



Making financial instruments work for cities

CSI Europe

Regulatory Framework Report



Connecting cities
Building successes



Report regulatory framework

1 Introduction and reading guide

The CSI Europe network of cities has been established under the URBACT programme to consider how financial instruments can help cities to deliver integrated sustainable urban development. One of the key themes for this network is the regulatory framework for the establishment and operation of Financial Instruments (FI's). In the partner meetings on June 11th and 12th 2013 a number of positive features of the new regulatory framework were identified, including the widening of the scope of FI's to all strategic themes and the inclusion of FI specific regulations in the CSF Regulations. At the same time some specific focal points were mentioned that still need further consideration by the European Commission (EC).

This report aims to highlight the main differences in European regulation for the use of ESIF resources in Financial Instruments, comparing the new 2014-2020 programming period to the 2007-2013 programming period. An overview of the consulted regulations, guidelines and other frameworks is given in Appendix 1.

The following topics will be elaborated upon, following the lines of the overview given in the work document¹ issued by the EC:

- Ex ante assessment (Chapter 3);
- 'Off the shelf' instruments (Chapter 4);
- Appointment fundmanager (Chapter 5);
- Remuneration fundmanager (Chapter 6);
- Request for payments (Chapter 7);
- Reporting (Chapter 8);
- Retention requirements (Chapter 9).

The chapters 3-9 all end by giving some concluding observations and – if possible – some recommendations.

¹ 'Financial instruments in ESIF, A short reference guide for managing Authorities' (EC, 25/04/2014)

2 Reference Guide

In April 2014 the EC published the work document 'Financial Instruments in ESIF: A short reference guide for managing authorities' (shortly named the 'Reference Guide'), which provides an overview of the most important regulations concerning Financial Instruments in the European Union (EU). The work document contains a table which summarizes the main modifications in regulation between the 2007-2013 and the 2014-2020 programming period, shown in figure 1.

	2007-2013	2014-2020
Scope	Support for enterprises, urban development, energy efficiency and renewable energies in building sector	Support for all thematic objectives covered under a programme
Set-up	Voluntary gap analysis for enterprises and at the level of Holding fund	Compulsory ex-ante assessment
Implementation options	Financial instruments at national or regional level – tailor made only	Financial instruments at national, regional level, transnational or cross-border level: Tailor-made OR off-the-shelf OR MA loans/guarantees Contribution to EU level instruments
Payments	Possibility to declare to the Commission 100% of the amount paid to fund – not linked to disbursements to final recipients	Phased payments linked to disbursements to final recipients National co-financing which is expected to be paid can be included in the request for the interim payment
Management costs and fees, interest, resources, returned, legacy	Legal basis set out in successive amendments of the regulations and recommendations/interpretations set out in three COCOF notes	Full provisions set out from outset in basic, delegated and implementing acts
Reporting	Compulsory reporting only from 2011 onwards, on a limited range of indicators	Compulsory reporting from the outset, on a range of indicators linked to the financial regulation.

Figure 1: Table summarising the main differences in regulation on financial instruments between the 2007-2013 and the 2014-2020 programming period

In the following chapters some of the differences highlighted in this table will be elaborated upon, from a practical point of view. A more detailed overview of these modifications is included in Appendix 2.

3 Ex ante assessment

Background

The main purpose of the ex ante assessment is to demonstrate both the financial and substantive use and the necessity of financial instruments. During the 2007-2013 programming period the EC only formulated few requirements to the template and the exact content of ex ante assessments in relation to financial instruments. A 'gap evaluation' as used in the case of for example the JESSICA and JEREMIE initiatives sufficed. With the start of the new 2014-2020 programming period however, the requirements for these ex ante assessments have been sharply adjusted. The new standards are described in Article 37.2 of the Common Provisions Regulations 2014-2020 (CPR) and are included in Appendix 3. A detailed explanation of these standards can subsequently be found in Appendix 4.

Implementation aspects

All elements named in Article 27.2 (a-g) of the CPR need to be included in the ex ante evaluation. A phased assessment is allowed, but it needs to be concluded before a decision to actually grant resources to a financial instrument can be made. For the time being, together with the European Investment Bank (EIB) the EC has developed a methodology which serves as a provisional basis for the implementation of the analysis. This methodology is described in the 'Ex-ante assessment methodology for financial instruments in the 2014-2020 programming period', which comprises of five elements. Volume 1 (General methodology covering all thematic objectives) and Volume 2 (Integral approaches to territorial development, including FI's for urban development) together set the requirements for the ex ante assessments for urban development funds.

