eligible expenditure concerns the guarantee and not to the loan, which determine the eligibility and regularity of the guarantee. Accordingly, it considers that there can be no “ineligible amount of the loan for which the guarantee was issued, since, in guarantee funds, is always the amount of collateral, where appropriate, must be considered as ineligible and not the underlying loan, even if it is irregular. Finally, as regards the population of investments to be considered by the audit authority in the closure declaration should exclude investments already audited by the audit authority itself. Therefore, it is proposed to add the following sentence of p. 13 of the Word document with the sentence highlighted in yellow: *.... In order to provide its assurance the audit authority will, on the basis of the list of investments in final recipients provided by the managing authority, including in investments in the audit procedures in view of the preparation of the closure declaration, not including the investments previously checked.*		The current wording aims only at providing further clarity.
LT COMMENTS TO THE GUIDELINES			
Common remark	There are some uncertainties related to FEIs in general: 1) what are the expectations from AA regarding the use of resources returned from investments? What would be legal basis on these expectations?	**NOT TAKEN INTO ACCOUNT**	The issue raised by MS is not in the scope of guidelines for the financial corrections to be applied in relation to FEIs under a programme for the 2007-2013 period.

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	2) how does the loss of money (e.g. in case of bankruptcy of a bank in which some temporarily free money was deposited (according to national rules and principles set in financing agreement)) relate to eligible expenditure under 78(6) – should this lost part of contribution be ineligible? What would be the reasons of that (e.g. the lost part of contribution is reimbursed by national funds and the goals of FEI are fully reached)? 3) what would be impact on error rate, calculated by AA? (in case FEI is part of expenditure population). Error rate is calculated for expenditure declared to EC, thus if there is no finalisation of FEI (as at closure), any detected ineligible expenditure is not being included in MLE.		The issues raised by MS should be addressed at Technical Meetings or Bilateral Meetings with the Commission.
<u>Chapter 2.1.</u> For irregularities affecting guarantees, the financial corrections should take into account the multiplier ratio if this is defined in the investment strategy (financial correction = amount of ineligible **loan** for which guarantee(s) was issued / multiplier ratio). If the multiplier ratio is not defined, the financial correction equals to the ineligible programme amount committed as a guarantee.	Please define a loan as a debt product including also leasing and use this term throughout the Guidelines.	**PARTIALLY TAKEN INTO ACCOUNT**	Article 44 of the General Regulation refers only to loans. Other debt products are not mentioned. However, in relation to the guarantees, the reference to the other risk sharing instruments was added in Chapter 2.1 and in the Annex.
Chapter 2.1 In addition, interest earned	Please delete the phrase "included into the financial correction" or indicate a legal basis of this provision.	**TAKEN INTO ACCOUNT**	Please see changes to the text in chapter 2.1

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on payments from the programmes to the FEI, which are attributable to the EU contribution and used to cover or finance the irregularity detected, should be also deducted from the eligible expenditure and consequently **included in the financial correction.**			
Chapter 3.1. (a) resources returned from legal and regular investments **exceeding the programme contribution** into the Holding Fund or FEI; (c) in a Holding Fund, individual irregularities in a given FEI may be replaced by investments done by another FEI **in excess of the OP contribution** transferred from the Holding Fund, provided that the funding agreements and all other EU and national rules have been respected.	Please clarify that the amount “exceeding the programme contribution“, and „in excess of the OP contribution“ means a revolved amounts?	**TAKEN INTO ACCOUNT**	Please see footnotes no 10 and 11

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Chapter 3.1 In addition, the replacement requires that the audit authorities have provided in the closure declaration assurance on the investments in final recipients for which the managing authority has ensured the legality and regularity as described above. In order to provide its assurance the audit authority will, on the basis of the list of investments in final recipients provided by the managing authority, include all investments in the audit procedures in view of the preparation of the closure declaration.	Does it mean that AA should audit investments in every FI projects (separating investments per project) or in general OP?	**N/A**	This is subject to the individual audit strategy and audit methodology of each audit authority.
Annex 1.2.3 The national contribution to the capital of the FEI was not effectively paid in breach of the funding agreement.	Depends on requirements, however if it is possible that national contribution would be paid on later date than audit or management verification is carried out (e.g. co-financing rate is foreseen to be reached on later payment claims), we would advise to consider not applying financial correction.	**NOT TAKEN INTO ACCOUNT**	The irregularity occurs when the contribution to the capital of FEI was **not effectively** paid and thus there is a breach of funding agreement.
Annex 2.1.3 Combination of different forms of assistance: FEI	We do not agree that guarantee for a loan and loan is same investment (only reason not to allow it, is to consider situations like that double financing), as loan is money paid	**NOT TAKEN INTO**	The combination of different forms of assistance is allowed provided that certain

