FICHE NO 9

FINANCIAL INSTRUMENTS – IMPLEMENTING ACTS

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Regulation	Article
Common Provisions Regulation (CPR)	• 33(3)(a): Implementing act concerning financial instruments complying with the standard terms and conditions laid down by the Commission. • 33(9): Implementing act laying down uniform conditions regarding the modalities of the transfer and management of programme contributions, managed by the entities referred to under Article 33(4). • 36(5): Implementing act laying down the methodology for calculating management costs and fees. Note: The empowerment under Article 35(3) is covered by Fiche 5A and the empowerment under Article 40(3) is covered by Fiche 4B.

This document is provisional, without prejudice to the on-going negotiations in the Trilogues between the European Parliament and the Council (in line with the principle that "nothing is agreed until everything is agreed"). This document is a draft that shall be adjusted following the expert meeting.

It does not prejudge the final nature of the basic act, nor the content of any delegated or implementing act that may be prepared by the Commission

1. EMPOWERMENT

- Article 33(3)(a) of the CPR sets out that the managing authority may provide a financial contribution to

"financial instruments complying with the standard terms and conditions laid down by the Commission, by means of implementing acts in accordance with the examination procedure referred to in Article 143(3)"

- Article 33(9) of the CPR sets out that:

"The Commission shall adopt implementing acts in accordance with the examination procedure laid down in Article 143(3) laying down uniform conditions regarding the modalities of the transfer and management of programme contributions, managed by the entities referred to under Article 33(4)."

- Article 36(5) of the CPR sets out that:

"The Commission shall adopt implementing acts in accordance with the examination procedure laid down in Article 143(3) laying down the methodology for calculating management costs and fees."

This document is based on the most recent Presidency compromise text, and is a provisional text, without prejudice to the on-going negotiations (in line with the principle that "nothing is agreed until everything is agreed").

2. MAIN OBJECTIVES AND SCOPE OF THE IMPLEMENTING ACT

The implementing act is to provide uniform conditions for the implementation of standardised financial instruments under Article 33(3)(a), the transfer and management of programmes contributions and the calculation of management costs and fees. The implementing act reflects the principles agreed by the Coordination Committee of the Funds (COCOF) for the programming period 2007-2013 and established in the most recent COCOF Guidance Note on Financial Engineering Instruments (COCOF 10-0014-04) (hereinafter referred to as the 'COCOF Guidance Note'). It also takes into consideration a set of recommendations made by the European Court of Auditors[1], as well as the principles contained in the Financial Regulation and its implementing rules.

3. MAIN ELEMENTS OF THE IMPLEMENTING ACT AND KEY CHANGES COMPARED TO THE PERIOD 2007-2013

In line with the empowerments contained in the CPR, the implementing act will include the following elements:

3.1 Financial instruments complying with the standard terms and conditions laid down by the Commission (empowerment under Art 33(3)(a) CPR)

[1] European Court of Auditors, Opinion 7/2011.

To facilitate the timely launch and sound functioning of financial instruments at national, regional or cross-border level, the CPR opens up the possibility to make programme contributions to financial instruments complying with standardised terms and conditions ("off-the-shelf"). In accordance with Article 33(3)(a) of the CPR, the Commission will propose standard terms and conditions which could be used by Member States and managing authorities for the set-up, implementation and governance of these financial instruments[2]. While applicable EU rules, in particular as regards the use of ESI Funds and public procurement, will serve as a foundation for these standard terms and conditions, they are also intended to reflect future State aid rules so as to catalyse the roll-out of these instruments.

The objectives of the "off the shelf" instruments are to provide an additional implementation option to all MAs in order to

- Facilitate the design and management of the most commonly used financial instruments, in particular on specific sectors where financial instruments are expected to play an important role in delivering cohesion policy and EU2020 objectives.

- Provide help to the MA in order to deliver faster the financial means to the final recipients through a safer and better managed process (early start). It would be based on the implementation experiences and know-how capitalised during the current programming period.

- Ensure the highest possible degree of alignment with the terms and conditions offered under EU level instruments.

The key principles which should guide the work on providing valuable "off the shelf" instruments are the following:

- The "off the shelf" instruments should cater for the needs of various types of regions and MAs benefiting from the ESI Funds.

