DRAFT Standard terms and conditions for financial instruments pursuant to Article 33(3)(a) of the CPR (Implementing Act Article X)

Table of content:
(1) Objectives and structure of the "off the shelf" instruments
(2) Selection of bodies implementing financial instruments
(3) The compatibility of the "off the shelf" instruments with the State aid regime
(4) Term sheets describing instruments and annotated table of content of a funding agreement

(1) Objectives and structure of the "off the shelf" instruments

The objective of the "off the shelf" instruments is to provide standard terms and conditions for a set of predefined financial instruments that can be set-up and implemented by managing authorities under Article 33(1)(b) of the CPR in order to

- Facilitate the design and the management of the most commonly used financial products within the European Structural and Investment Funds (ESIF), in particular for specific sectors where financial instruments are expected to play an important role contributing to the Europe 2020 objectives.
- Assist managing authorities in the delivery of financial means to the final recipients. Off the shelf instruments are based on the implementation experiences and know-how capitalised during the programming period 2007-2013.

The diagnosis determining the need to establish and the financial characteristics of the off the shelf instruments should be determined by an ex-ante assessment in accordance with Article 32.2 of the CPR.

It is proposed to cover the following concepts through the "off the shelf" instruments:

1. The selection of bodies implementing financial instruments is subject to public procurement rules. Off-the-shelf instruments would include general terms and conditions from the CPR\(^1\), the most relevant requirements of EU procurement law and some relevant elements from previous experience, in particular for the five types of instruments specified below.
2. Financial instruments need to be compatible with State aid rules. Off-the-shelf instruments will need to take into account State aid rules and will be structured in such a way that their terms and conditions do not require State aid notification and subsequent clearance from the European Commission.
3. Term sheets of a minimum set of technical and legal requirements for each of the instruments. These term sheets will cover the elements foreseen in annex X of the CPR to establish a funding agreement to implement a financial instrument under Article 33(4)(a) or (b). Managing authorities may add conditions to the term sheets if not altering the minimum technical and legal requirements.

\(^1\) Common Provision Regulation-President compromise of June 2012 – based on EC prop COM (2011)615
The instruments are:

1. Loan for SMEs based on a portfolio risk sharing loan model (RS Loan)
2. Guarantee for SMEs (Capped guarantee)
3. Equity Investment fund for SMEs and start-up companies based on a co-investment model (Co-investment Facility)
4. Loan for energy efficiency and renewable energies in the residential building sector (Renovation Loan)

(2) Selection of bodies implementing financial instruments

The general terms and conditions to select the bodies implementing financial instruments are set out in Articles X and X of the Delegated Act referred to in Article 33(4) of the CPR (minimum requirements, principles, criteria, including the possibility of direct award to EIB).

The instruments foreseen therein can be implemented through a fund of funds or directly with the financial intermediaries in charge of the specific instruments. Both the manager of the fund of funds and the financial intermediaries are considered to be bodies implementing the financial instrument. The possibility is left open to the managing authority to decide on the most appropriate implementing method taking into consideration the findings of the ex-ante assessment required under Article 32(2) of the CPR. In all cases the instrument shall be established according to the laws of a Member State and must comply with the EU law, the latter prevailing in case of conflict. In the term sheets and in the rest of this document, depending on the implementing method chosen by the managing authority pursuant to Article 33(4) of the CPR, the set of provisions referring to the role of the managing authority also apply, mutatis mutandis to the fund of funds manager. Nevertheless, none of this discharges the managing authority from its obligations regarding the funds.

The managing authority shall select the public or private manager of the financial instrument based on specific and appropriate selection criteria that aim at achieving the objectives of the programme and are in line with the CPR (Article X of the Delegated Act referred to in Article 33(4) of CPR) (criteria which should be approved by the monitoring committee). The criteria should ensure that entities that are selected to implement financial instruments manage financial instruments (i) with independence, (ii) in accordance with the relevant professional standards (iii) act in the exclusive interest of the parties providing contributions to the financial instruments.

The applicable public procurement rules should be duly respected when selecting a fund manager. The contribution to financial instruments is not as such subject to public

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2 According to the ECJ case-law, a public authority is not obliged to launch a public procurement procedure in cases it intends to award a service contract to a separate entity, in this case the financial intermediary or the fund of funds manager, as appropriate, which is wholly owned by one or various contracting authorities, exercising over the separate entity concerned a control which is similar to that which it exercises over its own departments and that entity carries out the essential part of its activities with the controlling public authority or authorities (ECJ Case C-26/03, Stadt Halle, paragraph 50, ECJ Case C-295/05 Asemfo, paragraphs 57-65 and ECJ Case C-182/11, Econord, paragraphs 32-33, C-458/03, Parking Brixen). It is also possible not to launch a public procurement procedure in cases of cooperation between public entities (concluded exclusively by public entities, without the participation of a private party), with the aim of ensuring that a public task (governed solely by considerations and requirements relating to the pursuit of objectives in the public interest) that they all have to
procurement rules. However these rules and norms should be respected as regards the selection of the body responsible for the implementation of the financial instruments\(^3\).

Where public procurement rules are not applicable a managing authority can directly contribute with funds from a programme to a body implementing and running financial instruments. In this case, the managing authority must ensure notably a transparent selection procedure for the selection of the financial intermediaries and final recipients.

The selection, contribution and remuneration of a commercial financial institution (public or private) implementing financial instruments established at the initiative of the managing authorities must be compatible with State aid rules and other applicable laws as referred in the instruments term sheets.

The following table summarises the key elements regarding the selection of bodies implementing financial instruments:

<table>
<thead>
<tr>
<th>Instruments</th>
<th>Financial Intermediary</th>
<th>Key specific requirements</th>
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<tbody>
<tr>
<td>(1) RS Loan</td>
<td>Public or private</td>
<td>• Follow professional best practice.</td>
</tr>
<tr>
<td></td>
<td>financial institution(^4) (incl. IFIs)</td>
<td>• Have appropriate management capacity and a suitable track record in financing SMEs through loan funds.</td>
</tr>
<tr>
<td>(2) Capped</td>
<td>Public or private</td>
<td>• Follow professional best practice.</td>
</tr>
<tr>
<td>Guarantee</td>
<td>financial institution(^2) (incl. IFIs)</td>
<td>• Have appropriate management capacity and a suitable track record in issuing guarantees or lending for SMEs</td>
</tr>
<tr>
<td>(3) Co-</td>
<td>Venture Capital/Private</td>
<td>• Follow professional best practice.</td>
</tr>
<tr>
<td>investment</td>
<td>Equity fund manager</td>
<td>• Have appropriate management capacity and a suitable track record in financing equity in the stage of the SMEs life cycle the instrument is applied</td>
</tr>
<tr>
<td>Facility</td>
<td>and private financial</td>
<td>Possess the required capabilities and skills to fulfil the role of Co-investment facility manager and apply industry and regulatory standards.</td>
</tr>
<tr>
<td></td>
<td>institution(^2) (incl.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>IFIs)</td>
<td></td>
</tr>
<tr>
<td>(4) Renovation</td>
<td>Public or private</td>
<td>• Follow professional best practice.</td>
</tr>
<tr>
<td>loan</td>
<td>financial institution(^2) (incl. IFIs)</td>
<td>• Have appropriate management capacity and a suitable track record in financing operations in the energy and construction sector.</td>
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</table>

When developing a financial Instrument through a fund of funds, the additional provisions set out in Article 24 of the annotated table of content for a funding agreement (Annex 6) should be taken into account.

In the case of financial instruments implemented through a fund of funds, the selection of financial intermediaries by the fund of funds manager should follow the same provisions as for the appraisal and selection of bodies implementing the financial instruments made by the managing authority (in accordance with Article X of the Delegated Act referred to in Article perform is carried out (ECJ Case C-480/06 Commission v Germany, paragraphs 37 and 44 to 47 and ECJ Case C-159/11, ASL Lecce, paragraphs 35 to 37).

\(^4\) Banks and other undertakings which are empowered by the competent national authorities and by their statues to carry out financial activities, namely as described in the points 2 to 12 of the annex I of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.
33(4) of the CPR). In such a case, the selection of bodies implementing financial instrument might be subject to Call for Expression of Interest.

For the off-the-shelf instruments, the fund of funds manager shall be an international financial institution in which a Member State is a shareholder, the EIB, the EIF or a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority and selected in accordance with applicable Union and national rules.

(3) The compliance of the "off the shelf" instruments with the State aid regime

Each "off the shelf" financial instrument must be designed in a way to prevent a private finance provider (a private investor or a lender), a manager of the financial instrument, or a final recipient from receiving any State aid which is incompatible with the internal market. Any aid has to be either market-conform, or in line with the de minimis (DM) Regulation\(^5\) or any successor regulation, or with the General Block Exemption Regulation (GBER)\(^6\) or any successor regulation, in order to be exempted from the obligation to notify to the European Commission. The cumulation rules have to be respected.

(3.1) At the level of private finance providers (investors or lenders)

The overall option retained is to ensure that the "off the shelf" instruments are either market conform, fall under the DM regulation or are compatible aid respecting the GBER conditions at the level of the private finance providers as follows:

In order to exclude aid, the public and private participations shall be made on terms that would be applicable to private independent participants operating in a market economy in the absence of any public intervention. This is the case when the "pari passu" principle is respected, i.e. when the transaction is made under the exact same terms and conditions by public and private investors (therefore carrying the same level of risks and rewards, and same level of subordination related to the same risk class). Equally important is that these categories of operators intervene simultaneously\(^7\) and the intervention of the independent private investor is of real economic significance.\(^8\) It is to be noted that in case the private investors are not undertakings within the meaning of Article 107(1) TFEU, they are not subject to state aid law.

In order to respect the DM regulation, any aid to the private investors shall be quantified and remain under the de minimis thresholds.

In order to respect the GBER conditions, any aid to the private investors shall comply in particular with Article 19 (risk finance aid) of the GBER.

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\(^5\) [reference to new de minimis regulation].

\(^6\) [reference to new GBER]. It is to be noted that it might be necessary to adopt appropriate measures for GBER-compliant aid granted after the expiry of the GBER.

\(^7\) In the area of risk finance aid, the transactions by public and private investors are considered to be made simultaneously if the private and public investors co-invest into the final beneficiaries via the same investment transaction.

\(^8\) According to the Risk Capital Guidelines, pari passu is understood in State aid terms in the following sense: "the Commission will consider the investment to be effected pari passu between public and private investors, and thus not to constitute State aid, where its terms would be acceptable to a normal economic operator in a market economy in the absence of any State intervention. This is assumed to be the case only if public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination, and normally where a significant proportion of the funding of the measure is provided by private investors, which are independent from the companies in which they invest".
(3.2) At the level of the financial intermediary and/or its manager, the remuneration shall reflect the current market remuneration in comparable situations, which is considered to be the case when it has been chosen through an open, transparent, non-discriminatory and objective tender procedure and the remuneration has been subject to the above-selection procedure, and it does not receive any other advantages granted by the State (including any interest rate or guarantee fee subsidy that must be passed through to final recipients).

When developing financial instruments through a fund of funds, potential aid to the fund of funds manager must be assessed by the national authority. If the fund of funds manager is a public institution with a public interest mission as in Article 33(4)(b)(i)-(ii) of the CPR, the State aid issue is most likely irrelevant except regarding the potential commercial activities of the public manager. If the fund of funds manager is selected without a tender the national authority should avoid potential aid by establishing market-conformity of the remuneration through a benchmarking system.

More particularly:
It is to be noted that in the case of the RS Loan and the Capped Guarantee, the financial intermediaries are the private finance providers (co-lenders). Therefore, the conditions of the respective two levels have both to be respected.
In the case of the Capped Guarantee, to exclude aid at the level of the financial intermediaries, either the conditions of the Guarantee Notice have to be respected including the market-priced guarantee premium, or if the guarantee premium is lower than the market benchmark or the financial intermediary does not pay a guarantee premium, the advantage has to be quantified and fully passed on to the final recipients.

The Co-Investment Facility may also provide direct aid to the managers to support their scouting costs (Article 22 of the GBER).

(3.3) At the level of the final recipients

In cases where the investment is made on terms which would be acceptable to a private investor in a market economy in the absence of any State intervention, the enterprises in which the investment is made will not be considered as aid recipients.

More particularly:
For loans, there is no aid at the level of the final recipients when the conditions of the Reference Rate Communication\(^9\) are respected.

For guarantees, there is no aid if the safe-harbour conditions of the Guarantee Notice\(^10\) or the de minimis guarantee ceilings are respected.

For equity and quasi-equity instruments, there is no aid at the level of the final recipients when there is no aid to private co-investors and the financial intermediary, which is commercially managed, and financing decisions are independent and profit-driven.

For the renovation loan, in specific cases, private house owners will be subject to State aid rules; this is the case if they are landlords (renting is an economic activity) and in the case of installing renewable energies, if part of the renewable energy produced is supplied to the grid (supplying energy to the grid is considered an economic activity).

If aid is present at the level of the final recipients, it shall comply with the DM regulation or the GBER.

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As regards agriculture and forestry, and in particular the support for products falling under Annex I to the Treaty, the relevant State-aid rules are those on agriculture and forestry as defined by Commission Regulations […]. The EAFRD regulation and its fixed aid intensity support are applicable to the cases when the instruments are set up without the presence of a national public top-up support. Some “off the shelf” instruments for agriculture and forestry will be developed with respect to the specific State-aid rules applicable to these sectors.

The relevant extracts of the draft State aid rules\(^\text{11}\) are attached here below. The following table summarises the State aid situation regarding the final recipients in the “Off the Shelf” Instruments.