The EC recommends to split the assessment into two 'building blocks'. Block 1 describes the 'Market assessment' and covers elements a-d of Article 37.2 of the CPR. Block 2 describes the 'Delivery and management' and covers elements e-g. Figure 2 shows the mutually related elements from both Block 1 and 2.

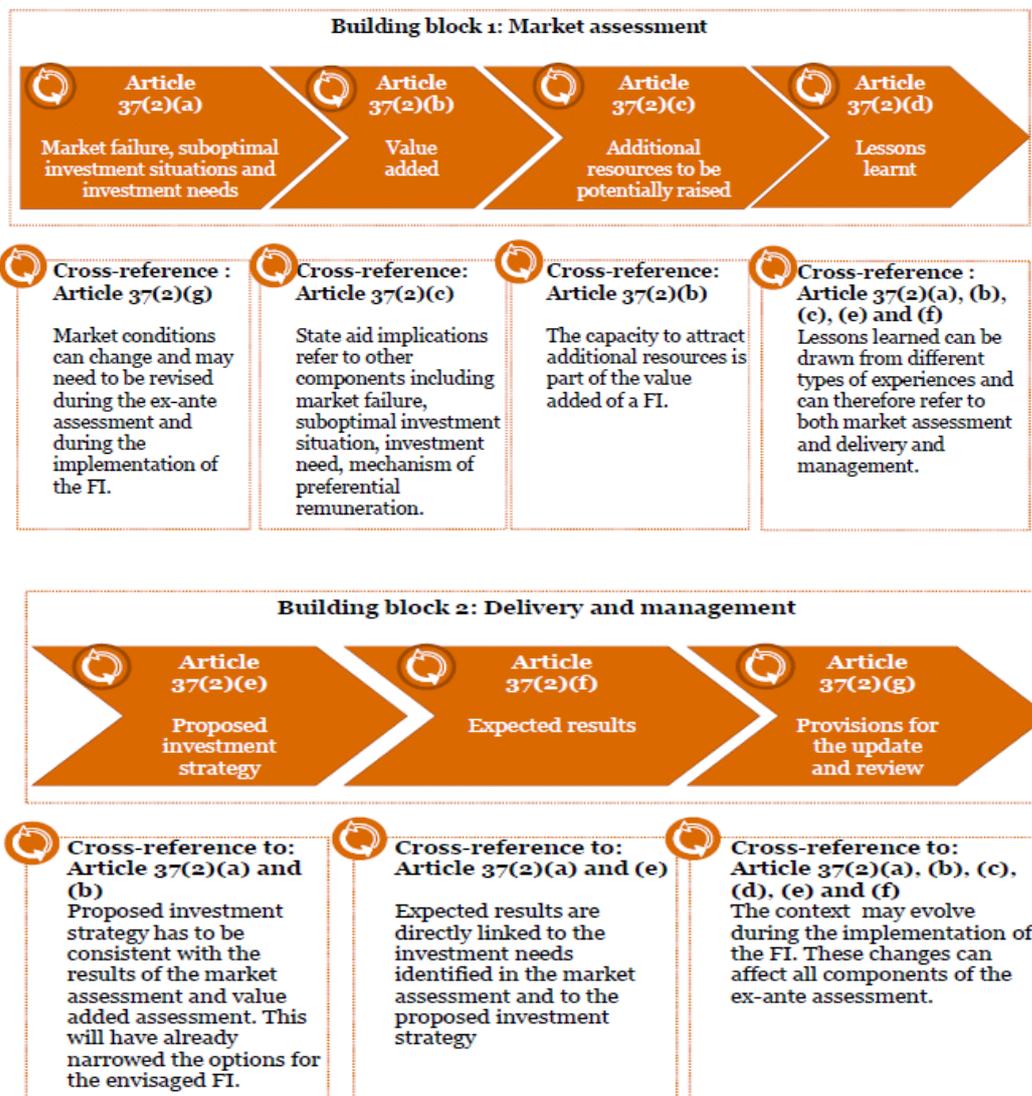


Figure 2. Building blocks ex ante assessment and main cross references among the elements

The ex-ante assessment can be funded by the programme's technical assistance from the 2007-2013 or 2014-2020 period. The ex-ante assessment must be submitted to the programme monitoring committee for information and its summary findings and conclusions must be published within three months of their date of finalisation on the website of the Management Authority (MA).