- The terms and conditions applicable for the chosen instruments should be simple and clear, based on reliable lessons learned from the past implementation experience;

- To be attractive to the regions and MAs, the "off the shelf" instruments should in a comprehensive and reliable way offer coverage in particular concerning the rationale of the instrument, technical requirements, compliance with the state aid regimes and procurement rules;

- Adaptable presentation of the different terms and provisions in order to fit into the reality of each OP and to answer to new demands of the MAs in the future.

To the extent these principles point in different directions, an appropriate balance needs to be struck (for instance between the need for simplicity and the aim to cover the multiple situations of the different regions).

In line with the empowerment under Article 33(3)(a), <u>the standard terms and conditions for these standardised instruments will be laid down in the implementing act</u>.

[2] At present, the Commission is analysing the possibilities for proposing also standard terms and conditions for financial instruments set up under the EAFRD.

The Commission proposes standard terms and conditions for five "off-the-shelf instruments". Their thematic scope and specific objectives instruments are outlined in Annex 1.

3.2 Modalities of the transfer and management of programme contributions, managed by the entities referred to under Article 33(4) (empowerment under Article 33(9) CPR)

The CPR aims at increased flexibility in mobilising support to financial instruments from a variety of sources. Contributions to financial instruments can come from several priority axes, measures or operational programmes and a wider range of options for national contributions is foreseen. In this context, and building on the COCOF Guidance Note, it is for example necessary to clarify under which circumstances non-ESI Funds contributions to financial instruments made at the level of final recipients could be taken into consideration as national co-financing resources under ERDF, ESF and CF.

In line with the empowerment under Article 33(9), the following elements will be covered:

- Financial instruments can receive support from more than one programme supported by the ESI Funds or from more than one priority axis or measure of the same programme. Where this is the case,
  - o the bodies implementing the financial instrument (including funds of funds) need to keep separate accounts or maintain an adequate accounting code for the contribution from each programme and from each priority axis or measure, for reporting and audit purposes; and
  - o a single managing authority and a single audit authority need to be appointed among the participating managing authorities in order to ensure compliance of the operation with applicable rules.
- National public or private contributions can be made at the level of final recipients (unless excluded in fund-specific rules). However, these contributions can only be considered eligible if they comply with the following conditions:
  - o there is documentary evidence of the legal agreement between the private or public entities providing national contributions and the body implementing the financial instrument on their contribution to the implementation of the co-financed support;
  - o the body implementing the financial instrument (including funds of funds) need to retain overall responsibility for the operation including subsequent monitoring of the contributions from the programme according to the funding agreement;
  - o the national contribution made by private or public entities is supported by evidence that the transfer of funds has effectively taken place (including accounting documents of equivalent probative value where applicable);
  - o the national contribution made by such private or public entities is reported formally to the body implementing the financial instrument (including funds of funds, which is responsible for verifying the reality and eligibility of the national contribution before declaring it to the managing authority or certifying authority; and

  - o the audit trail is maintained down to the level of the payment of the national contribution to or by the final recipient.

- Member States and managing authorities could only withdraw contributions from operational programmes to financial instruments if such contributions were not already reimbursed by the Commission on the basis of a payment request or if the declaration of expenditure is subsequently modified to withdraw or replace the expenditure in question.

3.3 Methodology for calculating management costs and fees (empowerment under Article 36(5) CPR)

Bodies implementing financial instruments may charge to the ESI Funds their costs for managing contributions received from operational programmes to support final recipients. While the COCOF Guidance Note provided further explanations on the relevant principles and ceilings applicable to programme contributions, both Member States and the European Court of Auditors stressed the need for more effective rules that help both (i) to increase the efficiency and effectiveness of investments undertaken by the instruments and (ii) to avoid undesirable practice (e.g. double-charging of costs to both the final recipients and the ESI Funds). To this end, the Commission proposes a performance-driven methodology for the calculation of management costs and fees.

In line with the empowerment under Article 36(5), <u>the following elements will be covered:</u>

- A performance-based calculation methodology for management costs and fees should be adopted, ensuring alignment of interest between the managing authority and bodies implementing financial instruments. This methodology should take into account the performance of the financial instrument, the quality of support provided to final recipients, as well as their contribution to the objectives and outputs attributable to the programme contributions. The methodology should be included in the relevant funding agreement and the monitoring committee is to be informed in advance of the proposed methodology. Every six months, the monitoring committee should receive regular reports on the management costs and fees effectively paid.