<table>
<thead>
<tr>
<th>Instruments</th>
<th>Final recipients</th>
<th>State aid regimes</th>
<th>Key requirements</th>
</tr>
</thead>
</table>
| (1) RS Loan                 | Micro and SME    | Loans under de minimis                                     | Final recipient GGE\(^\text{12}\) < 200,000 EUR\(^\text{13}\) over any period of three fiscal years  
Or either EUR 1 million loans (max. 5 years and min 50% collateral) or EUR 500 000 (max. 10 years and min. 50% collateral);  
Financial intermediary shall reduce Interest Rate charged on each loans. The reduction should reflect the favourable funding and risk-sharing conditions of this instrument.  
The entire programme contribution for interest rate reduction and advisory support shall be passed on to the final recipients. |
| (2) Capped Guarantee        | Micro and SME    | Guarantees under de minimis                                | Final recipient GGE < 200,000 EUR over any period of three fiscal years  
Or either EUR 1.5 million\(^\text{14}\) and a guarantee of max.80% for an underlying loan with a duration of max. 5 years, or EUR 750 000\(^\text{16}\) and a guarantee of max.80% for an underlying loan with a duration of max. 10 years.  
The entire benefit of the programme contribution for guarantee shall be passed on to the final recipients (guarantee premium reduction) as a first loss portfolio guarantee limited by a capping. |
| (3) Co-investment Facility  | Micro and SME    | Equity under GBER Art 19 (non pari passu situations)        | Final recipients total investment of max [10] MEUR/SME / as per GBER Article 19.  
Compliance with the commercial management and profit-driven investment conditions. |
| (4) Renovation              | Economic         | Loans under de minimis                                     | Final recipient GGE < 200,000 EUR over any period of three fiscal years.         |

\(^\text{11}\) Both the de minimis regulation and the General Block Exemption Regulation expire at the end of 2013 and therefore are currently being reviewed. This note reflects the draft revised rules as published in the respective last public consultations (respectively launched on 20 March 2013 and 8 May 2013). .

\(^\text{12}\) Gross Grant Equivalent

\(^\text{13}\) The total amount of de minimis aid granted per Member State to any one undertaking performing road freight transport for hire or reward shall not exceed EUR 100 000 over any period of three fiscal years and shall not be used for the acquisition of road freight transport vehicles.

\(^\text{14}\) Under the Capped Guarantee instrument, the EUR 1.5m or EUR 750 000 mean: the guaranteed part of the underlying loan.
<table>
<thead>
<tr>
<th>Loan activity (independent professional, legal persons)</th>
<th>Loan minimis.</th>
<th>Or either EUR 1 million loans (max. 5 years and min 50% collateral) or EUR 500 000 (max. 10 years and min. 50% collateral);</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private house owners</td>
<td>No State aid involved</td>
<td>Social housing for low income or vulnerable households.</td>
</tr>
<tr>
<td>Providers of Services of General Economic Interest (SGEI)</td>
<td>Services of General Economic Interest (SGEI) as defined in (2012/C 8/02) De minimis aid to providers of SGEI (EU 360/2012) or Commission decision (2012/21/EU)</td>
<td>Threshold of Commission regulation (EUC 360/2012) on “de minimis” aid to providers of services of general economic interest and Commission decision (2012/21/EU) on State aid in the form of public service compensation for Services of General Economic Interest.</td>
</tr>
<tr>
<td>Financial Intermediary shall reduce Interest Rate charged on each loans. The reduction should reflect the favourable funding and risk-sharing conditions of this instrument. The entire programme contribution for interest rate reduction and advisory support shall be passed on to the final recipients.</td>
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<td></td>
</tr>
</tbody>
</table>
Relevant extracts from the State aid rules

1. Draft GBER Article 19 SMEs' access to finance: Risk finance aid

1. Risk finance aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The risk finance measure may take the form of:
   (a) equity or quasi-equity investments made in financial intermediaries providing risk finance directly or indirectly to eligible SMEs; or
   (b) guarantees for investors or financial intermediaries to cover losses from risk finance provided to eligible SMEs; or
   (c) loans to financial intermediaries providing risk finance to eligible SMEs; or
   (d) fiscal incentives to independent private investors that are natural persons providing risk finance to eligible SMEs.

3. The risk finance measure shall be open to all types of financial intermediaries fulfilling predefined criteria objectively justified by the nature of the investment and shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. This condition shall not apply to entities entrusted by a Member State with implementing the risk finance measure.

4. The risk finance measure shall target SMEs that at the time of the initial risk finance provision are unlisted and fulfill one of the following eligibility criteria:
   (a) have been operating in any market for less than [5] years following their first commercial sale; or
   (b) have achieved, since their registration, an average annual turnover not exceeding 10% of the total funding provided under the risk finance measure; or
   (c) have sought support under the risk finance measure with a view to entering a new product market and discontinuing their previous commercial activities on the basis of a business plan setting the terms and conditions of such a transition.

5. The risk finance measure may also support follow-on investments made after the 5-year period mentioned in point (a) of paragraph 4.

6. The risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least [50]% of each investment round into the eligible SMEs.

7. For equity instruments falling under paragraph 2(a) of this Article, no more than 30% of the fund's aggregate capital contributions and uncalled committed capital shall be used for purposes other than the provision of risk finance to the eligible SMEs.

8. The provision of risk finance to the eligible SMEs may take the form of equity, quasi-equity investments, risk finance loans, or a mix thereof.

9. The total amount of risk finance referred to in paragraph 8 of this Article shall not exceed EUR [10] million per eligible SME.

10. The risk finance measure shall leverage additional finance from private independent investors at the level of the financial intermediaries or the eligible SMEs, so as to achieve an aggregate amount reaching the following minimum thresholds:
    (a) [10]% of the risk finance provided to the eligible SMEs prior to their first commercial sale on any market;
    (b) [40]% of the risk finance provided to the eligible SMEs referred to in paragraph 4 of this Article;
    (c) [60]% of the risk finance for follow-on investment after the 5-year period mentioned in paragraph 4(a) of this Article.

11. The risk finance measure shall fulfill the following conditions:
    (a) financial intermediaries, investors and managers shall be selected through an open, transparent and non-discriminatory call aimed at establishing appropriate risk-reward sharing arrangements whereby asymmetric profit sharing shall be given preference over downside protection;
    (b) in the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [20]% of its total investment;
    (c) in the case of guarantees falling under point (b) paragraph 2, the guarantee rate shall be limited to [50]% and total losses assumed by a Member State shall be capped at [20]% of the underlying guaranteed portfolio.

Point (a) shall not apply to entities entrusted by a Member State with implementing the risk finance measure.
12. For risk finance measures involving financial intermediaries, the following conditions shall be fulfilled in order to ensure profit-driven financing decisions:

(a) the financial intermediary shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments; and
(b) risk finance provision to the eligible SMEs shall be based on a viable business plan, containing details of product, sales and profitability development, establishing ex-ante financial viability; and (c) a clear and realistic exit strategy shall exist for each investment.

13. Financial intermediaries shall be managed on a commercial basis. This is considered to be the case when the following conditions are fulfilled:

(a) the manager must be independent, professional and obliged by law or contract to act with the diligence of a professional manager and in good faith; and
(b) the manager's remuneration shall conform to market practices; and
(c) the manager shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources on the same risk conditions as the public investor; and (d) there shall be an agreement between the manager and investors, setting out the investment strategy, criteria and the proposed timing of investments; and (e) private investors shall be represented in the governance bodies of the investment intermediary in proportion to their participation, but shall not be involved in the day-to-day financing decisions.

The condition laid down in point (b) shall be presumed to be met when the manager is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity.

14. A risk finance measure providing guarantee and loan instruments falling under paragraph 2(b) and (c) of this Article shall fulfill the following conditions:

(a) the financial intermediary shall be able to demonstrate on the basis of its previous 3-year financial statements that the loan portfolio supported under the risk finance measure includes a significant number of SMEs which, in the light of its internal rating criteria, would not have been financed without the measure; and
(b) the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9.

…

Some definition regarding **AID TO SMES**

'entrusted entity' means a financial institution, such as the European Investment Bank and European Investment Fund, public law body and private law body with a public service mission, entrusted by a Member State to manage a financial instrument;

'equity investment' means the provision of capital to an undertaking, invested directly or indirectly in return for total or partial ownership of that undertaking and where the equity investor may assume some management control of the undertaking and may share the undertaking’s profits;

'exit strategy' means a strategy for the liquidation of holdings by an investment vehicle or another investor, in accordance with a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another investment vehicle or another investor, sale to a financial institution and sale by public offering, including an initial public offering (IPO);

'financial intermediary' means any financial intermediary, regardless of its form and ownership, including entities entrusted by the Member State for the purposes of implementing the risk finance measure, fund-of-funds, private equity investment funds and public investment funds;

'first commercial sale' means the first sale by a company on a product or service market, excluding limited sales to test the market;

'follow-on investment' means additional investment in a company subsequent to one or more previous investment rounds;

'-independent private investor' means a private investor who is independent from the SME in which it invests, including financial institutions, irrespectively of their ownership, to the extent that they bear the full risk in respect of their investment;

'investment' means one or more investment rounds in a company;

'scouting costs' mean costs related to the scouting of SMEs prior to their first commercial sale or which have been operating for less than five years following their first commercial sale on a market, where such costs do not lead to an investment. Scouting costs may not include the legal and administrative costs of the investment fund or its managers;
Article 22 Aid for scouting costs
1. Aid covering part of scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, if they fulfil the conditions laid down in paragraph 2 of this Article and in Articles 4 and 5.
2. The eligible costs shall be the costs of scouting or initial screening prior to formal due diligence undertaken by professional private fund managers or investors to identify target undertakings prior to the due diligence phase.
3. Aid may take the form of a grant.
4. The aid intensity shall not exceed [50]% of the eligible costs.

2. Draft De Minimis regulation
Article 3 De minimis aid
1. Aid measures shall be deemed not to meet all the criteria of Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 108(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 to 8 of this Article and in Articles 4 and 5.
2. The total amount of de minimis aid granted per Member State to any one undertaking as defined in Article 2(d) shall not exceed EUR 200 000 over any period of three fiscal years.
The total amount of de minimis aid granted per Member State to any one undertaking as defined in Article 2(d) performing road freight transport for hire or reward shall not exceed EUR 100 000 over any period of three fiscal years and shall not be used for the acquisition of road freight transport vehicles.
3. If an undertaking performing road freight transport for hire or reward and other activities to which the ceiling of EUR 200 000 applies, the ceiling of EUR 200 000 shall apply to the undertaking, provided that Member States ensure by appropriate means such as separation of activities or distinction of costs that the benefit to the road freight transport activity does not exceed EUR 100 000 and that no de minimis aid is used for the acquisition of road freight transport vehicles.
4. De minimis aid is granted at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime.
5. The ceilings laid down in paragraph 2 shall apply irrespective of the form of the de minimis aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin. The period of three fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.
6. The ceilings laid down in paragraph 2 shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
7. Aid payable in several instalments shall be discounted to its value at the moment it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time of grant.
8. Where the de minimis ceiling laid down in paragraph 2 would be exceeded by the grant of a new de minimis aid, the latter may not benefit from this Regulation, even for a fraction not exceeding that ceiling.
9. In case of mergers or acquisitions, all de minimis aid granted before to either of the previous undertakings shall be taken into account in determining whether any new de minimis aid to the new or the acquiring undertaking exceeds the ceiling, without calling into question de minimis aid lawfully granted before the merger or acquisition.
   If one undertaking splits into two or more separate undertakings, de minimis aid granted prior to the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the de minimis aid was used. If such an allocation is not possible,
the de minimis aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings.

**Article 4 Calculation of gross grant equivalent**

10. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without need to undertake a risk assessment ('transparent aid'). In particular the aid measures referred to in paragraphs 2 to 6 shall be considered as transparent aid.

11. Aid comprised in loans shall be considered as transparent de minimis aid if either of the following two methodologies is used:
   (a) The loan is secured by collateral covering at least 50% of the loan and it does not exceed either EUR 1 000 000 (or EUR 500 000 for undertakings performing road freight transport) and a duration of five years or EUR 500 000 (or EUR 250 000 for undertakings performing road freight transport) and a duration of ten years. If a loan only accounts for less than these amounts and/or is granted for a period of less than respectively five or ten years, the gross grant equivalent of that loan shall be calculated as a proportion of the applicable ceiling laid down in Article 3(2).
   (b) The gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.

12. Aid comprised in capital injections shall not be considered as transparent de minimis aid, unless the total amount of the public injection does not exceed the de minimis ceiling.

13. Aid comprised in risk finance measures taking the form of equity or quasi-equity investments, shall not be considered as transparent de minimis aid, unless the measure concerned provides capital not exceeding the de minimis ceiling to each target undertaking.

14. Aid comprised in guarantees shall be treated as transparent de minimis aid if either of the following three methodologies is used:
   (c) The guarantee does not exceed 80% of the underlying loan and either the guaranteed part of the underlying loan does not exceed EUR 1 500 000 (or EUR 750 000 for undertakings performing road freight transport) and the duration of the guarantee does not exceed five years or the guaranteed part of the underlying loan does not exceed EUR 750 000 (or EUR 375 000 for undertakings performing road freight transport) and the duration of the guarantee does not exceed ten years. If the guaranteed part of the underlying loan only accounts for less than these amounts and/or the guarantee is for a period of less than respectively five or ten years, the gross grant equivalent of that guarantee shall be calculated as a proportion of the applicable ceiling laid down in Article 3(2).
   (d) The gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice15.
   (e) Before being implemented, the methodology to calculate the gross grant equivalent of the guarantee has been accepted following notification of this methodology to the Commission under any regulation adopted by the Commission in the State aid area applicable at the time, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation.

15. Aid comprised in other instruments shall be considered as transparent de minimis aid on condition that the instrument provides for a cap ensuring that the applicable ceiling is not exceeded.