Moreover, it is not compulsory to use the ex ante assessment methodology from the EC and EIB. According to the *Reference Guide* 'any high quality methodology which provides the elements mentioned in the regulation' suffices. Consequently, it is up the MA itself to select the methodology that will be used and to determine whether an already completed ex ante assessment still sufficiently mirrors the current market conditions. This topic is elaborated upon in Chapter 9 of this report.

Conclusions and recommendations

The requirements for ex ante assessments set in the new 2014-2020 programming period have been sharply adjusted in comparison to the previous programming period. The new requirements state that both the financial and substantive use and the necessity of financial instruments have to be clearly demonstrated in advance. For this purpose the EC developed a (rather extensive and in terms of implementation expensive) ex ante methodology. The use of this methodology however is not obligatory.

This factually leaves MA's with three options to fulfil the requirements:

- The use of recently already used and geographically and thematically focused ex ante assessments, which according to the MA are able – alone or in combination with other already completed assessments – to meet the requirements set in Article 37.2 of the CPR;
- The use of an assessment with a broader scope (for example at the national level), which makes it possible to share costs;
- The use of a completely new, geographically and thematically focused ex ante assessment, whether on the basis of the EC/EIB methodology or not.

4 'Off the shelf' instruments

Background

During the 2007-2013 programming period no standardized funding instruments were available, as the JESSICA and JEREMIE initiatives concerned pilots and therefore only provided guidelines to set up funding instruments. Standardisation – especially in the case of a notification-free state aid approach – was not the case. With the new 2014-2020 programming period the EC presents five standardised 'off the shelf' financial instruments with a minimum set of technical and juridical requirements. A regional adjustment of these 'off the shelf' financial instruments is possible, as long as the specific regional conditions do not devalue the minimal requirements.

Moreover, besides these small regional adjustments tailor made solutions will remain possible. Both the development of new and the use of existing financial instruments is allowed, as long as the ex ante assessments justifies the chosen methodology.

Implementation aspects

Currently the EC is developing five 'off the shelf' financial instruments, according to Article 38.3 of the CPR. These are:

- Loan fund for SME's (RS loan);
- Guarantee fund for SME's (Capped guarantee);
- Equity investment fund for SME's and starter companies (Co-investment facility);
- Loan fund for energy efficiency or renewable energies in the building sector (Renovation loan);
- Loan fund for sustainable Urban Development (UD fund).

The actual implementation of these formats is scheduled for the second/third quarter of 2014. Depending on the demand more 'off the shelf' products can be developed in the future. Information on the UD fund is currently not yet available. Some specific information on the 'off the shelf' *Renovation loan* instrument² is included in Appendix 5.

Conclusions and recommendations

The ex ante assessment in Chapter 3 also plays an important role in the argumentation behind the decision to either use one of the five standardised funding instruments or to use a tailor made solution (for example to connect to an existing funding instrument). The standardised *UD fund* instrument is not yet available.

Moreover, choosing a tailor made solution focused on the (re)development of an area generally implies that a separate state aid notification procedure has to be followed, as the possibilities of exemption are limited due to the (new) General block exemption Regulation (GBER). The new *UD fund* instrument is expected to provide a better solution for this.

5 Appointment fundmanager

Background

During the 2014-2020 programming period, implementation tasks can in fact be assigned to the same bodies as in the 2007-2013 period due to Article 38.4 of the CPR. A new element is the fact that the MA can execute implementation tasks for financing instruments themselves, which – besides loans – also concern *guarantees*. A second new element is the more detailed explication of the conditions under which implementation tasks can also be assigned to (international) financial institutes, without a preceding public tender procedure. As stated in the CPR, a financial institute located in a Member State is namely obligated to pursue public benefit under supervision of the government. With this modification the current jurisdiction is translated into the regulation text.

Implementation aspects

An important facet of implementation is the assignment of implementation tasks to financial institutes. The rules regarding this specific assignment can be found in a draft EC regulation dating from September 2013³.

'According to the ECJ case-law, a public authority is not obliged to launch a public procurement procedure in cases 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,

² Source: (Draft) Standard terms and conditions for financial instruments pursuant tot Article 33(3)(a) of the CPR, 16/07/2013

³ DRAFT Standard terms and conditions for financial instruments pursuant to Article 33(3)(a) of the CPR (Implementing Act Article X), version 16/09/2013

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 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)'

The qualitative requirements set for the funding manager in the 2014-2020 programming period have not seen any significant changes in comparison to the previous period. These requirements can be found in Article 7 of the *Delegated Regulation C (2014) 1207 final*.