- Detailed rules for the calculation of management costs and fees pursuant to Article 36(1)(d) of the CPR, namely the establishment of ceilings and breakdown of management costs and fees into the following components:

- For bodies implementing funds of funds

  (a) Base remuneration for the management of contributions paid to the fund of funds, calculated *pro-rata temporis* from the moment of effective payment to the funds of funds until the end of the eligibility period, the repayment to the managing authority or the date of winding up, whichever is earlier;

  (b) Plus performance-based remuneration relating to programme contributions disbursed by the fund of funds to bodies implementing financial instruments, calculated *pro-rata temporis* from the moment of effective disbursement by the fund of funds until the end of the eligibility period, the repayment to the managing authority or the date of winding up, whichever is earlier.

- For bodies implementing financial instruments

(a) Base remuneration for the management of contributions, for equity: committed by the managing authority, or by the fund of funds where applicable, under the relevant funding agreement to bodies implementing the financial instrument, calculated *pro-rata temporis* from the moment of signature of the relevant funding agreement until the end of the eligibility period, the repayment to the managing authority or the date of winding up, whichever is earlier; or in all other cases, paid to bodies implementing the financial instrument, calculated *pro-rata temporis* from the moment of effective payment to the financial instrument until the end of the eligibility period, the repayment to the managing authority or the date of winding up, whichever is earlier;

(b) Plus performance-based remuneration relating to programme contributions paid (in case of guarantees committed) to final recipients and where appropriate from resources re-invested which are attributable to programme contributions, which are still to be paid back to the financial instrument, calculated *pro-rata temporis* from the moment of payment to the final recipient until the repayment of the investment, the end of the recovery procedure in the case of write-offs or the end of the eligibility period, whichever is earlier.

(c) Given the differing complexity and management or follow-up requirements for the various financial products, the Commission will propose different ceilings for the management of specific types of investments (i.e. equity, loans, micro-credits or loans to natural persons, guarantees and complementary grant elements).

- The ceilings for management costs and fees could be exceeded when the body implementing the financial instrument, or the fund of funds where applicable, were selected through a competitive tender and higher percentage was agreed as a result.

3.4 **Rules for the capitalisation of management costs and fees for equity-based instruments and micro-credit** (empowerment under Article 36(5) CPR)

For certain types of investments, Article 36(5) of the proposed regulatory framework foresees the possibility to include as eligible expenditure also management costs and fees for activities carried out during a limited period after the end of the eligibility period.

In line with the empowerment under Article 36(5), the following elements will be covered:

- Capitalised management costs and fees are to be calculated at the end of the eligibility period for the purpose of the payment of the final balance as the total of discounted payment obligations for the purposes and maximum periods laid down in Article 36(2) of the CPR. Such calculation should be in conformity with the provisions of the relevant funding agreements and total capitalised amounts will be subject to separate ceilings for equity and micro-credit.

- They can be charged for contributions paid to final recipients during the eligibility period in the meaning of Article 36(1)(a) of the CPR and still to be paid back to the financial instrument, calculated *pro-rata temporis* from the end of the eligibility period until the repayment of the investment, the end of the recovery procedure in the case of defaults or until 7 years after the eligibility period whichever is earlier.

- Any residual resources left in the escrow account after the maximum period referred to under Article 36(2) of the CPR, or as a result of unexpected winding-up of the financial instrument before the end of this maximum period, shall be used in accordance with the legacy provisions referred to under Article 39 of the CPR.

ANNEX 1

STANDARDISED "OFF-THE-SHELF" INSTRUMENTS UNDER ART 33(3)(a) CPR

Scope of proposed instruments

It is proposed, during a first phase, to focus the "off the shelf" instruments on those models that represent the majority of financial instruments implemented through current support and those that have proved successful in terms of the implementing methods pursued by MAs and their stakeholders.

In a second phase, and in function of the different partnership agreements with Member States, the different OPs and results of ex-ante assessments, additional off-the-shelf instruments may be developed by the Commission during the programming period 2014-2020. The envisaged Technical Assistance Platform[3] may contribute to assess respective demand and to support the update or the structuring of existing or additional "off-the-shelf" models.