**Article 5 Cumulation**

16. De minimis aid under this Regulation may be cumulated with de minimis aid under Regulation (EU) No 360/201216 up to the ceilings set out in that Regulation. It may be cumulated with de minimis aid under other de minimis regulations up to the ceiling laid down in Article 3(2).

17. De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission.


(4) Term sheets describing instruments and annotated table of content of a funding agreement between managing authorities and financial intermediaries

Note: in the term sheets, depending on the implementing method chosen by the managing authority pursuant to Article 33(4) of CPR, the set of provisions referring to the role of the managing authority also applies, mutatis mutandis, to the “fund of funds manager”. None of this discharges the managing authority from its obligations regarding the Funds.

Annex 1: Loan for SME's based on a portfolio risk sharing loan model (RS Loan)
Annex 2: Guarantee for SMEs (Capped guarantee)
Annex 3: Equity Investment fund for SMEs and start-up companies based on a co-investment model (Co-investment Facility)
Annex 4: Loan for energy efficiency and renewable energies in the residential building sector (Renovation Loan)
Annex 5: Annotated table of content of a funding agreement between managing authorities or the funds of funds and the financial intermediaries

Annex 1: Loan for SMEs based on a portfolio Risk Sharing loan model (RS Loan)\(^1\)

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**Schematic representation of the RS Loan principle**

**Market conditions to implement Risk-sharing Loan**

\(^1\) In the term sheets, according to the implementing method chosen by the managing authority, the term referring to the role of the managing authority can equally be substituted by the term “fund of funds manager”.

Off the Shelf Instruments – version 16/09/2013
The risk-Sharing Loan is a useful financial instrument for supporting SME growth in a difficult funding environment. This form of financing is a particularly effective way of supporting SMEs in a context of limited availability of funding or relatively little risk appetite of the financial intermediaries for certain sectors or type of SMEs.

**Governance**

The managing authority should be represented in the supervisory committee of the RS Loan but shall not participate directly in individual decisions.

The RS Loan shall have a governance structure that allows for decisions concerning credit and risk diversification to be made transparently in line with relevant market practice.

**Additional measures linked to the development of the instrument**

This financial instrument may be combined with a grant type of support such as advisory service to support the business development of the companies benefiting from the RS Loan. The grant can be part of financial instrument operation or it can be provided through a separate operation supported by the operational programme.

If the grant constitutes a part of financial instrument operation (as envisaged in Article 32(5) of the CPR) and will consist in Technical Assistance (advisory service), then it is managed by the beneficiary of the financial instrument (i.e. body implementing financial instrument) and the programme contribution to the financial instrument includes also the grant part. In such case, the financial intermediary shall be entitled to a fee in line with the State aid line with Article X of the Implementing Act of the CPR. The grant support shall not refer to the activities which are covered by management cost and fees received by the financial intermediary to manage the financial instrument.

If the grant constitutes a separate operation then the managing authority has a freedom to either give direct support to an enterprise or select the institution (including financial intermediary) which will manage this scheme. In this case the expenditure associated with this grant does not fall under the financial instrument rules, it is reimbursed ex post and no management cost under the financial instrument can be claimed for its management.

Irrespective whether the grant is part of financial instrument operation or not, it has to fulfil the following main conditions:

- The grant has to be for the benefit of the final recipient.
- The total amount of the grant and the GGE of the loan shall be in compliance with the de-minimis rules.
- The expenditure covered by the grant cannot constitute part of the investment to be financed by the loan

| **Structure of the Financial Instrument** | The Risk Sharing Loan (RS Loan or Financial Instrument) is a loan from the programme contribution to a selected financial intermediary aiming to co-finance a portfolio of newly originated loans. The Risk Sharing loan is made available by the managing authority in the framework of the action which is part of the priority axis defined in the programme funded by the relevant European Structural and Investment Fund (ESIF) and defined in the context of the ex-ante assessment required in Article 32 of the CPR. |
| **Aim of the instrument** | The aim of the instrument is to: 1. combine resources from the managing authority and the financial intermediary to support financing to SMEs as referred in Article 32(3) of the CPR, and 2. provide SMEs with easier access to finance by providing financial intermediaries with funding contribution and credit risk |
sharing and thereby offering SMEs with more funds at preferential conditions in terms of interest rate reduction and/or collateral reduction.

The programme contribution from the managing authority to the financial intermediary shall not crowd out financing from other private investors or public investors investing under the market economy principle (established as part of the ex-ante assessment).

The portfolio Risk Sharing loan is linked to the credit performance of an underlying portfolio of loans to SMEs. The managing authority would be providing funding to the financial intermediary in order to build up a portfolio of newly generated loans to SMEs, and in parallel, participating in the losses/defaults and recoveries on the SME loans in this portfolio on a loan by loan basis and in the same proportion as the managing authority's participation in the instrument.

In the case of fund of funds structure, the fund of funds may contribute with loans from the programme contribution. In the framework of the risk-sharing agreement, the fund of funds and the financial intermediary may combine resources with the aim to provide loans to final recipients at preferential terms, and agree on a loss-sharing between the fund of funds and the financial intermediary.

<table>
<thead>
<tr>
<th>State aid implication</th>
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<tbody>
<tr>
<td>The scheme will be designed as a State aid free scheme, i.e. market-conform risk-sharing with the financial intermediary, market-conform remuneration for the financial intermediary and aid to the final recipients under the &quot;de minimis&quot; rule (see part 2 above).</td>
</tr>
<tr>
<td>a) Aid at the level of the financial intermediary:</td>
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<tr>
<td>Aid at the level of the financial intermediary is excluded when:</td>
</tr>
<tr>
<td>1. the financial intermediary and the managing authority bear at any time the losses and benefits in proportion to their contribution (pari passu and pro-rata) and there is a significant participation of the financial intermediary in the risk sharing loan instrument, and</td>
</tr>
<tr>
<td>2. The remuneration (i.e. management costs and/or fees) of the financial intermediary reflects the current market remuneration in comparable situations, which is the case when the latter has been selected through an open, transparent, non-discriminatory and objective tender and no other advantages are granted by the State;</td>
</tr>
<tr>
<td>3. The entire benefit of the public contribution of the instrument shall be quantified and fully passed on to the final recipients to exclude any aid to the financial intermediary.</td>
</tr>
<tr>
<td>b) Aid at the level of the SMEs:</td>
</tr>
<tr>
<td>At the SMEs' level, the aid shall comply with the &quot;de minimis&quot; rule, i.e. the gross grant equivalent (GGE) of the aid is compliant with the de minimis ceiling (including the advisory support, if any) or in compliance with the de minimis loan conditions.</td>
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<thead>
<tr>
<th>Lending policy</th>
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<tbody>
<tr>
<td>a) Disbursement from the managing authority to the financial intermediary:</td>
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</table>
Following the signature of a Funding Agreement between the managing authority and the financial intermediary, the relevant managing authority will transfer funds from the programme to the financial instrument. The transfer shall comply, inter alia, with Article 35 of the CPR.

b) Origination of a portfolio of new loans:

The financial intermediary will originate a portfolio of new eligible loans in addition to its current loan activities, partly funded from the disbursed funds under the programme at the risk-sharing rate agreed in the funding agreement.

Eligible loans for SMEs (according to pre-defined eligibility criteria on a loan-by-loan and portfolio level) will be automatically included in the Portfolio, by way of submitting inclusion notices on a quarterly basis.

The financial intermediary shall implement a consistent lending policy, especially regarding portfolio diversification, enabling a sound credit portfolio management and risk diversification, while complying with the applicable industry standards and while remaining appropriate to the managing authority's financial interests.

The identification, selection, due diligence, documentation and execution of the loans to final recipients will be performed by the financial intermediary in accordance with its normal standard procedures and in accordance with the principles set out in the relevant funding agreement.

c) Reimbursement from the financial intermediary to the managing authority:

Repayments would occur regularly (e.g. quarterly) mirroring (i) principal repayments (on a pro rata basis on the basis of the risk sharing rate) (ii) any recovered amount (according to the risk sharing rate), of the SME loans and (iii) interest rate payments if any.

The programme contribution shall be periodically reduced by the relevant pro-rata portion of the losses incurred by the financial intermediary on each loan in the portfolio, therefore providing risk sharing to the financial intermediary.

Amounts reimbursed and/or recovered by the financial intermediary from loans to final recipients within the time framework for investments as set out in the funding agreement shall be made available for new use (revolving approach as referred at Articles 38 and 39 of the CPR)

d) Loss recoveries:

The financial intermediary shall take recovery actions in relation to each defaulted SME loan co-financed by the financial instrument in accordance with its internal guidelines and procedures.

Amount recovered (net of recovery and foreclosure costs, if any) by the financial intermediary should be allocated pro-rata to the risk-sharing between the financial intermediary and the programme contribution.
### Pricing policy

When proposing its pricing, the financial intermediary shall reduce the overall interest rate charged to each loans included in the Portfolio.

**To be noted that:**
1. the interest rate on the financial intermediary participation is set at market basis (i.e. according to the financial intermediary own policy),
2. the overall interest rate, to be charged to the Eligible SMEs included in the portfolio, must be reduced proportionally to the allocation provided by the programme.

### Programme contribution to financial intermediary: amount and rate (product details)

The actual risk sharing rate, the lending amount and rate of the loans shall be aligned with the ex-ante assessment and shall be such as to ensure that the benefit to the final recipients complies with the "de minimis" rule.

To ensure sufficient diversification, the programme contribution within one financial intermediary shall be determined on the basis of the ex-ante assessment justifying the support to the financial instrument (Article 32 of the CPR). This will typically be between an indicative range of a minimum EUR [1] million and a maximum amount of EUR [100] million.

The RS Loan allocation and the risk-sharing rate must be set in order to fill the gap evaluated within the ex-ante assessment of the programme, but in any case must comply with the conditions laid down in this term sheet.

The risk sharing rate agreed with the financial intermediary defines for each eligible loan included in the portfolio, the portion of the eligible loan principal amount financed by the programme. The risk-sharing rate agreed with the financial intermediary determines the portion of the losses which are to be covered by the financial intermediary and by the programme contribution.

### Programme contribution to financial Instrument

The portfolio co-funded by the RS loan instrument shall include only newly originated loans provided for the ultimate benefit of SMEs. The eligibility criteria for inclusion in the portfolio are determined in accordance with the programme and national eligibility rules, and

e) Others:
To be noted that interest and other gains generated by support from the ESI Funds should be used as referred in Article 37 of the CPR.

If a loan becomes ineligible (i.e. regarding the programme objectives, the final recipients definition or the obligations linked to the product), the financial intermediary shall exclude the loan from the instrument since the date of ineligibility. The financial intermediary shall take recovery actions to recover the benefits of the programme that were unduly perceived by the final recipients since the date of ineligibility. The financial intermediary can replace it by an eligible loan within the eligibility period.
agreed with the financial intermediary with the aim of reaching a large number of final recipients and achieving sufficient portfolio diversification. Financial intermediary shall have a reasonable estimation of the portfolio risk profile. These criteria shall reflect market conditions and practices in the relevant country or region.

Managing Authority's liability

The managing authority's liability in relation to a financial instrument shall be limited to the maximum amount of the programme contribution which can be declared as eligible expenditure. Direct liability of the managing authority towards bodies implementing financial instruments or final recipients as well as any other debt or obligation of the financial instrument shall be contractually excluded under the relevant funding agreements.

The liability represented by the programme contribution shall be capped in quantum and time and the financial intermediary shall be obliged to ensure that the financial instrument is able to meet such liability as long as it remains outstanding.

If the selected financial intermediary becomes aware that the loan granted to the final recipient becomes non-eligible, the financial intermediary shall include such information in the next report submitted to the managing authority and this non-eligible loan shall be excluded from the portfolio at the date of its non-eligibility.

However, if:

1/ the loan granted to a final recipient becomes a non-eligible loan as a result of any event/circumstance beyond the control of the financial intermediary but after the loan has been included within the portfolio and prior to any loss relating to the loan has been reported to the managing authority; in that case the financial intermediary has two possibilities:

- if the financial intermediary decides to accelerate the payment and close the loan between the date it becomes aware of the non-eligibility of the loan and the next date of the report to be submitted to the managing authority: therefore the loan shall remain in the portfolio and in case it defaults, it shall be covered by the instrument. All reasonable measures shall be taken to recover the unduly perceived programme benefit passed on to the final recipients as referred in the point e) of the lending policy.

- if the financial intermediary decides not to proceed to the acceleration of the loan: therefore the loan shall be excluded of the portfolio as the date he became a non-eligible loan.

2/ the loan granted to a SME becomes a non-eligible loan as a result of any event/circumstance beyond the control of the financial intermediary but after to a loss relating to the loan has been reported to the managing authority; therefore, the loan shall remain within the portfolio
and it shall be covered by the instrument. All reasonable measures shall be taken to recover the unduly perceived programme benefit passed on to the final recipients as referred in the point e) of the lending policy.

The losses covered are principal amounts due, payable and outstanding and standard interest (but excluding late payment, fees and any other costs and expenses).

### Duration
The financial instrument will be a revolving instrument. The lending period of the financial instrument will be set in order to ensure that first time use of the programme contribution as referred in Article 36 of the CPR will be used for loans disbursed to final recipients. Typically up to 4 years, from the date of signature of the Funding Agreement (between the managing authority and the financial intermediary) but in any case no later than 31-12-2023.

### Lending and risk-sharing at financial intermediary level (alignment of interest)
Alignment of interests between the managing authority and the financial intermediary shall be achieved through:

- Performance fees as provided by Article X of the delegated act of the CPR
- In addition to the managing authority contribution, the financial intermediary shall contribute under local market conditions to the financing with at least [20]% of the total financing commitment.
- The losses and recoveries will impact pari passu pro-rata the financial intermediary and the managing authority within the limited liabilities.