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loans, FEI guarantees and grants (including interest rate rebate and capital rebate) for the same eligible expenditure.	out and guarantee is insurance for money not returned, these two types of activities do not overlap each other even when supporting same SME activity. Furthermore mixing these types of financial measures, while having respect for state aid rules, can result in higher efficiency of EU fund policy implementation, as forbidding to give ERDF funded guarantees for ERDF funded loans, can result in problems issuing ERDF funded loans, because while not receiving a guarantee they become non-competitive compared to regular business loans.	**ACCOUNT**	conditions are fulfilled.
Annex 2.1.6 Guarantees were not committed/provided for investments fostering **entrepreneurship and innovation funding for SMEs** through financial engineering instruments.	Description should include information, that guarantees are not committed/provided for new loans.	**NOT TAKEN INTO ACCOUNT**	
Annex 2.1.7 Loans were not provided for investments fostering entrepreneurship and innovation funding for SMEs through financial engineering instruments.	Description should include information that loans are not provided for new investments.	**NOT TAKEN INTO ACCOUNT**	
Annex 2.1.6; 2.1.7 6. Guarantees not committed to new loans. 7. Loans not provided for new investments.	Please ensure compliance of the title of irregularity and the references to Regulations as the indicated provisions do not cover “new loans”, “guarantees for new loans”.	**NOT TAKEN INTO ACCOUNT**	

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Annex 2.3.2 Amount of ineligible expenditure.	Actual application of this point would require a lot administrative work and high amounts of audit work from audit authority (checking if management costs were supported by evidence might be more time consuming than checking if all investments are eligible, though investments would attribute to major part of eligible expenditure declared to EC).	**NOT TAKEN INTO ACCOUNT**	Article of 15 Implementing Regulation requires adequate audit trail for all eligible expenditure
Annex 2.3.3 The management costs paid for costs falling after the eligibility period set out in the funding agreement or defined by the regulations, are charged for reimbursement from the Structural Funds/EFF.	We propose to include reference to the extension of the eligibility period until 2017-03-31.	**N/A**	The eligibility period was not extended. It was clarified in the Revised Closure Guidelines that eligibility period of expenditure, i.e. contribution from OP to FEI, is until 31/12/2105. However, the investments in final recipients as well as management costs can be incurred until 31 march 2017
Annex 2.5.1 Management verifications were not carried out throughout the programming period or were carried out in a deficient way, i.e. at the set-up of the FEI and the implementation phase.	Management verification guidelines say little about how management verifications should be carried out in FEI's. Would participation in "control committee" be considered management verification? Also, if management verification is carried out on "expenditure" declared to EC at the end of the project to verify if expenditure (results) of the FEI are eligible for declaration, can we actually consider applying financial correction? We think – not.	**N/A**	The issue raised by MS is not in the scope of guidelines for the financial corrections to be applied in relation to FEIs under a programme for the 2007-2013 period. The issues raised by MS should be addressed at Technical Meetings or Bilateral Meetings with the Commission.
Annex 2.6.1 The loans/guarantees/equity were provided to final recipients at the amounts	Clarification is needed. Does this point mean 1) that FEI cannot give (or declare) more loans then it foreseen in the measure (funding agreement) or 2) does it mean that if maximum amount of a single loan is foreseen (for example 1 million EUR) and FEI gives a single higher loan (for	**NOT TAKEN INTO ACCOUNT**	The investments in final recipients such as loans / guarantees / equity should respect EU and national law, the eligibility rules and contractual provisions.