Conclusions and recommendations

During the 2014-2020 programming period the conditions under which implementation tasks can also be assigned to (international) financial institutes without a preceding public tender procedure are further explicated. Though strict conditions apply to this assignment (see Chapter 6), the explication has clarified the situation greatly.

6 Remuneration fundmanager

Background

Regarding the management fees and costs some important modifications can be seen in the new programming period. For example, during the 2007-2013 programming period the average yearly management costs of JESSICA initiatives were not allowed to exceed certain threshold values. In short the following was stated in the EC 1083/2006 Article 43.4:

- 2 % of the capital contributed from the operational programme to holding funds, or of the capital contributed from the operational programme or holding fund to the guarantee funds;
- 3 % of the capital contributed from the operational programme or the holding fund to the financial engineering instrument in all other cases, with the exception of microcredit instruments directed at micro-enterprises;
- 4 % of the capital contributed from the operational programme or the holding fund to micro-credit instruments directed at micro-enterprises.

These percentages form the guiding principle, unless a higher percentage is necessary on the basis of a suitable public procurement procedure. From a perspective of free market processes the management fee needs to consist of a basic component in combination with a performance related component. The latter can for example imply a fee based on the size of the assigned resources *and* a fee based on the size of the revolving resources.

This approach forms the basis of the 2014-2020 structural funds period, although the calculation systematics are now more differentiated and explicated and the threshold values have been modified.

Implementation aspects

The (calculation method of) management costs and fees of the fundmanager are defined in Article 13 of the *Delegated Regulation C (2014) 1207 final*, as an outcome of Article 42 of the CPR.

Performance based criteria

The managing authority shall calculate management costs and fees which can be declared as eligible on the basis of the four performance based criteria:

- The disbursement of contributions provided by ESI Funds programme;
- The resources paid back from investments or from the release of resources committed for guarantee contracts;
- The quality of measures accompanying the investment before and after the investment decision to maximise its impact;
- The contribution of the financial instrument to the objectives and outputs of the programme.

The latter two elements are new relative to the previous programming period.

Thresholds for management costs and fees regarding Holding funds

For a body that implements a fund of funds, management costs and fees which can be declared as eligible expenditure shall not exceed the sum of:

- 3% for the first 12 months after the signature of the funding agreement;
- 1% for the next 12 months after the signature of the funding agreement;
- 0,5% per annum, of the programme contributions paid to the fund of funds, calculated from the date of effective payment to the fund of funds until the end of the eligibility period, repayment to the managing authority or the date of winding up, whichever is earlier;
- 0,5% per annum of programme contributions paid by the fund of funds to financial intermediaries, calculated from the moment of effective payment by the fund of funds until repayment to the fund of funds, the end of the eligibility period or the date of winding up, whichever is earlier.

Thresholds for management costs and fees regarding (urban) development funds

Management costs and fees which can be declared as eligible expenditure by bodies implementing financial instruments providing equity, loans, guarantees, as well as micro-credits, including when combined with grants, interest rate subsidies or guarantee fee subsidies shall not exceed certain thresholds. These thresholds relate to both fixed and performance-based remunerations. A complete overview of these threshold values – which vary with each type of instrument – can be found in Article 13 of the *Delegated Regulation C(2014) 1207 final*. Below an example is given of threshold values for institutes that provide **loans**.

For a financial instrument providing loans the *base remuneration* shall not exceed 0,5% per annum of programme contributions paid to the financial instrument, calculated from the date of effective payment to the financial instrument until the end of the eligibility period, the repayment to the managing authority, or to the fund of funds, or the date of winding up, whichever is earlier.

The *performance based remuneration* for a financial instrument providing loans shall not exceed 1% per annum of the programme contributions paid to final recipients in the form of loans, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated from the date of payment to the final recipient until repayment of the investment, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;

Maximum total amount for management costs and fees

The total amount for management costs and fees also has a maximum. For a Holding fund the maximum is 7% of the total amount of programme fees paid to the Holding fund. For a financial instrument which provides loans the maximum is 8% of the total amount of programme fees paid to the financial instrument. Different types of instruments here also imply different threshold values.

Conclusions and recommendations

Regarding the payment of the manager of a development fund the calculation systematics from the 2007-2013 programming period (basic fee, performance-based fee, thresholds) basically remain the same. The calculation systematics however are more differentiated and further explicated, while the threshold values have also been significantly modified.