The risk-sharing rate will be determined based on the ex-ante assessment justifying the support to the Financial instrument.

### Eligible Financial Intermediaries
Public and private bodies established at international, national, regional or local levels in the Member States which are legally authorised to provide loans to enterprises established in the Member States, such as financial institutions, and as appropriate microfinance institutions, or any other institution authorised to provide financial instruments.

### Targeted results: Reporting, Monitoring and evaluation
The indicators should be aligned with the programme financing the financial instrument and the ex-ante assessment. They shall be measured and reported for the RS Loan and aligned as a minimum with the regulation requirements. For example:
- Numbers of loans/projects financed
- Amounts of loans financed
- Number of jobs created with the loan support

### Final recipients eligibility
The final recipients shall be eligible under the relevant operational programme and funding agreement. The following eligibility criteria shall be met at the date of the signature of the loan, except for the criterion f):

- a) shall be a micro (including individual entrepreneurs/self-employed persons), small and medium enterprises as defined
in the Commission Recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36)\(^{18}\)

b) Shall not be a SME active in the sectors defined in article 1 (a-f)
of the draft de-minimis regulation;

c) shall not be excluded Articles 1.2 to1.5 of the draft General block exemption Regulation [reference to be added when available],

d) shall not be part of the sectors mentioned in Article 3 of the
ERDF regulation (COM(2011) 614);

e) shall not be delinquent or in default in respect of any other loan
or lease either granted by the financial intermediary or by
another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy;

f) shall have registered place of business and main activity (have
some economic activity) in the relevant Member State Region/Jurisdiction for the programme at the time of the investment.

| Characteristics of the product for the final recipients | The financial intermediary should deliver to final recipients, loans, co-financed by the programme under the RS Loan. Their terms shall be grounded on the ex-ante assessment referred to in Article 32-(2) of the CPR. The loans shall be used exclusively for the following permitted purposes:

a. investments in tangible and intangible assets, including transfer of proprietary rights in enterprises provided that such transfer takes place between independent investors; or

b. working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the SME and the amount of the financing);

The following eligibility criteria shall be met at all times by loans included in the portfolio:

c. Loans shall be newly originated;

d. The principal amount of a loan included in the RS Loan portfolio (i) shall be typically up to EUR1.000.000 based on the ex-ante assessment and (ii) shall be provided under such conditions that would not cause the GGE with respect to each final recipient to exceed EUR 200.000 (or 100.000 EUR in the road freight transport) over any period of three fiscal years or the de minimis loan amount, in accordance with State aid rules; Eligible SMEs could potentially apply more than once for loans allocated in the context of this financial instrument provided that the above-mentioned GGE limit is fully respected; |

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\(^{18}\) Enterprise with less than 250 employees and having a turnover of less than EUR 50 million or total assets less than EUR 43 million; also not belonging to a group exceeding such thresholds. According to the Commission Recommendation, “an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity”. Economic activity definition is: “any activity consisting in offering goods and services on a given market is an economic activity”. (ECJ, Joined Cases C- 180/98 to C-184/98 Pavlov). Consequently, for the avoidance of doubt, NGOs, museums, theatres, foundations, and any other organization complying with the SME definition above will satisfy the SME Eligibility Criteria.
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<td><strong>e.</strong> Loans shall provide financing:</td>
<td><strong>f.</strong> Loans shall not be in the form of mezzanine loans, subordinated debt or quasi equity,</td>
</tr>
<tr>
<td>a. for one or more of the permitted purposes;</td>
<td>g. Loans shall not be in the form of revolving credit lines;</td>
</tr>
<tr>
<td>b. Currency: EUR and/or national currency in the relevant jurisdiction and, as the case may be, in any other currency.</td>
<td>h. Loans shall have a repayment schedule: amortising and/or bullet;</td>
</tr>
<tr>
<td>i. Loans shall not finance ineligible expenditure, do not finance pure financial activities or real estate development when undertaken as a financial investment activity and do not finance the provision of consumer finance;</td>
<td>j. Maturity: Loans shall have a minimum indicative maturity of [12] months including the relevant grace period (if any) and a maximum indicative maturity of up to [120] months;</td>
</tr>
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</table>

| Reporting | Financial intermediaries shall provide the managing authority with quarterly information in a standardised form and scope. Reporting measures shall refer to the provisions of Article 40 CPR. Member States shall also fulfil their reporting obligations pursuant to the de minimis regulation (or successor regulation). |
| Evaluation of the economic benefit of the programme contribution | The financial intermediary shall reduce the overall effective interest rate (and collateral policy where appropriate) charged to the final recipients under each eligible loans included in the portfolio reflecting the favourable funding and risk sharing conditions of the RS Loan. The entire benefit of the programme contribution of the instrument shall be quantified and transferred for the final recipients. This principle and the quantification methodology shall be clearly reflected in the Funding Agreement between the managing authority and the financial intermediary. |
Annex 2: Capped Portfolio Guarantee for SME’s (Capped Guarantee)

Schematic representation of the Capped Guarantee

Market conditions to implement the Capped Portfolio Guarantee

The participation of the Member State/Region will address the gap in the market by providing an incentive to financial intermediaries to increase access to credit either by starting to provide new loans covered by such guarantees or by extending their current lending activities.

The Capped Portfolio Guarantee instrument is to support loans to SMEs by providing credit risk protection (in the form of a first loss portfolio capped guarantee) with the aim to reduce the particular difficulties that SMEs face in accessing finance because (i) of the lack of sufficient collateral in combination with the (ii) relatively high credit risk they represent.

In order to achieve the expected impact, the funds from the programme committed in funding agreements signed between the managing authority and the financial intermediary must, however, not replace equivalent guarantees received by the respective intermediaries for the same purpose under existing EU, national and regional financial instruments.

Governance

The managing authority should be represented in the supervisory committee of the Capped Portfolio Guarantee but shall not participate directly in individual decisions.
The Capped Portfolio Guarantee shall have a governance structure that allows for decisions concerning credit and risk diversification to be made transparently in line with relevant market practice.
### Structure of the Financial Instrument

The Capped Portfolio Guarantee (CPG or Financial Instrument) will provide credit risk coverage on a loan by loan basis, for the creation of a portfolio of new loans, covered by such instrument, to SMEs by a financial intermediary, up to a maximum loss amount (cap).

The Capped Portfolio Guarantee is a Financial Instrument made available by the managing authority, in the framework of the operation which is part of the priority axis defined in the programme funded by the European Structural and Investment Funds (ESIF) and defined in the context of the ex-ante assessment required in Article 32 of the CPR.

### Aim of the instrument

The aim of the instrument is to

1. Provide better access to finance to targeted SMEs, typically addressing concrete and well identified market gaps.
2. Leverage EU funds/public resources to support financing for SMEs as referred in Article 32(3) of the CPR.

The programme contribution from the managing authority to a financial intermediary shall not crowd out guarantees from other public or private investors (established as part of the ex-ante assessment).

The managing authority will commit to provide funds from the programme to the financial intermediary in case of default of the final recipients. The financial intermediary will count on a partial guarantee covering losses up to a limited amount when providing loans to eligible SMEs. The benefit of the guarantee must be passed on to the SMEs (e.g. as a reduction of the interest rate of the loans or/and collateral reduction but always with a full programme contribution passed on to the final recipients).

In the case of a fund of funds structure, the Capped Guarantee Instrument can be implemented through multiple financial intermediaries.

### State aid implication

The scheme will be designed as a State aid free scheme, i.e. market conform at the level of the financial intermediary and aid to the final recipients under the "de minimis" rule (see part 2 above).

**a) Aid at the level of the financial intermediary and/or its manager:**

At the level of the financial intermediary the aid is excluded when:

1) Financial intermediaries are selected in an open, transparent, objective and non-discriminatory tender procedure or the remuneration of the financial intermediary reflects the current market remuneration in comparable situations; and no other advantage is granted by the State; and

2) The financial intermediary builds up the portfolio of new loans with its own resources and the risk retained by the financial intermediary is in no case less than 20% of the loan amount (on a loan by loan basis); and
3) In addition, to exclude any aid to the financial intermediary:

- either the conditions of the Guarantee Notice\textsuperscript{19} are fully respected, including the market price paid for the guarantee (guarantee premium); or

- if the guarantee premium is not market-priced, the entire benefit of the public contribution of the instrument shall be quantified (cost of the guarantee) and fully passed on to the final recipients.

The guarantee should be linked to a specific financial transaction, for a fixed maximum amount and limited in time.

b) Aid at the level of final recipients:

At the SMEs' level, the aid shall comply with the "de minimis" rule, i.e. the GGE of the aid is compliant with the de minimis ceiling or in compliance with the de minimis guarantee conditions.

<table>
<thead>
<tr>
<th>Guarantee policy</th>
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<tbody>
<tr>
<td>a) Commitment from the managing authority to the financial intermediary:</td>
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<tr>
<td>Following the signature of a funding agreement between the managing authority and the financial intermediary, the relevant managing authority will commit funds from the programme to the financial instrument. The commitment shall comply, inter alia, with Article 35 of the CPR.</td>
</tr>
<tr>
<td>b) Origination of a portfolio of new loans:</td>
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<tr>
<td>The financial intermediary shall build up within a limited period of time a portfolio of new SMEs loans. Newly originated SMEs loans are partly covered by the programme contribution on a loan by loan basis up to a certain amount (Cap). Eligible SMEs loans are automatically included in the portfolio subject to a pre-set loan inclusion criteria.</td>
</tr>
<tr>
<td>Inclusion of SME loans shall occur automatically upon receipt by the managing authority of an inclusion notice submitted by the financial intermediary on a quarterly basis until the end of the relevant inclusion period.</td>
</tr>
<tr>
<td>The financial intermediary shall implement a consistent loan policy regarding portfolio diversification, enabling a sound portfolio management and risk diversification, while complying with the applicable industry standards and while remaining appropriate to the managing authority's financial interests.</td>
</tr>
<tr>
<td>The identification, selection, due diligence, documentation and execution of the guarantees to final recipients will be performed by the financial intermediary in accordance with its normal standard</td>
</tr>
</tbody>
</table>

\textsuperscript{19} OJ C 155 of 20.6.2008., p. 10.
procedures and in accordance with the principles set out in the relevant funding agreement.

c) Loss cover:

The Capped Portfolio Guarantee shall cover losses incurred by the financial intermediary in respect of each defaulted eligible SME loan in accordance with the guarantee rate of a maximum percentage of [80]%.

Losses covered by the Capped Portfolio Guarantee in respect of the portfolio of eligible SME loans shall in aggregate not exceed a cap amount.

The cap amount which is the maximum liability under this instrument is the product of the Capped Portfolio Guarantee volume by the guarantee rate and the guarantee cap rate.

The guarantee cap rate shall be determined as part of the ex-ante risk assessment in accordance with Article 36.1.b of the CPR.

Losses covered are principal amounts due, payable and outstanding and standard interest (but excluding late payment, fees and any other costs and expenses).

D) Guarantee payment:

Following the occurrence of a loss related to a default, managing authority shall make guarantee payments to the Financial Intermediary under the Guarantee within typically 60 days.

E) Others:

Amounts recovered by the financial intermediary from loans covered by Capped Portfolio Guarantee to SMEs within the time framework for guarantees as set out in the funding agreement should be made available for new use (revolving approach as referred at Articles 38 and 39 of the CPR).

No Guarantee fees will be payable by the financial intermediary to the managing authority.

If a guaranteed loan becomes ineligible (i.e. regarding the programme objectives, the final recipients definition or the obligations linked to the product), the financial intermediary shall exclude the guaranteed loan from the guarantee instrument since the date of ineligibility. The financial intermediary shall take recovery actions to recover the benefits of the programme that were unduly perceived by the final recipients since the date of ineligibility. The financial intermediary can replace it by an eligible guarantee within the eligibility period.

| Pricing and collateral policies | When proposing its pricing/collateral policy, the financial intermediary shall reduce the overall interest rate and/or other collateral requirements under each eligible SME loan included in the portfolio. The level of such reduction proposed by the financial intermediary shall |

Off the Shelf Instruments – version 16/09/2013   Page 24
be assessed and confirmed by the managing authority following analysis and due diligence and shall deemed to be an eligibility criterion for SME loans to be included in the Portfolio.

To be noted that:
1. The instrument will cover maximum 80% of the risk exposure of each eligible SME Loan (up to a Cap);
2. Therefore, the advantage of the programme should be passed on to the eligible SMEs, through a reduction of the interest rate charged and/or a reduction of the collateral required by the financial intermediary.

| Guarantee to financial intermediary: amount and rate (product details) | The leverage of the guarantee financed by the programme contribution is defined as the product of (1 divided by the Guarantee Rate) and (1 divided by the Guarantee Cap Rate).
The leverage ratio shall indicatively be equal to or higher than [5]
The Guarantee Cap rate shall be determined in the ex-ante risk assessment in accordance with Article 36.1.b of the CPR and in all cases not exceed 25%.
To ensure sufficient diversification, the size of the portfolio partially covered by the guarantee shall be determined on the basis of the ex-ante assessment justifying the support to the financial instrument (Article 32 of the CPR). This will typically be between an indicative range of minimum EUR [2] million and an amount of EUR [30] million. |
| Guarantee to financial intermediary (activities) | The loan portfolio guaranteed by the guarantee instrument shall include newly originated loans provided for the ultimate benefit of final recipients. The eligibility criteria for inclusion in the portfolio are determined according to the programme, national eligibility rules, and by the financial intermediary with the aim of reaching a large number of final recipients and achieving sufficient portfolio diversification. Financial intermediary shall have a reasonable estimation of the portfolio risk profile (concentration limit by sector for example). These criteria shall reflect market conditions and practices in the relevant country or region.
The financial intermediary shall estimate ex-ante a recovery rate to be used for calculating the amount expected to be recovered from the defaults in the portfolio, which could impact the evaluation of the guarantee cap rate. |
| Managing authority’s liability | The managing authority's liability in relation to a financial instrument shall be limited to the amounts of the programme contribution which can be declared as eligible expenditure. Direct liability of the managing authority towards bodies implementing financial instruments or final recipients as well as any other debt or obligation of the financial instrument shall be contractually excluded under the relevant funding agreements. |
The liability represented by the programme contribution is capped in quantum and time and the financial intermediary shall be obliged to ensure that the financial instrument is able to meet such liability as long as it remains outstanding.