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exceeding maximum amounts established for individual investments in the funding agreement.	example 1,2 million EUR), eligible expenditure would be only be amount of foreseen loan (i.e. 1 million EUR)? If it would be the first case, we would advise to reconsider applying the correction, as it would just show that measure had a higher demand than expected.		
Annex 2.6.3 Incorrect use of resources returned	Who/when/how should supervise that?	**N/A**	The issue raised by MS is not in the scope of guidelines for the financial corrections to be applied in relation to FEIs under a programme for the 2007-2013 period. The issues raised by MS should be addressed at Technical Meetings or Bilateral Meetings with the Commission.
LV COMMENTS TO THE GUIDELINES			
Chapter 3.1. *Corrections by the Member States* *…In addition, the replacement requires that **<u>the audit authorities</u>** have provided in the closure declaration assurance on the investments in final recipients for which the managing authority has ensured the legality and regularity as described above. **<u>In order to provide</u>***	Could You, please, expand the Guidance note with the explanation for the Audit Authorities about audits to be performed for the closure of 2007-2013 planning period. 1) For the purpose of providing the closure declaration, should the Audit Authorities audit **only the first round of investments in final recipients** (multiplier ratio = 1) **or also subsequent investments?** *(subsequent investments = resources paid back from final recipients (principal+interest).* **2) If the subsequent investments should be audited, whether the auditing criteria are the same as for the first round or is the only criterion left “money used for the same purpose - SME, energy efficiency”?** 3) **What kind of corrective measures should be taken if deficiency is found in subsequent round of investments?** Will it be irregularity which should be	**N/A**	The issue raised by MS is not in the scope of guidelines for the financial corrections to be applied in relation to FEIs under a programme for the 2007-2013 period. The issues raised by MS should be addressed at Technical Meetings or Bilateral Meetings with the Commission. However, the following clarifications are provided: **Ad.1** For the purpose of closure declaration, the audit authorities should audit the first round of investments in final recipients. The subsequent investments should be

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its assurance the audit authority will, on the basis of the list of investments in final recipients provided by the managing authority, include all investments in the audit procedures in view of the preparation of the closure declaration…	treated as usual irregularity: money should be recovered from the final beneficiary and withdrawn from the declared amount? • For example: The declared expenditure for the Guarantee Fund is 10 000 Eur. Multiplier ratio = 4. The multiplier ratio was already reached and at the moment the audit Authority was conducting its audit work for the closure declaration the multiplier ratio was already 6. The Audit Authority has found 1 ineligible guarantee (1000 euro) which was issued for the purpose of Acquisition of other company. The Guarantee term has already expired. **What should be the corrective measures? Will it be 1000/4 = 250 euro deduction from the declared expenditure? What should be done with the interest earned?** • The same example with a loan. The declared expenditure for the Loan Fund is 10 000 Eur. The multiplier ratio (1) was already reached and at the moment the audit Authority was conducting its audit work for the closure declaration the multiplier ratio was already 2 (EC contribution used twice for issuing loans). The Audit Authority has found 1 ineligible loan (1000 euro) which was given for the purpose of Acquisition of other company. The loan term has already expired, (Financial intermediary got back principal sum+interest). **What should be the corrective measures? Will it be 1000 euro deduction from the declared expenditure? What should be done with the interest earned?** 4) Please, explain the term **"acquisition"** more precisely, and whether cases of acquisition should it be classified		audited in cases when they are used for the replacement purposes. **Ad. 2** If the subsequent investments are used for the replacement purposes, then they have to fulfil all the eligibility criteria as the 1st round investments. **Ad. 3** If the irregularity is found in the subsequent investments that were used for the replacement purposes, then the replacement is not possible. In all other cases, the audit authority shall determine the rate of financial correction on the basis of the seriousness of the irregularity Ad. 4 The term "acquisition" is defined in glossary of *Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 of 8/02/2012 - COCOF_10-0014-05-EN* as 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. Please see also point 3.2 of same COCOF guidance.

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	and defined according to legislation of every Member State or according to other criteria (if so, please, define the criteria).		A simple transfer of proprietary rights is not the purpose of Cohesion Policy and can therefore not be supported.
PL COMMENTS TO THE GUIDELINES			
Annex 2.1.3 b) the value of expenditure exceeds maximum 100% of the total value of the investment, this being subject to the obligation of verification by the managing authority of the reality of the costs supported by receipted invoices or accounting documents of equivalent probative value (Article 13(2) of Commission Regulation (EC) No 1828/2006). Such over-financing should be calculated by adding up the nominal value of public expenditure for loans, grant and guaranteed loans	Further clarification is needed as regards the term specified in the letter "b" - "100% of the total value of the investment," and the term "nominal value of public expenditure". We would be grateful as well for clarification of the concept of "expenditure" in the context used in this sentence.	**TAKEN INTO ACCOUNT**	100% of the total value of the investment at the level of final recipient means value of investment by final recipient / beneficiary of the grant for which the assistance was granted = value of all expenditure underlying the investment made by the final recipient / beneficiary of the grant. Nominal value of expenditure => the value of expenditure financed by EU and national contribution (public and private) as defined in Article 78(6) of General Regulation, i.e. the nominal value of the loans, of the grants and of the guaranteed loans.