During the current programming period, reporting data suggests that mainly five different types of instruments in three different sectors should be offered to be implemented by Member States. These five instruments will serve as the basis for the following "off-the-shelf" models:

The five instruments are:

1. Loan fund for SME's based on a portfolio risk sharing loan model **(RS Loan)**
2. Guarantee fund for SMEs (partial first loss portfolio) **(Capped guarantee)**
3. Venture Capital fund for SMEs and starter companies based on a co-investment model **(Co-investments Facility)**
4. Loan fund for energy efficiency or renewable energies in the building sector **(Renovation Loan)**
5. Loan fund for sustainable Urban Development **(UD Fund)**

Approach and structure proposed for the "Off-the-Shelf Instruments"

It is proposed to structure the "off the shelf instruments" on the basis of the following items:

a. The requirements of existing procurement rules to facilitate the selection of bodies implementing financial instruments. It would include general terms and conditions from the CPR, the most relevant technical requirements of the EU centrally managed instruments (equity and debt instruments) and some relevant elements from previous experiences, in particular for the five types of instruments here above.

b. The technical and financial parameters of off-the-shelf instruments should be fully compatible with future State Aid rules, thus allowing for a swift rollout under existing

[3] The Commission proposes the set-up of a Technical Assistance Platform for financial instruments in cohesion policy 2014-2020 (TAP). This framework should provide advisory and capacity enhancement services to Member States, managing authorities and relevant stakeholders for all stages of delivering financial instruments.

frameworks. It would take into account the specific situation of the five instruments mentioned here below and the on-going revision of the state aid guidelines.

c. Term sheets with standardised technical and legal requirements for each of the five mentioned types of instruments. These term sheets will cover most of the EU provisions foreseen in the annex X of the CPR (presidency compromise of June 2012) to establish a funding agreement.

d. The term sheets will present the following items: Aim of the instrument, State aid implication, Lending/ guarantee/ investment policy, Fund contribution to the financial intermediary product details, Operational programme contribution to financial instrument (activities), Managing authority's liability, Duration, Alignment of interest, Eligible financial intermediaries, Targeted results (reporting, monitoring and evaluation), Final Recipients eligibility, Characteristics of the product for the final recipients, Evaluation of the economic benefit.

Summary description of the five "off-the-shelf" instruments proposed

1. Loan for SME's based on a portfolio risk sharing loan model (RS Loan)

Risk-Sharing Fund is a useful financial instrument for supporting SME growth in difficult funding environment. This form of financing is a particularly effective way of supporting SMEs in a context of limited availability of funding (credit crunch) or relatively little risk appetite of the financial intermediaries for certain sectors or type of undertakings. The diagnose determining the need to establish a risk-sharing loan fund should be determined by an ex-ante assessment following article 32.2 of the CPR.
The aim of the instrument is to:

1. combine resources from the MA and the financial intermediary, 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.

2. Guarantee for SMEs (partial first loss portfolio) (Capped guarantee)

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

The aim of the instrument is to provide better access to finance to targeted SMEs, typically addressing concrete and well identified market gaps and leveraging ESI Funds. 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 risk margin in the interest of the loans and/or as a reduction of the collateral but always with a full operational programme contribution passed on to the final recipients).

3. Venture Capital fund for SMEs and starter companies based on a co-investment model (Co-investments Facility)

Co-investment instruments are useful financial instruments 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 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.

The aim of the instrument is to:

1. Invest in SMEs at seed, start-up and expansion stage through co-investment agreements (partnership approach) with co-investors such as venture capital and private equity funds or other market participants making investments in such final recipients.
2. Provide more capital available to increase investment volumes.

4. Loan fund for energy efficiency or renewable energies in the building sector (Renovation Loan)

The instrument is a housing energy efficiency loan product that is primarily aimed at 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 technical assistance support and funding to prepare and implement 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.

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 for energy efficiency measures that are eligible for ESIF support.

The managing authority will provide directly funds from the operational programme to the financial instrument with the aim to provide loans to final recipients under a risk sharing arrangement with the financial intermediary.

5. Loan for sustainable Urban Development (UD Fund)

The Urban Development Fund is a useful financial instrument to give special attention to the need of urban regeneration and urban investments, and is based on the scarcity of investment funds to finance integrated urban renewal and regeneration projects in pursuit of more sustainable urban communities. This form of financing is a particularly effective way of supporting urban development actors in a context of limited availability of funding or relatively little risk appetite of the financial intermediaries for certain type of projects.

The aim of the instrument is to provide access to finance for urban projects by providing financial intermediary with credit risk sharing (loans) allowing providing urban development actors with more funds at lower interest rate.

Urban projects are investment initiatives part of an investment strategy, including the rehabilitation potential of deprived urban areas, basic infrastructure works, as well as on water and waste management, energy networks and energy efficiency, etc. being part of an Integrated Plan for Sustainable Urban Development.