If the financial intermediary selected becomes aware that the loan guaranteed becomes non-eligible, the financial intermediary shall include such information in the next report submitted to the managing authority and this non-eligible loan shall be excluded from the guarantee portfolio at the date of its non-eligibility.

However, if:

1/ the loan guaranteed becomes a non-eligible loan as a result of any event/circumstance beyond the control of the financial intermediary but before the payment demand of a guarantee (no-losses occurred); in that case the financial intermediary has two possibilities:

- if the financial intermediary decides to accelerate the payment and close the loan between the date it becomes aware of the non-eligibility of the loan and the next date of the report to be submitted to the managing authority: therefore, the loan shall be considered as covered. All reasonable measures shall be taken to recover the unduly perceived programme benefit passed on to the final recipients as referred in the point e) of the guarantee policy, or

- if the financial intermediary decides not to proceed to the acceleration of the loan: therefore, the loan guaranteed shall be excluded of the guarantee portfolio as the date it became non-eligible.

2/ the loan guaranteed becomes non-eligible as a result of any event/circumstance beyond the control of the financial intermediary but after the payment demand of a guarantee (losses occurred); therefore, the loan guaranteed should be considered as covered by the guarantee instrument. All reasonable measures shall be taken to recover the unduly perceived programme benefit passed on to the final recipients as referred in the point e) of the lending policy.

Default means, in respect of a loan to final recipient that (i) the financial intermediary can prove at any time (acting in accordance with its internal procedures and as reflected in its financial and regulatory reporting) that a final recipient is unlikely to meet its payment obligations; or (ii) a final recipient has failed to meet any payment obligation under the relevant SME loan which has continued for at least 90 consecutive calendar days.

| Duration       | The financial instrument will be a revolving instrument. |
The guarantee period of the financial instrument will be set in order to ensure that first time use of the programme contribution as referred in Article 36 of the CPR will be used with guarantees of loans disbursed to final recipients. Typically up to 4 years, from the date of signature of the funding agreement (between the managing authority and the financial intermediary) but in any case no later than 31-12-2023.

| Risk-sharing at FI level (alignment of interest) | Alignment of interests between the managing authority and the financial intermediary shall be achieved through:
| | • The own credit risk retained by the financial intermediary in no case shall be less than 20% on a loan by loan basis;
| | • The Financial Intermediary commits to build up a portfolio of new loans with its own resources;
| | • The full advantage of the Guarantee is passed on to eligible SMEs
| | • Performance fees as provided by Article X of the delegated act of the CPR |

| Eligible Financial Intermediaries | Public and private bodies established at international, national, regional or local levels in the Member States which are legally authorised to provide loans to enterprises established in the Member States, such as financial institutions, and as appropriate microfinance institutions, or any other institution authorised to provide financial instruments. |

| Targeted results: Reporting, Monitoring and evaluation | The indicators should be aligned with the programme financing the financial instrument and the ex-ante assessment. They shall be measured and reported for the guarantee fund and aligned as a minimum with the requirements of the regulation. For example:
| | Numbers of loans guaranteed/projects financed
| | Value of the loans guaranteed
| | Number of jobs created
| | ……… |

| Final Recipient (final recipients) eligibility | The final recipients shall be eligible under the relevant programme, and funding agreement. The final recipients shall fulfil the following eligibility criteria at the date of the document evidencing the relevant SME guarantee:
| | a. Shall be a micro, small or medium-sized enterprises ("SMEs") (including individual entrepreneurs/self-employed persons) as defined in the Commission recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36)\(^\text{20}\); |

\(^{20}\) Enterprise with less than 250 employees and having a turnover of less than EUR 50 million or total assets less than EUR 43 million; also not belonging to a group exceeding such thresholds. According to the Commission Recommendation, “an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity”. Economic activity definition is: “any activity consisting in offering goods and services on a given market is an economic activity”. (ECJ, Joined Cases C-180/98 to C-184/98 Pavlov). Consequently, for the avoidance of doubt, NGOs, museums, theatres,
b. Shall not be a SME active in the sectors defined in article 1 (a-f) of the draft de-minimis regulation;

c. Shall not be excluded by Articles 1.2 to 1.5 of the General block exemption Regulation [reference to be added when available], or

d. Shall not be part of the sectors mentioned in Article 3 of the ERDF regulation (COM(2011) 614) or one or more other restricted sectors;

e. Shall not be delinquent or in default in respect of any other loan or lease either granted by the financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy;

f. Shall have registered place of business and main activity (have some economic activity) in the relevant member State Region/Jurisdiction for the programme at the time of the investment.

<table>
<thead>
<tr>
<th>Characteristics of the product for the final recipients</th>
</tr>
</thead>
<tbody>
<tr>
<td>The financial intermediary shall deliver to final recipients loans covered by the guarantees co-financed by the programme. Loans criteria shall be determined by the ex-ante assessment justifying the support to the financial instrument (Article 32 of the CPR). The loans shall be used exclusively for the following permitted purposes:</td>
</tr>
<tr>
<td>a) Investments in tangible and in intangible assets including transfer of proprietary rights in enterprises provided that such transfer takes place between independent investors; or</td>
</tr>
<tr>
<td>b) Working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (1a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the final recipient and the amount of the financing);</td>
</tr>
</tbody>
</table>

The following eligibility criteria shall be met at all times by loans included in the portfolio:

a) Loans shall be newly originated;

b) The guaranteed part of the underlying loan included in the portfolio i) shall typically be up to EUR [1.500.000] based on the ex-ante assessment and ii) shall be provided under such conditions that would not cause the GGE\(^1\) with respect to each final recipient to exceed EUR 200.000 over any period of three fiscal years or the de minimis guaranteed amount, in accordance with State aid rules. Eligible SMEs could potentially apply more than once for loans allocated in the context of this financial instrument provided that the

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foundations, and any other organization complying with the SME definition above will satisfy the SME Eligibility Criteria.
above-mentioned GGE limit is fully respected.

c) Shall have a repayment schedule: amortising and/or bullet;
d) Loans shall not be in the form of mezzanine loans, subordinated debt or quasi equity,
e) Loans shall not be in the form of revolving credit lines;
f) Loans do not finance ineligible expenditure, do not finance pure financial activities or real estate development when undertaken as a financial investment activity and do not finance the provision of consumer finance;
g) Maturity: between an indicative minimum maturity of [12] months and an indicative maximum maturity of [120] months;
h) Currency: EUR and/or national currency in the relevant jurisdiction and, as the case may be, in any other currency.

**Reporting**

Financial intermediaries shall provide the managing authority with quarterly information in a standardised form and scope. Reporting measures shall refer to the provisions of Article 40 CPR. Member States shall also fulfil their reporting obligations pursuant to the de minimis regulation (or successor regulation).

**Evaluation of the economic benefit of the programme contribution**

The entire benefit of the programme contribution of the instrument shall be quantified and transferred for the final recipients (benefit of the guarantee).

The benefit for the eligible SMEs shall be materialised by a reduction of the overall interest rate required by the financial intermediary and/or collateral reduction on such SME loan. This principle and the quantification methodology shall be clearly reflected in the funding between the managing authority and the financial intermediaries.
Schematic representation of Co-investment principle

Market conditions to implement Co-Investment instruments
By channelling ESI Funds to SMEs through Equity Investment fund, Co-investment instruments serve as a means of attracting additional investments in SMEs through a partnership approach with Equity Investment funds or other market participants making investments.

Co-investment instruments are a useful financial instrument for supporting SME growth in difficult funding environments. This form of financing is a particularly effective way of supporting SMEs located in relatively contained geographies, which, due to their size, do not always offer sufficient market absorption capacity for dedicated venture capital or private equity funds. This phenomenon also applies in the context of SMEs active in less established sectors and stages, where deal flow is still largely unpredictable.

In this respect, Co-investment instruments serve as a way for managing authorities to establish a recognised structural framework for venture capital and private equity investors with a wider geographic focus to become more active in a specific local market that may normally not receive attention from more regionally or globally minded venture capital actors.

Governance
The financial intermediary shall have a governance structure that allows for decisions concerning investments, divestments and risk diversification to be made transparently and independently, in line with relevant market practice. The managing authority shall not be involved in any individual investment/divestment decisions taken.
The governance structure shall include, in particular, the following aspects: (i) Changes to the fundamental nature of the co-investment facility, including changes to the investment strategy that have a material impact on the eligibility requirements of the relevant financial instrument; (ii) Provisions on the possibility to remove the manager and (iii) provisions insuring the transparency in the selection process of the co-investors.

Additional measures linked to the development of the instrument
This financial instrument may be combined with a grant type of support such as such as scouting cost and aid for initial screening prior to a formal due diligence as defined in Article 22 of GBER or advisory service to support the business development of the companies benefiting from the co-investment facility. The grant can be part of financial instrument operation or it can be provided through a separate operation supported by the operational programme.

If the grant constitutes a part of financial instrument operation (as envisaged in Article 32(5) of the CPR) then it is managed by the beneficiary of the financial instrument (i.e. body implementing financial instrument) and the programme contribution to the financial instrument includes also the grant part. In such case, the financial intermediary shall be entitled to a fee in line with Article X of the delegated Act of the CPR. The grant support shall not refer to the activities which are covered by management cost and fees received by the financial intermediary to manage the financial instrument.

If the grant constitutes a separate operation then the managing authority has a freedom to either give direct support to an enterprise or select the institution (including financial intermediary) which will manage this scheme. In this case the expenditure associated with this grant does not fall under the financial instrument rules, it is reimbursed ex post and no management cost under the financial instrument can be claimed for its management.

Irrespective whether the grant is part of financial instrument operation or not, it has to fulfil the following main conditions:

- The grant has to be for the benefit of the final recipient.
- The total amount of the grant support shall be in compliance with the GBER Article 19 (regarding advisory support) and 22 (regarding scouting costs and initial screening).
- The expenditure covered by the grant cannot constitute part of the investment to be financed by the loan.

| Structure of the Financial Instrument | The Co-Investment Facility will co-invest in the equity of SMEs with the contribution of the financial intermediary own resources and with private Co-investment partners. The financial intermediary is a private entity who takes all investment/divestment decisions with the diligence of a professional manager in good faith. The financial intermediary is economically and legally independent from the managing authority. Co-investors are business angels, VC firms, etc. economically and legally independent from the co-investment facility. The Co-Investment Facility is a financial instrument made available by the managing authority, in the framework of the action which is part of the priority axis defined in the programme funded by the ESI Funds and defined in the context of the ex-ante assessment required in Article 32 CPR. |

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Off the Shelf Instruments – version 16/09/2013  Page 31
### Aim of the instrument

The aim of the instrument is to:

1. Invest in SMEs at seed, start-up, expansion stage or for the realisation of new projects, penetration of new markets or new development through co-investment agreements (partnership approach) with co-investors such as business angels, venture capital and private equity funds or other private market participants making investments in such final recipients. Such investments shall be made in the limit of the scope of the GBER.
2. Provide more capital available to increase investment volumes.

The programme contribution from the managing authority to a financial intermediary shall not crowd out investments from other public or private investors. The Co-investment Facility amount and rates must be set in order to fill the equity gap evaluated within the ex-ante assessment of the financial instrument.

The Co-investment Facility's performance is directly dependent on the investment performance of the portfolio of equity investments in SMEs. The managing authority will be providing funding to the Co-investment Facility in order to build up a portfolio of new investments and follow-on investments in SMEs and will participate with the financial intermediary and co-investors (or co-investment partners) resources on a deal by deal basis.

In the case of fund of funds structure, the fund of funds can provide programme contribution to the financial intermediary in charge of the Co-investment Facility.

### State aid implication

To encourage private investors to participate in the scheme by providing the private investors with better terms on their participation than public investors. The investment of a Co-Investment facility will be considered to be part of a **Compatible State aid Scheme** under Art 19 of GBER (not requiring a notification), provided all conditions for compatibility are satisfied cumulatively. This concerns the aid at the levels of the financial intermediary and/or its manager, the private investors and final recipients.

The costs aiming at the development of the investment projects, due diligence or accompanying the final recipients shall be integrated in the management costs and fees.

Regarding advisory support provided to the final recipients, the costs referring to the scouting or initial screening prior to formal due diligence shall refer to Article 22 of the GBER.

### Investment policy

**a) Disbursement from the managing authority to the Co-investment Facility:**

Following the signature of a funding agreement between the managing authority and the financial intermediary, the relevant managing authority will transfer public funds from the programme to the Co-investment Facility according to the expected portfolio of investments.
The financial Intermediary shall implement a consistent investment policy, especially regarding portfolio diversification (geographical, sectorial, size of final recipients, etc.), enabling a sound portfolio management and risk diversification, while complying with the applicable industry standards and remaining appropriate to the managing authority's financial interests.

Potential co-investments will be identified, screened and assessed by the financial intermediary along with the co-investment partners (if any). The financial intermediary which will undertake, on a deal by deal basis, a due diligence in which key aspects such as detailed business plan, containing details of product, sales and profitability development, assessment of the viability of the investment and a clear exit strategy will be assessed.

b) Disbursements from the co-investment facility to the eligible SMEs

The Co-Investment facility will co-invest with other private investors (i.e. the financial intermediary own resources and co-investment partners).