7 Request for payments

Background

The CPR 2007-2013 stated no specific requirements for the phasing and amount of the programme contributions to a financial intermediary, except for the fact that these elements needed to be arranged in the Funding Agreement (Article 33.4 1083/2006). A complete programme contribution to the financial intermediary – without expenditures to final beneficiaries – therefore was one of the possibilities. The CPR states that a development fund can be supplemented in a few phases.

Implementation aspects

Due to Article 41 of the CPR the programme contributions to a financial instrument per application cannot be higher than 25% of the total amount of the programme contributions allocated for the financial instrument.

The first advance amounts to 25% of the total committed financing to a financial instrument. The second advance of 25% can only be paid when at least 60% of the previous contribution has been spent to the final beneficiaries, the third (and following) advance is paid when 85% of the received resources has been spent.

Conclusions and recommendations

During the programming period of 2007-2013 a complete programme contribution to the financial intermediary – without expenditures to final beneficiaries – was one of the possibilities. This will no longer be possible in the 2014-2020 programming period. Only (limited) payments on a call-off basis are now possible. Arranging the cashflow systematics of development funds according to this principle is recommended.

8 Reporting

Background

In the 2014-2020 programming periode an annex to the annual implementation report about the implementation of financial instruments is required just as was the case in the 2007 – 2013 programming period. There's more emphasis on performance and effectiveness of the financial instruments to which funding is allocated in the new programming period. The complete set of requirements the annex has to meet can be found in article 46 paragraph 2 of the CPR. The most notable changes are the addition of the elements 'performance' (article 46 paragraph 2 section f) and 'leverage' (article 46 paragraph 2 section h) of the financial instrument involved.

Implementation aspects

With regard to the *performance* of the financial instrument the report has to describe the progress made compared to the targets set, of the body implementing the fund, but also the progress in its set-up and in the selection of the bodies implementing the financial instrument. With regard to *leverage* the report has to describe the progress in achieving the expected leverage effect of the investments made by the financial instruments as well as the value of investments and participations.

It is important to anticipate this at the set-up and implementation of the ex ante assessment, by setting clear and feasible targets and at the same determine how the achievements can be monitored.

Also notable is the fact that reporting about the leverage effect and the contribution of the financial instrument to the achievement of the indicators of the priority/measure concerned is restricted to the annual implementation reports submitted in 2017 and 2019 as well as in the final implementation report.

Financial instruments form part of the normal management and control provisions, as described in the CPR. The fundamental idea of which is that controls at the level of the final recipient of funding will only be carried out if necessary documents are not available at the level of the managing authority or body implementing the financial instrument.

Conclusions and recommendations

The programming period 2014-2020 contains detailed provisions regarding the accounting and reporting about financial instruments and auditing these. It is important to arrange these matters well, beforehand and to anticipate this by setting clear and feasible targets, for example in the ex ante assessment.

9 Retention requirement

Background

For the programming period 2007-2013 article 43 of regulation 1083/2006 states that ERDF means which (co-)finance a financial instrument upon closure of the fund have to be assigned in accordance with the Operational Programme. The retention requirement of the fund is at least five years after the closure of the ERDF programming period (eligible period). In the programming period 2014-2020 the retention requirement has been enhanced, both in terms of duration as well as specific requirements.

Implementation aspects

According to article 45 of the CPR the inclusion of ERDF means into financial instruments brings along a retention requirement just as the previous period. However the CPR provisions determine that the activities of the fund have to be carried out in line with the objectives of the fund for the duration of at least eight years after closure of the programming period. This can be within the financial instrument concerned or –in case the means are no longer part of the financial instrument- within other financial instruments. In this regard it is essential that an interim assessment of the market circumstances proves the necessity of such investments. See also chapter 3.

Conclusions and recommendations

The retention requirement for financial instruments has been enhanced, both in terms of duration as well as in terms of specific requirements. Clearly, this context also illustrates the importance of the ex ante assessment and the right choice of theme, set-up and organization of a fund.

Appendix 1. Overview consulted regulations, guidelines and other frameworks

- Regulation (EU) No 1083/2006
- Regulation (EU) No 1303/2013
- Delegated Regulation C(2014) 1207 final
- DRAFT Standard terms and conditions for financial instruments pursuant to Article 33(3)(a) of the CPR (Implementing Act Article X), version 16/09/2013
- 'Financial instruments in ESIF, A short reference guide for managing Authorities', (EC, 25/04/2014)
- Ex-ante assessment methodology for financial instruments in the 2014 - 2020 programming period. Volume I and III (EC/EIB, march 2014)
- Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 (COCOF 10-0014-04)