<table>
<tr><th>REFERENCE TO THE GUIDELINES</th><th>MS COMMENTS</th><th>EC ACTION</th><th>EC COMMENTS</th></tr>
<tr><td></td><td>

We would be very grateful if you could indicate ineligible expenditure in the following cases:

Example 1

<table>
<tr><td>Value of investments / eligible expenses PLN</td><td>Value of the loan from FEI – public expenses (PLN)-1</td><td>Value of the guarantee from FEI –public expenses (PLN)-2</td></tr>
<tr><td>200</td><td>200</td><td>160</td></tr>
</table>

1. public expenses; EU 100 PLN; national input 100 PLN
2. - public expenses; EU 80 PLN; national input 80 PLN

Example 2

<table>
<tr><td>Value of investments / eligible expenses PLN</td><td>Value of the loan from FEI – public expenses (PLN)-1</td><td>Value of the guarantee from FEI –public expenses (PLN)-2</td></tr>
<tr><td>400</td><td>200</td><td>160</td></tr>
</table>

1. public expenses; EU 100 PLN; national input 100 PLN
2. public expenses; EU 80 PLN; national input 80 PLN

Example 3

<table>
<tr><td>Value of investments / eligible expenses PLN</td><td>Value of the loan from FEI –public expenses (PLN)-1</td><td>Value of the guarantee from FEI – public expenses (PLN)-2</td><td>Value of the grant (PLN) - 3</td></tr>
<tr><td>200</td><td>200</td><td>160</td><td>100</td></tr>
</table>

According to the rules of the Operational Programme, co-financing of the project under the grant scheme (from the public funds) may not exceed 50 %.

</td><td>

N/A

</td><td>

Example 1

Overfinancing calculations:
200 OP loan + 200 of guaranteed commercial loan = 400 > 200 value of investment

Correction:
a) amount of guarantee, or
b) amount of loan

Example 2
Overfinancing calculations:
200 OP loan + 200 of guaranteed commercial loan = 400 =400 value of investment

No correction.

Example 3
The value of the eligible investment is 200 PLN.
If we consider that the OP loan of 200 PLN is eligible, all the other forms of support are no more eligible and should be corrected

</td></tr>
</table>

<table>
<tr><th>REFERENCE TO THE GUIDELINES</th><th>MS COMMENTS</th><th>EC ACTION</th><th>EC COMMENTS</th></tr>
<tr><td></td><td>1. public expenses; EU 100 PLN; national input 100 PLN
2. public expenses; EU 80 PLN; national input 80 PLN
3. public expenses; EU 50 PLN; national input 50 PLN

Example 4<table><tr><td>Value of investments / eligible expenses PLN</td><td>Value of the loan from FEI –public expenses (PLN)-1</td><td>Value of the guarantee from FEI – public expenses (PLN)-2</td><td>Value of the grant (PLN) - 3</td></tr><tr><td>400</td><td>200</td><td>160</td><td>100</td></tr></table>According to the rules of the Operational Programme, co-financing of the project under the grant scheme (from the public funds) may not exceed 50 %.
1. public expenses; EU 100 PLN; national input 100 PLN
2. public expenses; EU 80 PLN; national input 80 PLN
3. public expenses; EU 50 PLN; national input 50 PL</td><td></td><td>Example 4

The value of the eligible investment is 400 PLN.
If we consider that the OP loan of 200 PLN and the 200 of guaranteed commercial loan are eligible, all the other forms of support are no more eligible and should be corrected (in this case the grant).</td></tr>
<tr><td colspan="4">SK COMMENTS TO THE GUIDELINES</td></tr>
<tr><td>Art. 1.2.2+ 3.1</td><td>Foot note No. 4, as well as Art. 3.1., 3rd paragraph – Please clarify, what types of irregularities might be anticipated at the level of final beneficiary, as those mentioned in Annex are mostly related to incorrect provision of funds to final beneficiary.</td><td>NOT TAKEN INTO ACCOUNT</td><td>Irregularities mentioned in Annex concern irregularities at the programme level (e.g. lack of management verifications by MA); at FEI level (e.g. breach of the funding agreement provisions) and at final recipient level (e.g. lack of audit trail, ineligible activities, etc.)</td></tr>
<tr><td>Art. 2.1.</td><td>Please provide clearer differentiation between the systemic and systematic irregularities in the proposed guideline.</td><td>N/A</td><td>There is no reference to “systematic” irregularities in the guidelines.</td></tr>
<tr><td>Art. 3.1</td><td>Text starting with „In addition, the replacement...“– Please clarify term „investment“ and subsequently in whole</td><td>TAKEN INTO ACCOUNT</td><td>Please see footnote no 11</td></tr>
</table>