In other words, on a deal by deal basis:
1. the programme contribution will finance up to (90%/60%/40%)\(^{21}\) of the overall amount invested into an SME in a single round, to acquire equity stakes.
2. the rest of the monies (10%/40%/60%) shall be of private origin and is to be provided by:
   (i) the financial intermediary or a vehicle affiliated to the fund manager for at least (1%/4%/6%)
   (ii) Co-investment partners.

c) Level of private contribution to eligible SMEs (GBER Article 19):

The financial intermediary and the private co-investment partners shall contribute along with the programme contribution for the minimum thresholds:
1. 10% of funding if the investment targets SMEs prior to their first commercial sale on any market;
2. 40% of funding if the investment targets SMEs:
   i. have been operating in any market for less than 5 years following their first commercial sale; or
   ii. have achieved, since their registration, an average annual turnover not exceeding 10% of the total investment amount; or
   iii. have sought support under this measure with a view to entering a new product market and discontinuing their previous commercial activities on the basis of a business plan setting the terms and conditions of such a transition. referred to the box eligible SMEs;
3. 60% of funding if the investment provides follow-on investment

\(^{21}\) Art.19(10), GBER
after the 5 years period mentioned in point 2.i. above.

d) Investments within an eligible SMEs have to be profit-driven:

A profit-driven investment is ensured if the following conditions are fulfilled:

1. The financial intermediary and co-investment partners shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments; and

2. Investment in eligible SMEs shall be based on a viable business plan, containing details of product, sales and profitability development, establishing the ex-ante viability of the investment; and

3. A clear and realistic exit strategy shall exist for each investment.

The co-investment agreement between the Financial Intermediary and co-investors defines the terms and conditions for parallel investment in the final recipients.

The investment policy of the Co-investment facility includes a clear exit strategy will be described in the funding agreement.

<table>
<thead>
<tr>
<th>Fund Contribution to financial intermediary: amount and rate (product details)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The transfer of public contribution from the programme to the Co-investment Facility shall comply, inter alia, with Article 35 CPR. The aim of the resources shall be to take share of eligible SMEs provide capital at seed, start-up, and expansion stages in the form of equity to final recipients under a Co-investment Facility.</td>
</tr>
<tr>
<td>The actual Co-investment amount and rates will be determined by factors such as the size and focus of the Co-investment Facility, the fundraising conditions, the expected catalytic effect of the Co-investment Facility, remaining in the limits set up above (GBER Article 19).</td>
</tr>
<tr>
<td>To ensure sufficient diversification, the Co-investment allocation within one financial intermediary shall be determined by the ex-ante assessment justifying the support to the financial instrument (Article 32 CPR).</td>
</tr>
<tr>
<td>This will typically be between an indicative range of minimum EUR [10] million and maximum EUR [50] million.</td>
</tr>
<tr>
<td>Amounts returned to the financial intermediary from the investments within the time framework for investments as set out in the funding agreement shall be used or re-used as referred at Articles 38 and 39 CPR).</td>
</tr>
<tr>
<td>Preferential remuneration of private investors can be set in line with Article 38(2) CPR and Article 19(11)(b) GBER.</td>
</tr>
<tr>
<td>Programme</td>
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<tr>
<td>-----------</td>
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<tr>
<td></td>
</tr>
</tbody>
</table>

| Managing authority's liability | The managing authority's liability in relation to a financial instrument shall be limited to the amounts of the programme contribution which can be declared as eligible expenditure. Direct liability of the managing authority towards bodies implementing financial instruments or final recipients as well as any other debt or obligation of the financial instrument shall be contractually excluded under the relevant funding agreements. On liquidation of the Co-investment Facility, the financial intermediary shall make a thorough assessment of the risk of claims against the Co-investment Facility and ensure suitable sums are held in escrow accounts to meet such claims. |

| Duration | The Co-investment Facility will be a revolving instrument. The investment period of the financial instrument will be set in order to ensure that first time use of the programme contribution as referred in Article 36 CPR will be used with investments disbursed to final recipients at the latest by 31-12-2023. |

| Investment and risk-sharing at financial intermediary | Alignment of interest between the managing authority and the financial intermediary shall be achieved through: • Performance fees as provided by Article X of the delegated act of the CPR; |
### Level (Alignment of Interest)

- The remuneration of the financial intermediary shall reflect the current market remuneration in comparable situations, which is the case when the financial intermediary has been selected through a competitive tender and no other advantages granted by the state;

- A co-financing by the private co-investors shall be at the minimum level set in Article 19(10) GBER;

- A co-financing by the financial intermediary of a minimum of 1%/4%/6% (mirroring the minimum level set in Article 19(10) of the GBER) on a deal by deal basis;

- The co-financing by co-investors shall be made on identical terms and conditions as those applicable to the Co-investment Facility. (Provisions fixed through the co-investment agreements). Although, an asymmetric loss-sharing might be set between the public and private investors. The first loss assumed by the public investor might be maximum [20]% of the total investment in line with in line with Article 19(11)(b) GBER and established in the ex-ante assessment as referred in Article 38(2) CPR.

- The financial intermediary will not be allowed to start a new investment vehicle targeting the same final recipients until: a) [75%] of the Co-investment Facility commitments have been invested or committed to be invested, or, if earlier, b) the end of the investment period of the Co-Investment Facility.

- Procedures avoiding conflict of interest between the financial intermediary and co-investors shall be set-up before any investment made within a financial recipient by the financial intermediary selected.

### Eligible Financial Intermediaries and Co-Investors

Private bodies established at international, national, regional or local levels in the Member States which are legally authorised to provide equity to enterprises established in the Member States, such as financial institutions, or any other institution authorised to provide financial instruments.

The managing authority shall ensure that the financial intermediary is selected through an open, transparent and non-discriminatory call aimed at establishing appropriate profit/loss-sharing arrangements.

The mandate given to the financial intermediary shall specify the conditions for the evaluation of co-investors ensuring that their selection can be controlled ex-post, the criteria for selection are understandable and communicated to potential co-investors and that the financial intermediary demonstrates a non-discriminatory approach to find and select co-investors.

The Co-investment Facility shall seek to mobilise Co-investors, while protecting the managing authority from reputational risks. The co-investors should be suitable, qualified long-term investors including venture capital funds, business angels, high net worth individuals, family offices, or companies with proven and sophisticated know-how and operational capacity in identifying, assessing, and structuring investments in final recipients.
Co-investors and financial intermediaries shall not be established in territories whose jurisdictions do not co-operate with the EU in relation to the application of internationally agreed tax standards.

Financial intermediaries shall be managed on commercial basis as referred in the conditions of Article 19(13) of the GBER.

Private investors shall be independent from the final recipients invested in except in the case of follow-on investment into final recipients that are already part of the Co-investment facility.

<table>
<thead>
<tr>
<th>Targeted results: Reporting, Monitoring and evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The indicators should be aligned with the programme financing the financial instrument and the ex-ante assessment. They shall be measured and reported for the Co-investment Facility and aligned as a minimum with the regulation requirements. For example:</td>
</tr>
<tr>
<td>Numbers of projects financed</td>
</tr>
<tr>
<td>Value of the investments financed</td>
</tr>
<tr>
<td>Number of jobs created with the co-investment support</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Final recipient eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>The final recipients shall be eligible under the relevant programme, funding agreement and with the condition referred in Article 19(4) GBER. The following eligibility criteria shall be met at the date of the signature of the investment:</td>
</tr>
<tr>
<td>a) Shall be a micro (including individual entrepreneurs), small or medium enterprise as defined in the Commission Recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36)(^2) and be as referred as in Article 19(4) and (5) GBER</td>
</tr>
<tr>
<td>b) shall not excluded by Articles 1.2 to 1.5 of the draft General block exemption Regulation [reference to be added when available],</td>
</tr>
<tr>
<td>c) shall not be part of the sectors mentioned in Article 3 of the ERDF regulation (COM(2011) 614) or on one or more other restricted sectors (to be determined at the discretion of the financial intermediary);</td>
</tr>
<tr>
<td>d) shall not be in default in respect of any other loan or lease either granted by a financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy;</td>
</tr>
<tr>
<td>e) Shall be established and operating in the relevant Region/Jurisdiction under the programme;</td>
</tr>
<tr>
<td>f) for State aid purposes investment should not be made in listed companies (SMEs listed on an alternative trading platform are not considered listed for the purposes of the of the shelf</td>
</tr>
</tbody>
</table>

\(^2\) Enterprise with less than 250 employees and having a turnover of less than EUR 50 million or total assets less than EUR 43 million; also not belonging to a group exceeding such thresholds. According to the Commission Recommendation, “an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity”. Economic activity definition is: “any activity consisting in offering goods and services on a given market is an economic activity”. (ECJ, Joined Cases C- 180/98 to C-184/98 Pavlov). Consequently, for the avoidance of doubt, NGOs, museums, theatres, foundations, and any other organization complying with the SME definition above will satisfy the SME Eligibility Criteria.
| Characteristics of the product for the final recipients | The Co-investment facility amount and rates shall be established in the ex-ante assessment referred in Article 32(2) CPR.  

The financial intermediary shall deliver to final recipients equity or quasi-equity investment co-financed by the financial intermediary own contributions, the public programme contribution and the co-investors contributions (possibly included in the eligibility for co-financing of the ESI Funds programme contribution) under a co-investment agreement signed between the financial intermediary and the co-investors.  

The total investment (i.e. one or more investment rounds including follow-on) combining public and private resources provided shall not exceed EUR 10m per eligible final recipient as per GBER Article 19(9). |
| Reporting | Financial intermediaries shall provide quarterly information in a standardised form and scope.  

Reporting measures shall refer to the provisions of Article 40 CPR.  

Member States shall also fulfil their reporting and transparency obligations pursuant to the GBER (or successor regulation). |
| Evaluation of the economic benefit of the programme Contribution | The size and nature of the portfolio of SMEs supported by the Co-Investments facility. The benefit of the programme contribution of the instrument shall be quantified and transferred for the final recipients. This principle and the quantification methodology shall be clearly reflected in the funding agreement between the managing authority and the financial intermediary. |
Annex 4: Loan for energy efficiency and renewable energies in the residential building sector (Renovation Loan)

Schematic representation of the Renovation loan principle

Market conditions to implement the Renovation Loan

The appropriateness of such a financial instrument should be assessed in light of the actual conditions existing in that particular region or Member State. These will dictate, amongst other things, the level of risk appetite of existing financial intermediaries to finance such projects, energy prices (both current and future expectations), the ownership and collective decision making processes of house owners where appropriate, as well as the availability of any grant or technical assistance funding to complement the investment to be made by the financial intermediary. Such factors will be determined through an appropriate ex ante assessment, [as required by Art 32 of the CPR], whilst others might only be effectively determined through an open and competitive procurement process.

The housing energy efficiency loan product primarily aims multi apartment buildings where the energy saving potential of renovation is significant but where apartment owners still need appropriate incentives, in the form of complementary grant assistance, long term subsidised loan conditions and upfront advisory support and funding to prepare and implement “full envelope” building renovation projects. It also assumes a financing market in which banking intermediaries are essentially the only source of funding, but where this funding is either too little (due to the risk appetite of the intermediary), too short term, too costly or otherwise inappropriate for the long term payback nature of the projects being financed. This, together with an inefficient system of identifying and procuring the works on behalf of multiple apartment owners without excluding the possibility to support individuals, are the particular market failure arguments to support. Nevertheless, there is some payback potential, generated through the savings on energy bills, which warrants the use of a financial instrument. Managing authorities should also take into consideration the level of “self-
financing” or collateral/security that can be reasonably expected to be provided by homeowners. Excessive requirements in this regard can be another market failure that, unless addressed through the appropriate design and risk sharing of the instrument, will be detrimental to the success thereof.

In the model presented below, the long term, low interest funding is primarily provided using European Structural and Investment Funds (ESIF), with an appropriate level of risk sharing by the financial intermediary determined through a competitive process and provided in the form of a shared loss component. Alternative market conditions might allow for a modification of this model where financial intermediaries might also be able to provide co-financing.

**Governance**
The managing authority shall seek to be represented in supervisory committee of the Renovation Loan and shall not participate directly in individual decisions. The Renovation Loan shall have a governance structure that allows for decisions concerning credit and risk diversification to be made transparently and in line with relevant market practice.

**Additional measures linked to the development of the instrument**
Advisory support such as advisory service to support project preparation, administration and implementation at the final recipients’ level (energy audits for example). A grant may be also allocated as a capital rebate for final recipients under certain financial conditions (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), performance conditions and for low income households.

The grant can be part of financial instrument operation or it can be provided through a separate operation supported by the operational programme. If the grant constitutes a part of financial instrument operation (as envisaged in Article 32(5) of the CPR) then it is managed by the beneficiary of the financial instrument (i.e. body implementing financial instrument) and the programme contribution to the financial instrument includes also the grant part. In such case, the financial intermediary shall be entitled to a fee in line with Article X of the delegated Act of the CPR. The grant support shall not refer to the activities which are covered by management cost and fees received by the financial intermediary to manage the financial instrument.

If the grant constitutes a separate operation then the managing authority has a freedom to either give direct support to an enterprise or select the institution (including financial intermediary) which will manage this scheme. In this case the expenditure associated with this grant does not fall under the financial instrument rules, it is reimbursed ex post and no management cost under the financial instrument can be claimed for its management.