Appendix 2: Comparison “old” versus “new” regulations regarding Financial Instruments

Theme	2007-2013	2014-2020	Difference
Supported activities	Restrictions on sectors, beneficiaries (funds for SME's and urban development) on thereby types of projects and activities that are to be supported. (1083/2006, art. 44) (1080/2006, art 3 (2C)) (1828, art 43 (1), art. 45 and art. 46)	Member States and managing authorities may use financial instruments in relation to all thematic objectives covered by Operational Programmes (Ops), and for all Funds, where it is efficient and effective to do so. (1303/2013, art. 37 (1)).	Flexibility to EU Member States and regions in terms of target sectors, beneficiaries, types of projects and activities
Synergy between instruments	An expenditure co-financed by the Funds shall not receive assistance from another Community financial instrument. (1083/2006, art 54 (5))	Financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies. In this case, separate records must be maintained for each form of financing. (1303/2013, art. 37 (7-9)).	Capture synergies between financial instruments and other forms of support, such as grants
Ex ante assessment	Voluntary gap analysis. (Reference guide).	Ex ante assessment to identify market failures or suboptimal investment situations, and investment needs. (1303/2013, art 37, (2)).	Provide evidence of the adequacy of the FI against an identified market failure or suboptimal investment situation, ensure that the FI will contribute to the achievement of the Programme and ESIF objectives.
Implementation options	When operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds and urban development funds, the Member State or the managing authority shall implement them through one or more of the following forms: (a) the award of a public contract in accordance with applicable public procurement law; (b) in other cases, where the agreement is not a public service contract within the meaning of public procurement law, the award of a grant, defined for this purpose as a direct financial contribution by way of a donation: (i) to the EIB or to the EIF; (ii) to a financial institution without a call for proposal, if this is pursuant to a national law compatible with the Treaty. (1083/2006, art. 44).	Managing Authorities may provide a financial contribution to the following financial instruments: a) financial instruments set up at Union level, managed directly or indirectly by the Commission; b) financial instruments set up at national, regional, transnational or cross-border level, managed by or under the responsibility of the managing authority Managing Authorities may: (a) provide financial contributions to invest in the capital of existing or newly created legal entities, including those financed from other ESF Funds, dedicated to implementing financial instruments consistent with the objectives of the respective ESF Funds (b) entrust implementation tasks to: - the EIB; - international financial institutions in which a Member State is a	More - partially different - implementation options from which the Managing Authorities may choose the most suitable solution.

Theme	2007-2013	2014-2020	Difference
		shareholder, or financial institutions established in a Member State aiming at the achievement of public interest under the control of a public authority; - undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. (1303/2013, art. 38) .	
Audits	On the spot verifications and audits by bodies entrusted with the implementation of the financial instruments. (1083/2006, art. 44).	No on the spot verifications or audits of operations comprising financial instruments implemented. Instead regular control reports from the bodies entrusted with the implementation of these financial instruments.(1303/2013, art 40).	No on the spot verifications and audits. Instead regular control reports
Request for payment	The statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds. (1083/2006, art. 78 (6)).	Phased applications for interim payments shall be made for programme contributions paid to the financial instrument during the eligibility period in accordance with the following conditions: - the programme contribution paid to the financial instrument included in each application for interim payment submitted during the eligibility period shall not exceed 25% of the total amount of programme contributions committed to the financial instrument - each application for interim payment may include up to 25% of the total amount of the national co-financing expected to be paid to the financial instrument; - subsequent applications for interim payment submitted during the eligibility period shall only be made: (i) for the second application for interim payment, when at least 60 % of the amount included in the first application for interim payments has been spent as eligible expenditure ; (ii) for the third and subsequent applications for interim payment, when at least 85 % of the amounts included in the previous applications for interim payments have been spent as eligible expenditure. (1303/2013, art 41).	Detailed rules regarding requests for payment.
Closure guideline	At the partial or final closure of the operational programme, eligible expenditure shall be the total of: (a) any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; or (b) any payments for investment in enterprises from each of the abovementioned funds; or (c) any guarantees provided including amounts committed as guarantees by guarantee funds; and (d) eligible management costs.	At closure of a programme, the eligible expenditure of the financial instrument shall be the total amount effectively paid or, in the case of guarantee funds committed, by the financial instrument within the eligibility period 1-1-2014 – 31-12-2022, corresponding to: (a) payments to final recipients; (b) resources committed for guarantee contracts, whether outstanding or already come to maturity; (c) capitalised interest rate subsidies or guarantee fee subsidies, due to be paid for a period not exceeding 10 years after the eligibility period, used in combination with financial instruments, paid into an	Total amount effectively paid instead of any payment