REFERENCE TO THE GUIDELINES	MS COMMENTS	EC ACTION	EC COMMENTS
	document.		
	Furthermore please indicate the depth of the verification the audit authority has to provide in order to prepare the closure declaration.	**NOT TAKEN INTO ACCOUNT**	The issue raised by MS is not in the scope of guidelines for the financial corrections to be applied in relation to FEIs under a programme for the 2007-2013 period. The issues raised by MS should be addressed at Technical Meetings or Bilateral Meetings with the Commission.
Annex	Please provide clear link between system and systemic irregularities as mentioned in Art. 2.1. and those listed in Annex.	**NOT TAKEN INTO ACCOUNT**	The definitions are stated in chapter 2.1
Annex, point 1.3.1	Please clarify term „financial institution“, is it „financial intermediary	**NOT TAKEN INTO ACCOUNT**	It is either financial intermediary or holding fund.
Annex 2.1.6	Please, **replace** wording „Guarantees not committed/provided for new loans“ by „**Guarantees not committed/provided for loans**	**NOT TAKEN INTO ACCOUNT**	
Annex 2.1.7	Please, **replace** wording „Loans not provided for new investments“ by „**Loans not provided for investments**“	**NOT TAKEN INTO ACCOUNT**	
	Explanation: The European Commission has repeatedly informed us that refinancing of existing loans is not allowed and supported under the program. We understand that the policy stance of the EC is that refinancing should not be allowed due to the fact that if a loan was already issued on commercial terms, it means that the client did not need any preferential financing and JEREMIE would thus not have created any new loan that would not be issued anyway.	**NOT TAKEN INTO ACCOUNT**	Re-financing of existing loans is not in line with the principle of sound financial management. The use of financial instruments in the area of SME support is to foster entrepreneurship and innovation funding. Therefore, the position of the European

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	However, we believe that refinancing and refunding should be allowed, not only because it is not prohibited by the legislation, but also because we believe that allowing them would speed up the drawing of the funds at no cost to the overall purpose of the program, which is to support disadvantages SMEs. Therefore, **we would like to ask the EC to reconsider its current policy line and consider allowing refinancing and refunding, based on the facts and reasons described below**. Based on our review of the corresponding legal framework, we have only found a clear legal basis for the prohibition on refinancing for risk financing, implemented under GBER for venture capital instruments in Slovakia.[1] **We have not found a clear legal basis for the prohibition on refinancing under the FLPG and PRSL instruments**, neither in the Financial Regulation,[2] nor in the *de minimis* state aid rules and the COCOF guidance note.[3] Point 1.2.5 of the COCOF guidance note on financial engineering instruments (FEI), quoted by the EC, indicates 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"*. Let us explain to you how we understand this article of the COCOF note. The key words here seem to be the words "subsequent investments," which the EC uses as basis for claiming that the project itself has to start only after a JEREMIE loan is issued for it. However, the phrase		Commission in relation to the refinancing remains unchanged.

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	describes something different – the fact that first a financial contribution from the program (i.e. the JEREMIE Holding Fund in our case) has to be made to the financial intermediary, which then subsequently uses the JEREMIE funds for loans to end recipients. Point 1.2.5 of the COCOF note does not deal with disbursing the funds to end recipients and does not say that a financial intermediary can only issue a loan to the end recipient for a new project that will start only after the loan is issued. In other words, the COCOF guidance note does not say that the submitted business plan cannot be for a project that is already being implemented and for which the applicant has already gotten a loan on commercial terms. Therefore, we do not see any legal restriction for refinancing of previously issued loans on market terms. Similarly, the EC claims that refunding of previously incurred expenses for a project is not possible due to the COCOF guidance note on retrospective assistance, which stipulates that *"retrospective support represents the award by a managing authority of EU assistance to an operation which has already incurred expenditure from national sources or is already complete before the EU assistance is formally applied for or awarded – hereafter the retrospective EU assistance"*. However, we believe that this phrase does not relate to refunding under JEREMIE. The phrase quoted by the EC seems to deal with a different situation – with a situation when, for example, a national public body first finances a project eligible for EU grant funding from its own resources and subsequently requests reimbursement of part of those expenses from the EC. Refunding under JEREMIE is different. In the case of refunding under JEREMIE, the		