Irrespective whether the grant is part of financial instrument operation or not, it has to fulfil the following main conditions:

- The grant has to be for the benefit of the final recipient.
- The advisory service and capital rebate shall be calculated in the advantages transmitted to the final recipients in the context of the State aid rule if the final recipients are undertakings.
- The expenditure covered by the grant cannot constitute part of the investment to be financed by the loan.
### Structure of the Financial Instrument

The renovation loan is a loan from the programme contribution to a selected financial intermediary aiming to provide loans to final recipients under a risk sharing arrangement with the financial intermediary.

The renovation loan is a financial instrument made available by the managing authority, in the framework of the operation which is part of the priority axis defined in the programme funded by the ESIF and defined in the context of the ex-ante assessment required in Article 32 of the CPR.

### Aim of the Instrument

The aim of the instrument is to offer preferential loans to natural and legal persons or independent professionals owning premises (apartment, social housing or individual household), as well as administrators or other legal bodies acting on behalf and for the benefit of the owners in order to undertake renovation works that are eligible for ESIF support.

The programme contribution from the managing authority to a financial intermediary shall not crowd out financing from other private investors or public investors investing under the market economy principle (established as part of the ex-ante assessment).

In the case of fund of funds structure, the fund of funds may commit loans with the programme contribution. In the framework of the risk-sharing agreement, the fund of funds and the financial intermediary may combine resources with the aim to provide preferential loans to final recipients, and agree on a risk-sharing between fund of funds and financial intermediary.

### State aid implication

The scheme is designed as a State aid free scheme under the "de minimis" rule or under the threshold of Commission regulation on "de minimis" for providers of SGEI (EU 360/2012) or as compatible State aid under the Commission decision (2012/21/EU) on State aid in the form of public service compensation for Services of General Economic Interest when considering social housing (see part 2 and annex).

**a) Aid at the level of the financial intermediary is excluded when:**

1. the financial intermediary and the managing authority bear at any time the losses and benefits in proportion to their contribution (pari passu and pro-rata) and there is a significant participation of the financial intermediary in the renovation loan instrument, and
2. The remuneration (i.e. management costs and/or fees) of the financial intermediary reflects the current market remuneration in comparable situations, which is the case when the latter has been selected through an open, transparent, non-discriminatory and objective tender and no other advantages are granted by the State;
3. The entire benefit of the public contribution of the instrument shall be quantified and fully passed on to the final recipients to exclude any aid to the financial intermediary.
b) Aid at the level of an entity acting on behalf of the owners (i.e. natural and legal persons, independent professionals owning premises, administrators, other legal bodies):

Aid at the level of an entity acting on behalf of the owners, the aid is excluded when:

4. the entity does not benefit from any direct transfers of public support and
5. The entity transfers all the benefit of the programme contribution to the final recipients

c) at the level of the final recipient/owners with an economic activity (legal person or independent professionals, landlords and owners who install renewable energies, supplying part of the energy produced to the grid):

At the level of the final recipients, the aid shall comply with the "de minimis" rule (including the Services of General Economic Interest rules applicable to social housing), i.e. the gross grant equivalent of the benefit is compliant with the de minimis ceiling or the loan is compliant with the de minimis loan conditions.

Lending policy

a) Disbursement from the managing authority to the financial intermediary:

Following the signature of a funding agreement with the financial intermediary, the relevant managing authority will transfer a contribution from the programme to the financial instrument. The total lending amount and interest should have been established based on the ex-ante assessment in accordance with Article 32 of the CPR.

The amount transferred shall comply, inter alia, with Article 35 of the CPR.

The maximum risk-sharing of the financial instrument towards the final recipients will be [85] % (i.e. at least 15% shall be provided by the financial intermediary own funds).

b) Origination of a portfolio of new loans:

The financial intermediary will originate a portfolio of new loans funded according to a risk-sharing rate agreed in the funding agreement (i.e. partly funded by (i) the renovation loan (funded by the programme contribution) (ii) the financial intermediary own fund).

Eligible loans pre-defined according to eligibility criteria on a loan-by-loan basis and portfolio level will be automatically included in the portfolio by way of submitting inclusions notices on a quarterly basis.

The financial intermediary shall implement a consistent lending policy, especially regarding portfolio composition enabling a sound credit portfolio management and risk diversification, while aiming at reducing
the market failure identified in the ex-ante assessment (referring to Article 32 of the CPR) and while remaining appropriate to the managing authority’s financial interests.

The identification, selection, due diligence, documentation and execution of the loans to final recipients will be performed by the financial intermediary in accordance with its normal standard procedures and in accordance with the principles set out in the relevant funding agreement.

c) reimbursement from the financial intermediary to the managing authority:

Repayments would occur regularly (e.g. quarterly) mirroring (i) principal repayments (on a risk sharing rate) (ii) any recovered amount (according to the risk sharing rate) and (iii) interest rate payments if any.

Amounts recovered by the financial intermediary from renovation loans to the final recipients within the time framework for investments as set out in the funding agreement should be made available for new use (revolving approach as referred in Articles 38 and 39 of the CPR).

d) Loss recoveries:

The financial intermediary shall take recovery actions in relation to each defaulted loan co-financed by the Renovation Loan in accordance with its internal guidelines and procedures.

Amount recovered by the financial intermediary (net of recovery and foreclosure costs, if any) should be allocated pro-rata to the risk-sharing between the financial intermediary and the programme contribution.

e) Others:

To be noted that interest and other gains generated by support from the ESI Funds should be used as referred in Article 37 of the CPR

If a loan becomes ineligible (i.e. regarding the programme objectives, the final recipients definition or the obligations linked to the product), the financial intermediary shall exclude the loan from the instrument since the date of ineligibility. The financial intermediary shall take recovery actions to recover the benefits of the programme that were unduly perceived by the final recipients since the date of ineligibility. The financial intermediary can replace it by an eligible loan within the eligibility period.

<table>
<thead>
<tr>
<th>Pricing policy</th>
<th>When proposing its pricing, the financial intermediary shall reduce the overall interest rate charged to each loans included in the Portfolio.</th>
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<tbody>
<tr>
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<td><strong>To be noted that:</strong></td>
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<td></td>
<td>1. the interest rate on the financial intermediary participation is set at market basis (i.e. according to the financial intermediary own policy).</td>
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<tr>
<td></td>
<td>2. the overall interest rate, to be charged to the final recipients</td>
</tr>
<tr>
<td><strong>Programme contribution to financial intermediary: amount and rate (product details)</strong></td>
<td>The renovation loan allocation to financial intermediaries and the risk sharing rate shall be determined with the ex-ante assessment justifying the support to the financial instrument (Article 32 of the CPR). This will typically be between an indicative range of minimum EUR [5] million and maximum EUR [30] million.</td>
</tr>
</tbody>
</table>
| **Programme contribution to financial instrument (activities)** | The loan portfolio funded by the renovation loan instrument shall include newly originated loans provided for the ultimate benefit of final recipients. The eligibility criteria for inclusion in the portfolio are determined from the programme, national eligibility rules, and with the financial intermediary with the aim of reaching a large number of final recipients and achieving sufficient portfolio diversification and homogeneity in order to allow a reasonable estimation of the portfolio risk profile. These criteria shall reflect market conditions and practices in the relevant country or region.  

The financial intermediary is required to cooperate with regional or national body responsible for providing additional services in relation to the implementation of the renovation projects, which may include inter alia: consultancy services; verification and evaluation of the project preparation, construction, technical supervision and procurement documents; evaluation of the compliance of renovation projects with EU and national law; the provision of grant support, State aid verification and registration and the provision of technical assistance to renovation projects. |
| **Managing authority's liability** | The managing authority's liability in relation to a financial instrument shall be limited to the amounts of the programme contribution which can be declared as eligible expenditure. Direct liability of the managing authority towards bodies implementing financial instruments or final recipients as well as any other debt or obligation of the financial instrument shall be contractually excluded under the relevant funding agreements.  

The liability represented by the programme contribution shall be capped in quantum and time and the financial intermediary shall be obliged to ensure that the financial instrument is able to meet such liability as long as it remains outstanding.  

If the financial intermediary selected becomes aware that the loan granted to the final recipient becomes non-eligible, the financial intermediary shall include such information in the next report submitted to the managing authority and this non-eligible loan shall be excluded from the portfolio at the date of its non-eligibility.  

However, if:  

1/ the loan granted to a final recipient becomes a non-eligible loan as a
result of any event/circumstance beyond the control of the financial intermediary but after the loan has been included within the portfolio and prior to any loss relating to the loan has been reported to the managing authority; in that case the financial intermediary has two possibilities:

- if the financial intermediary decides to accelerate the payment and close the loan between the date it becomes aware of the non-eligibility of the loan and the next date of the report to be submitted to the managing authority: therefore the loan shall remain in the portfolio and in case it defaults, it shall be covered by the instrument. All reasonable measures shall be taken to recover the unduly perceived programme benefit passed on to the final recipients as referred in the point e) of the lending policy.

- if the financial intermediary decides not to proceed to the acceleration of the loan: therefore the loan shall be excluded of the portfolio as the date he became a non-eligible loan.

2/ the loan granted to a SME becomes a non-eligible loan as a result of any event/circumstance beyond the control of the financial intermediary but after to a loss relating to the loan has been reported to the managing authority; therefore, the loan shall remain within the portfolio and it shall be covered by the instrument. All reasonable measures shall be taken to recover the unduly perceived programme benefit passed on to the final recipients as referred in the point e) of the lending policy.

### Duration

The financial instrument will be a revolving instrument. The lending period of the financial Instrument will be set in order to ensure that first time use of the programme contribution as referred in Article 36 of CPR will be used with loans disbursed to final recipients at the latest by 31-12-2023.

### Lending and risk-sharing at financial intermediary level (alignment of interest)

Alignment of interest between the managing authority and the financial intermediary shall be achieved through:

- Performance fees as provided by Article X of the delegated act of the CPR.
- The financial intermediary should contribute under local market conditions to the financing to at least an indicative [15] % of the total financing commitment (allowing determining the risk sharing rate).
- The losses and recoveries will impact pro-rata the financial intermediary and the managing authority up to their respective participation in the financing scheme and within the limited liabilities.

### Eligible

Public and private bodies established at international, national, regional
| **financial intermediaries** | or local levels in the Member States which are legally authorised to provide renovation loans to persons and enterprises established in the Member States, such as financial institutions, and as appropriate microfinance institutions, or any other institution authorised to provide financial instruments. |
| **Targeted results: Reporting, Monitoring and evaluation** | The indicators should be aligned with the programme financing the financial instrument and the ex-ante assessment. They shall be measured and reported for the Renovation Loan and aligned as a minimum with the regulation requirements. For example:  
  - Number and volume of the loans  
  - Renovated multifamily houses (Number, size)  
  - Renovated multi-apartment buildings (Number, size).  
  - Increase in energy efficiency in houses and buildings (Savings) |
| **Final recipient eligibility** | The final recipients shall be eligible under the relevant programme, and funding agreement.  
Final recipients may be natural or legal persons (including a provider of Services of General Economic Interest e.g. social housing insofar as the eligible expenditure is part of the delivery of the service of general economic interest) or independent professionals (economic activity), as well as administrators or other legal bodies acting on behalf and for the benefit of owners, owning premises (apartment or individual household) implementing energy efficiency or renewable measures that are eligible under the CPR and programme support.  
Eligible expenditure (example list of type of works that can be financed)  
- Preparation and implementation costs of the part of the project relating to the energy efficiency or renewable measures  
- Major repairs or replacement of heating and hot water systems:  
  - Replacement or refitting of the heating substation or the boiler house (individual boilers) as well as hot water preparation systems  
  - Installation of balancing valves for stands  
  - Improvement of heat insulation for pipes  
  - Replacement of pipes and heating devices  
  - Installation of individual heating measurement system and thermostatic valves in apartments  
  - Replacement or refitting of hot water system pipes and installations;  
  - Replacement or refitting of ventilation system;  
- Replacement of windows and entrance doors:  
  - Replacement of windows  
  - Replacement of entrance doors  
- Roof insulation, including construction of a new sloping roof (excluding construction of premises in the attic)  
  - Insulation of façade walls  
  - Insulation of cellar ceiling  
  - Installation of alternative energy sources (sun, wind, etc.) systems  
- Major repairs or replacement of elevators by replacing them by more energy efficient elevators  
- Replacement or repair of the common use engineering systems of the building (sewage system, electric installations, fire prevention systems, etc.)
installations, drinking water pipelines and installations ventilation system).

Regarding the final recipients, the following eligibility criteria shall apply when lending to final recipient/owners with an economic activity (independent professionals):

- shall be a micro (including individual entrepreneurs/self-employed persons), small and medium enterprises as defined in the Commission Recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36).
- shall not be part of the sectors mentioned in Article 1.2 & 1.3 of the General block exemption Regulation (EC 800/2008), or part of the sectors mentioned in Article 3 of the ERDF regulation COM(2011) 614);
- shall not be a “firm in difficulty” as this is defined in Article 1.7 of the General block exemption Regulation (EC 800/2008).

## Characteristics of the product for the final recipients

The product characteristics shall be established in the ex-ante assessment referred in Article 32(2) of CPR.

The renovation loan maturity shall be allocated for an indicative period of up to [20] years.

The average amount of the renovation loans is estimated at the indicative amount of up to [50,000] EUR per individual household premises. Amounts to be fixed in relation with the ex-ante assessment justifying the programme contribution to the financial instrument.

The financial instrument may require from the final recipients [or the administrators of common property acting on behalf of final recipients] an “own funds” contribution of at least [15%] of the renovation project cost.