Theme	2007-2013	2014-2020	Difference
	The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary. The corresponding statement of expenditure shall be corrected accordingly. (1083/2006, art. 78 (6)).	escrow account specifically set up for that purpose, for effective disbursement after the eligibility period but in respect of loans or other risk-bearing instruments disbursed for investments in final recipients within the eligibility period (d) reimbursement of management costs incurred or payment of management fees of the financial instrument. (1303/2013, art . 42).	
Interest	Interest and other gains generated by payments from operational programmes to financial engineering instruments supporting repayable investments for certain types of actions and final recipients, must be used for the benefit of the same type of actions. (COCOF, 5.1.2).	Interest and other gains attributable to support from the ESI Funds paid to financial instruments shall be used for the same purposes, including the reimbursement of management costs incurred or payment of management fees of the financial instrument and expenditure paid in accordance with Article 42(2), as the initial support from the ESI Funds either within the same financial instrument, or following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the specific objectives set out under a priority, until the end of the eligibility period. (1303/2013, art. 43 (2)).	More elaborate rules regarding the use of interest and other gains
Resources paid back	See above	Resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts, including capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by investments, which are attributable to the support from the ESI Funds, shall be re-used for the following purposes, up to the amounts necessary and in the order agreed in the relevant funding agreements: - further investments through the same or other financial instruments, in accordance with the specific objectives set out under a priority; - preferential remuneration of private investors, or public investors operating under the market economy principle; - reimbursement of management costs incurred and payment of management fees of the financial instrument. (1303/2013, art 44 (1)).	More elaborate rules regarding the use resources paid back
After closure	Capital resources and gains and other earnings or yields attributable to the EU contributions to financial instruments are to be used in line with the aims of the OP for a period of at least 5 years after its closure. (1083/2006, art. 44).	Resources paid back to financial instruments, including capital repayments and gains and other earnings or yields generated during a period of at least eight years after the end of the eligibility period, which are attributable to the support from the ESI Funds to financial instruments pursuant to Article 37, are used in accordance with the aims of the programme or programmes, either within the same financial instrument or, following the exit of those resources from the financial instrument, in other financial instruments provided that, in both cases, an assessment of market conditions demonstrates a continuing need for such investment, or in other forms of support.	More specific rules regarding durability with an emphasis on the use of financial instruments

Theme	2007-2013	2014-2020	Difference
		(1303/2013, art. 45).	
Reporting	Managing authorities need to send to the Commission a specific report on operations comprising financial instruments as an annex to the annual implementation report. (Reference guide).	Likewise, but with the addition of the elements leverage and performance. (1303/2013, art. 46).	More detailed reporting requirements on operations comprising financial instruments
Management costs	Management costs may not exceed, on a yearly average, for the duration of the assistance any of the following thresholds (unless a higher percentage proves necessary after a competitive Tender): - 2% of the capital contributed from the operational programme to holding funds, or of the capital contributed from the operational programme or holding fund to the guarantee funds; - 3% of the capital contributed from the operational programme or the holding fund to the financial engineering instrument in all other cases, with the exception of microcredit instruments directed at micro-enterprises; - 4 % of the capital contributed from the operational programme or the holding fund to micro-credit instruments directed at micro-enterprises. (1083/2006, art. 43 (4)).	For a body that implements a fund of funds, management costs and fees which can be declared as eligible expenditure shall not exceed the sum of: -3% for the first 12 months after the signature of the funding agreement; -1% for the next 12 months after the signature of the funding agreement; -0,5% per annum, of the programme contributions paid to the fund of funds, -0,5% per annum of programme contributions paid by the fund of funds to financial intermediaries For bodies implementing financial instruments providing equity, loans, guarantees, as well as micro-credits, including when combined with grants, interest rate subsidies or guarantee fee subsidies management costs and fees which can be declared as eligible expenditure shall not exceed the sum of : (a) a base remuneration which will be calculated on the base of different percentages dependent on type of instrument (b) a performance-based remuneration which also will be calculated on the base of different percentages dependent on type of instrument . (C(2014) 1207 final, art. 13).	More detailed rules regarding the management cost and fees

Appendix 3. Requirements ex ante assessment

Ex. artikel 37 lid 2 CPR⁴

Support of financial instruments shall be based on an ex ante assessment which has established evidence of market failures or suboptimal investment situations, and the estimated level and scope of public investment needs, including types of financial instruments to be supported. Such ex ante assessment shall include:

- (a) An analysis of market failures, suboptimal investment situations, and investment needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contributing to the achievement of specific objectives set out under a priority and to be supported through financial instruments. That analysis shall be based on available good practices methodology;
- (b) An assessment of the added value of the financial instruments that are being considered for support from the ESI Funds, consistency with other forms of public intervention addressing the same market, possible State aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion;
- (c) An estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and level of, preferential remuneration to attract counterpart resources from private investors and/or a description of the mechanisms which will be used to establish the need for, and extent of, such preferential remuneration, such as a competitive or appropriately independent assessment process;
- (d) An assessment of lessons learnt from similar instruments and ex ante assessments carried out by the Member State in the past, and how such lessons will be applied in the future;
- (e) The proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 38, financial products to be offered, final recipients targeted and envisaged combination with grant support as appropriate;
- (f) A specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives set out under the relevant priority including indicators for that contribution;
- (g) Provisions allowing for the ex ante assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the ex ante assessment may no longer accurately represent the market conditions existing at the time of implementation.

⁴ REGULATION (EU) No 1303/2013, 17 December 2013

Appendix 4. Requirements ex ante assessment elaborated⁵

Article 37 (2) requirements	Description
a) Analysis of market failures, suboptimal investment situations and investment needs	<ul style="list-style-type: none"> • Analysis of the amount of ESIF resources to be allocated to the FI in order to attract other investors and fill the investment gap or contribute to this objective; • FI needs to contribute to the strategy and to the expected results of the relevant Programme(s) by bridging a viability gap or a financing gap; • Identification of the main reasons, type and size of market failure and suboptimal investment situations with a good practice methodology to make sure the FI resources are used where they make a difference.
b) Value added of the financial instruments	<ul style="list-style-type: none"> • Check the value added of the FI; • Consistency with other forms of public intervention addressing the same market failure to limit overlap and avoid conflicting targets; • Possible State aid implications including the proportionality of the envisaged intervention to the identified market needs; • Measures to minimise market distortion resulting from the FI.
c) Additional public and private resources	<ul style="list-style-type: none"> • Estimate of additional public and private resources to be potentially raised by the FI; • Co-financing down to the level of the final recipient¹⁹; • Expected leverage effect²⁰; • If relevant, an assessment of the need for and level of preferential remuneration to attract counterpart resources from private investors.
d) Lessons learnt	<ul style="list-style-type: none"> • Analysis of lessons learnt from similar or instruments considered relevant in the past; • Analysis of ex-ante assessments carried out by the MS in the past; • Application of these lessons to make sure that the FI builds on existing and acquired knowledge.
e) Investment strategy	<ul style="list-style-type: none"> • Thematic and geographical coverage of the FI; • Ensure that within the meaning of Article 38, the most appropriate implementation option is chosen in regard to the country/regional situation; • Financial products to be offered to ensure an adequate response to market needs; • Final recipients targeted; • If relevant, envisaged combination with grant support to maximise efficiency and
f) Expected results	<ul style="list-style-type: none"> • Specification of the expected results and outputs of the FI within the priority of the Programme(s); • Definition of reference and target values based on the specific contribution of the FI to the priority of the Programme results and outputs indicators.
g) Provisions allowing the ex-ante assessment to be reviewed	<ul style="list-style-type: none"> • Rationale for the revision of the ex-ante assessment; • Practical and methodological procedures to update the ex-ante assessment; • Steps to adapt the FI implementation.

⁵ Ex-ante assessment methodology for financial instruments in the 2014-2020 programming period', Volume I 'General methodology covering all thematic objectives'

Appendix 5. 'Off the shelf' financial instrument 'Renovation loan' (draft)

Name	Loan for energy efficiency and renewable energies in the residential building sector
Aim	<p>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.</p> <p>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.</p>
Structure	<p>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.</p> <p>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</p>
Governance	<p>The managing authority shall seek to be represented in supervisory committee of the Renovation Loan and shall not participate directly in individual decisions.</p> <p>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</p>
State aid implication	<p>A. Aid at the level of the financial intermediary is excluded when:</p> <ul style="list-style-type: none"> - 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 - 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; - 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 <p>B. Aid at the level of an entity acting on behalf of the owners, the aid is excluded when:</p> <ul style="list-style-type: none"> - the entity does not benefit from any direct transfers of public support and - the entity transfers all the benefit of the programme contribution to the final recipients <p>C. 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</p>

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