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	end recipient would merely be given a loan for a project that would also cover the expenses already incurred, but the client would still have to pay the resources back anyway. Therefore, there would not be any grant element included in refunding under JEREMIE, unlike in the scheme that the quoted excerpt describes. What we are interested in is that if an applicant submits a business plan as part of his application for a JEREMIE loan, he would be able to receive the JEREMIE loan for the entire business plan, even if he already started to implement it before applying for a JEREMIE loan and thus incurred some expenses from his own funds, before receiving the JEREMIE loan. The current situation is such that if a client submits a business plan he has already started to implement and financed from his own resources, he can only receive a JEREMIE loan for that part of the business plan that has not yet been implemented and financed. Therefore, strictly speaking, in such situations the client is not submitting a new business plan anyway, but can still receive a JEREMIE loan, which to an extent undermines the argument that the business plan has to be an entirely new one. Based on the above, we believe that refinancing and refunding under JEREMIE is not excluded by the applicable EU legislation and the EC is allowed to decide to allow them. We would highly welcome such a decision of the EC. If refinancing and refunding were allowed, they would considerably increase the rate of absorption of the funds. Our financial intermediaries consistently complain that refinancing is a major obstacle for a better and more successful implementation of the program. According to the information from one of our financial intermediaries for		

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	PRSL, it has to reject around 60 percent of eligible applications for loans just because they would be used to refinance other previously issued loans. Thus, we see potential for a significant acceleration of the drawing of the funds if refinancing and refunding are allowed, while they would not lead to negative consequences for the effectiveness of the program.		
	In particular, if refinancing is allowed, it cannot be said that there will be less added value from JEREMIE because: 1 The financial intermediaries will then be able to issue more loans on commercial terms to other businesses. This will boost our economy in the longer run anyway (more loans lead to more growth) and, thus, corresponds with the EU policy line. 2 Refinancing may free up additional resources of SMEs, which can then be used to finance their other activities and future expansion, and also provide them with better opportunities to seek further loans on commercial terms. Also, we believe that if a potential client has already paid some expenses of the project from his own pocket (i.e. not from the Slovak public resources etc., but from his/her own private resources) prior to getting a JEREMIE loan, he should be able to have those expenses included as part of the JEREMIE loan because: 1. The potential client will likely pay those expenses only if he counts on receiving a JEREMIE loan, covering them. Most likely, he would not have taken a commercial loan for the paid expenses anyway, so JEREMIE is indeed creating additional added value in these cases. 2. Not including such expenses may artificially slow down a project of a client, because if the potential client knows		1. OP resources are not to support financial intermediaries. The role of financial intermediaries in financial instrument is to act as vehicles transferring support from OP to the final recipients for their investments and the State Aid legal framework also reinforces this principles. 2. If there are other activities and expansions envisaged, the SME should apply for a commercial loan (or if there is a market failure for an OP loan) to finance these activities. This will ensure not only sound financial management of EU resources but also use of OP resources in line with the policy objectives.

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	that he cannot start his project before he is given the JEREMIE loan, he may postpone his investment. On the other hand, if the potential client knows that he can start working on a project and financing it, he is more likely to start financing it earlier, expecting that the subsequent preferential JEREMIE loan will also include these costs. Therefore, we believe that the restriction on refunding initially incurred costs is to an extent artificial and does not achieve the main target, which is to create new loans, but rather slows down launching of new projects and discourages potential clients from seeking JEREMIE funding. In conclusion, we believe that we will be able to find a mutually acceptable solution to the aforementioned issues which will allow us to remove any unnecessary barriers for a successful implementation of the program in Slovakia and will also achieve the goal set by the EC to use these funds to finance SMEs and projects that would not be financed anyway on commercial terms. Notes [1] Under GBER, a "loan" means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. It may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield. The refinancing of existing loans shall not be an eligible loan. [1] Under the Financial Regulation, a "loan" means an agreement which obliges the lender to make available to		

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	the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time. [1] Under the COCOF note, 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.		