The renovation loan is composed of:
- The annual fixed interest rate of the Renovation Loan. The interest rate on the financial intermediary participation is set at market basis. The interest rate applicable to the relevant eligible loan included in the portfolio shall be reduced by the proportion of the programme contribution in favour of the final recipients. This rebate should take into account the revolving nature of the instrument during the eligibility period and the "de minimis" ceiling;
- Additional incentives. [15%] of the renovation loan amount may be a capital rebate by the financial instrument, subject to receipt of satisfactory documentary evidence that a minimum energy efficiency class/level of [B] is achieved upon renovation project completion. The amount may be modulated in accordance with the level of energy efficiency that has been reached with the renovation.
- Certain advisory support costs may be included in the financial instrument, in the context of Article 32 (5) of the CPR. Support could be provided through e.g. advanced feasibility studies, business plan preparation; assisting in organising investment decisions; energy audits; preparation of tendering procedures and contractual
arrangements; financial structuring and funding; or any other support necessary to improve the quality of the renovation projects and to accelerate investments (which may not exceed [5%] of the price of construction works]. These advisory support costs may only be eligible in the event that a renovation loan is entered into between the financial intermediary and the final recipients and regardless of the entity that provides these services (e.g. regardless of whether the financial intermediary provides such services or they are obtained from another entity).

| Evaluation of the economic benefit of the programme contribution | The entire benefit of the programme contribution of the instrument shall be entirely quantified and transferred for the final recipients. This principle and the quantification methodology shall be clearly reflected in the funding agreement between the managing authority and the financial intermediaries. |
Annex 5: Annotated table of content of a funding agreement between managing authorities and the financial intermediaries

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
</tr>
<tr>
<td>2</td>
<td>Scope and objective</td>
</tr>
<tr>
<td>3</td>
<td>Final Recipients</td>
</tr>
<tr>
<td>4</td>
<td>Investment, guarantee or lending policy</td>
</tr>
<tr>
<td>5</td>
<td>Target results</td>
</tr>
<tr>
<td>6</td>
<td>Activities and operations</td>
</tr>
<tr>
<td>7</td>
<td>Role and liability of the Financial Intermediary: Risk and Revenue sharing</td>
</tr>
<tr>
<td>8</td>
<td>Management of the Financial Instrument</td>
</tr>
<tr>
<td>9</td>
<td>Programme contribution</td>
</tr>
<tr>
<td>10</td>
<td>Payments</td>
</tr>
<tr>
<td>11</td>
<td>Account management</td>
</tr>
<tr>
<td>12</td>
<td>Administrative costs</td>
</tr>
<tr>
<td>13</td>
<td>Duration and eligibility of expenditure at closure</td>
</tr>
<tr>
<td>14</td>
<td>Re-utilisation of resources attributable to the support of the ESIF</td>
</tr>
<tr>
<td>15</td>
<td>Capitalisation of interest rate subsidies, guarantee fee subsidies and other gains</td>
</tr>
<tr>
<td>16</td>
<td>Governance of the financial instrument</td>
</tr>
<tr>
<td>17</td>
<td>Reporting, Monitoring and Evaluation</td>
</tr>
<tr>
<td>18</td>
<td>Audit</td>
</tr>
<tr>
<td>19</td>
<td>Visibility and transparency</td>
</tr>
<tr>
<td>20</td>
<td>Exclusivity</td>
</tr>
<tr>
<td>21</td>
<td>Settlement of disputes</td>
</tr>
<tr>
<td>22</td>
<td>Confidentiality</td>
</tr>
<tr>
<td>23</td>
<td>Amendment of the agreement and transfer of rights and obligations</td>
</tr>
<tr>
<td>24</td>
<td>Additional provisions in case of the management of a fund of funds</td>
</tr>
<tr>
<td></td>
<td>(a) Investors in the fund of funds</td>
</tr>
<tr>
<td></td>
<td>(b) Fund of funds manager's role, responsibilities and liabilities</td>
</tr>
</tbody>
</table>

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24 In the Funding Agreement depending on the implementing method chosen by the managing authority pursuant the Article 33(4) of CPR, the set of provisions referring to the role of the managing authority also applies, mutatis mutandis to the fund of funds manager. Nevertheless, none of this discharges the managing authority from its obligations regarding the funds.
Recitals

Article 1: Definitions

Article 2 Scope and objective

The description of the financial instrument, including its investment strategy or policy, the type of support provided, the criteria for eligibility for financial intermediaries if applicable as well as additional operational requirements transposing the policy objectives of the instrument. (financial products to be offered, final recipients targeted, and envisaged combination with programme contribution support,…)

The ex-ante assessment justifying the existence and added value of the financial instrument should be annexed to the funding agreement (Article 32 of the CPR)

Article 3 Final recipients

Identification and eligibility of the final recipients (target group) of the financial instrument.

Evaluation and quantification methodology of the expected financial benefit generated by the programme contribution in alignment with the State aid regime applicable.

Article 4 Investment, guarantee or lending policy

Provisions regarding investment, guarantee or lending policy especially regarding portfolio diversification (risk, sector, geographical zones, size, etc…) and existing portfolio of the financial intermediary.

A description of the investment, guarantee or lending policy should be annexed to the Funding Agreement.

The investment, guarantee or lending policy shall exclude financing that does not comply with applicable laws and regulations, including but not exclusively, fiscal legislation, competition legislation, consumer, data protection legislation, legislation on marketing to investors and anti-money laundering.
To this effect, the financial intermediary will apply relevant standards to prevent money laundering and finance of terrorism, such as KYC [Know Your Customer] procedures.

Article 5 Target results
The target results the financial instrument is expected to achieve as contribution to the specific objectives and results of the relevant priority or measure. List of indicators and information to report in accordance with Article 40 of the CPR.

Article 6 Activities and operations
Business plan or equivalent documents for the financial instrument to be implemented, including the expected leverage effect referred to in Article 32(2)(c) of the CPR;
Definition of eligible activities.
The description of the instrument should be annexed to the funding agreement (business and financial plan). It should be aligned with the term sheets of the off-the-shelf instruments.

Article 7 Role and liability of the financial Intermediary: risk and revenue sharing
Identifications and Provisions on the liability of the financial intermediary and of other entities involved in the implementation of the financial instrument;
Explanation of risk valuation and the (un-)symmetric endorsement of the different parties;
Provisions in line with Article X of the delegated act referred to in Article 33(4) of the CPR concerning role, liabilities and responsibility of bodies implementing financial instruments.

Article 8 Management of the financial Instrument
A clear definition of the tasks assigned and the limits thereof, concerning in particular the modification of tasks, waiving of debts, and use of funds reimbursed or unused;
Provisions in line with Article X of the delegated act referred to in Article 34(5) of the CPR concerning management and control of financial Instruments.

Article 9 Programme contribution
Provisions in line with Article X of the implementing act referred to in Article 33(9) of the CPR concerning the modalities of transfer and management of programme contributions.
Where appropriate, provisions on a framework of conditions for the contributions from the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural development and the Future Maritime and Fisheries Fund;
Conditions for a possible withdrawal or partial withdrawal of programme contributions from programmes to financial instruments.

Article 10 Payments
Requirements and procedures for managing the phased contribution provided by the programme in accordance with Article 35 and for the forecast of deal flows.
Provisions in line with Article X of the implementing act referred to in Article 35(3) of CPR concerning submission of additional information for applications for payments.
Rules concerning which supporting documents are required to justify the payments; payments of the Union contribution, including the reimbursement of costs incurred in respect of the implementation.

Conditions under which payments may be suspended or interrupted and how irregularities are handled referring to Article 135 of the CPR.

Article 11 Account management
Details of the accounts, including requirements for fiduciary/separate accounting as set out in Article 33(7) of the CPR;

Provisions explaining how the account of the financial instrument is managed. Including conditions governing the use of bank accounts: counterparty risks, acceptable treasury operations, responsibilities of parties concerned, remedial actions in the event of excessive balances on fiduciary accounts, record keeping and reporting.

Article 12 Administrative costs
Provisions on the remuneration of the financial intermediary, including management fee rates and on the calculation and payment of management costs and fees to the financial intermediary and in accordance with Article X of the delegated act referred to in Article 36 (1d) and 5 of the CPR;

The provision should include the maximum rate applicable and the reference amounts for the calculation. The maximum amount to be considered as eligible expenditure regarding the programme contribution and the maximum overall amount of administrative costs for the financial instrument should be mentioned.

Article 13 Duration and eligibility of expenditure at closure
The date for the entry into force of the agreement
The dates defining the implementing period of the financial Instrument and the eligibility period.

Provisions on the possibility of extension, and termination of the programme contributions from the programmes to the financial instrument, including the conditions for early termination, exit strategies of programme contributions and the winding-up of financial instruments (including the fund of funds where applicable);

The dates by which individual contracts and agreements which implement the funding agreement shall be concluded;

Provisions regarding the eligible expenditure at closure of the programme in accordance with Article 36 of CPR;

Article 14 Re-utilisation of resources attributable to the support of the ESIF (including interest yielded)
Requirements and procedures for managing interest and other gains generated within the meaning of Article 37 of the CPR;

Provisions regarding the re-use of resources attributable to the support of the ESI Funds until the end of the eligibility period in compliance with Article 38 of the CPR;

Provisions regarding the use of resources attributable to the support of the ESI Funds following the end of the eligibility period in compliance with Article 39 of the CPR;
Article 15 Capitalisation of interest rate subsidies, guarantee fee subsidies and other gains

Provisions in line with Article X of the delegated act referred to in Article 36 (4) of the CPR concerning capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies.

Article 16 Governance of the financial instrument

Provisions describing an appropriate governance structure of the financial instrument (Investment Committee role, composition and organisation) to ensure that decisions concerning loans/guarantees/investments, divestments and risk diversification are implemented in accordance with the applicable legal requirements and market standards;

The fund of funds manager and the financial intermediary shall have an appropriate governance structure in accordance with the applicable legal requirements and market standards. The governance structure shall ensure impartiality and independence of the fund of funds manager and/or of the financial intermediary.

Provisions on the investment board of the financial instrument (role, independence, criteria)

Clear procedures need to be established to deal with conflicts of interest. The managing authority shall not be involved in the day-to-day management of the financial instrument (including the fund of funds management). The managing authority may however be represented in a strategic or supervisory committee of the financial instrument or the fund of funds.

Article 17 Reporting, Monitoring and Evaluation

Provisions for monitoring of the implementation of investments and of deal flows including reporting by the financial intermediary to the fund of funds and/or the managing authority to ensure compliance with Article 40 and State aid rules. Provisions in line with Article X of the implementing act referred to in Article 40 (3) of CPR concerning monitoring and the provision of monitoring information.

Definition of the actions, results and impact indicators associated with base line measurements and expected targets. Rules on reporting to the managing authority on how the tasks are performed, reporting on results and irregularities and corrective measures taken;

Conditions and detailed arrangements for performing tasks and responsibilities and organising the controls to be carried out, including evaluation of the programmes.

Article 18 Audit

Provisions on the audit requirements, such as minimum requirements for documentation to be kept at the level of the financial intermediary (and at the level of the fund of funds), and requirements in relation to the maintenance of separate records for the different forms of support in compliance with Article 32(5) and (6) of the CPR (where applicable), including provisions and requirements regarding access to documents by national audit authorities, Commission auditors and the European Court of Auditors in order to ensure a clear audit trail in accordance with Article 34 of the CPR;

Provisions in line with Article X of the delegated act referred to in Article 34 (5) of the CPR concerning management and control of financial Instruments.
Article 19 Visibility and transparency
The financial intermediary shall ensure an appropriate level of visibility of the funding provided by the EU.
Provisions guaranteeing access to information.

Article 20 Exclusivity
Provisions establishing under which conditions the fund of funds manager or the financial intermediary is allowed to start a new investment vehicle (for example except if the new vehicle may affect negatively the existing fund of funds or instrument)

Article 21 Settlement of disputes
Provisions on the settlement of disputes.

Article 22 Confidentiality
Provisions defining what elements of the financial Instrument are covered by confidentiality clauses. Otherwise all other information is considered public.
Confidentiality obligations entered into as part of this agreement shall not prevent proper reporting to the investors, including those providing public funds.

Article 23 Amendment of the agreement and transfer of rights and obligations
Provisions defining the scope and conditions for possible amendment of the agreement.
Provisions forbidding the financial intermediary to transfer any right or obligation without the prior authorisation of the managing authority

Article 24 Additional provisions in case of the management of a fund of funds
(a) Investors in the fund of funds
Provisions organising the mobilisation of additional investments from other investors, while protecting the managing authority from reputational risks. The managing authority is identified as an Investor in the fund of funds. The managing authority investment shall be limited to the duration of the fund of funds.
Investors participating after the first closing of a fund will be subject to equalization fees, to be calculated by the fund of funds manager in accordance with market terms.
Provisions to cater for the possibility of selling the managing authority’s investment prior to the termination of the fund of funds at non-detrimental exit terms, which will be subject to termination of all loans/investments/guarantees under the present scheme, and will include: (a) reimbursement of principal to the fund of funds and (b) plus interests paid to, due to or accrued for the fund of funds.

(b) Fund of funds manager’s role, responsibilities and liabilities
Provisions to ensure liability of the fund of funds manager for any actions, proceedings, costs, charges, expenses, losses, damages or liabilities resulting from gross negligence, fraud, recklessness, bad faith, wilful misconduct or material breach in the discharge of its obligations as a manager, including claw-back on unduly paid management fees.
Provisions on the possibility to remove the fund manager.
Provisions on the selection of the financial intermediaries and on the manager's role to implement a consistent lending/investment policy.

Provisions on how to draw capital from the investors to meet operational needs. Any drawdown shall require sufficient notice to the investors and specify the purpose for which such drawdown is to be used.

Provisions to rebalance between the investors principal and interests paid to the manager.

Annex A: ex-ante assessment justifying the existence of the financial instrument (gap analysis and market failure analysis) and investment strategy (overview, plan of activities and link between strategy and the financial instrument)

Annex B: description of the financial instrument (terms of references based on the term sheet)

Annex C: Monitoring and reporting templates (including actions and results indicators and financial implementation)