

*“old” versus “new” regulations regarding financial instruments  
CSI Europe meeting, The Hague, 11 June 2013*

*Information from new delegated acts not available yet*

Theme	2007-2013	2014-2020	Development
<b>Supported activities</b>	<p>Restrictions on sectors, beneficiaries (funds for SME's, urban development and energy efficiency) and thereby types of projects and activities that are to be supported.</p> <p>(1083/2006, art. 44) (1080/2006, art 3 (2C)) (1828, art 43 (1), art. 45 and art. 46) (832/2010, art. 1 and 2 – energy &amp; housing)</p>	<p>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.</p> <p>(2011/0276, art. 32 (1))</p>	<p><b>Flexibility</b> to EU Member States and regions in terms of target sectors, beneficiaries, types of projects and activities</p>
<b>Synergy between instruments</b>	<p>An expenditure co-financed by the Funds shall not receive assistance from another Community financial instrument.</p> <p>(1083/2006, art 54 (5))</p>	<p>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.</p> <p>(2011/0276, art. 32 (1 and 2))</p>	<p>Capture <b>synergies</b> between financial instruments and other forms of support, such as grants</p>
<b>Ex ante Assessment</b>	<p>Urban development studies or evaluations</p> <p>(1828/2006, art. 44 (1))</p>	<p>Ex ante assessment to identify market failures or suboptimal investment situations, and investment needs.</p> <p>(2011/0276, art 32, (1))</p>	<p><b>“Prove” market failure.</b> Avoid overlaps and inconsistencies between funding instruments implemented by different actors at different levels.</p>

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<b>Implementation options</b>	<p>Financial engineering instruments, including holding funds, shall be set up as:</p> <ul style="list-style-type: none"> <li>a) independent legal entities governed by agreements between the co-financing partners or shareholders or</li> <li>b) as a separate block of finance within a financial institution. Where the financial engineering instrument is established within a financial institution, it shall be set up as a separate block of finance</li> </ul> <p>(1828/2006, art 43 (3))</p> <p>When operations are organised through holding funds, the Member State or the managing authority shall implement them through one or more of the following forms:</p> <ul style="list-style-type: none"> <li>(a) the award of a public contract in accordance with applicable public procurement law;</li> <li>(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:</li> </ul>	<p>MA may provide financial contributions to:</p> <ul style="list-style-type: none"> <li>(a) financial instruments set up at Union level, managed directly or indirectly by the Commission. Contributions shall be placed in separate accounts and used, to support actions and final recipients consistent with the programme</li> <li>(b) financial instruments set up at national, regional, transnational or cross border level, managed by or under the responsibility of the managing authority. These can be already existing or newly created instrument or standardised instruments (“off the shelf”) complying with the standard terms and conditions laid down by the Commission.</li> </ul> <p>(2011/0276, art 33, (1)).</p> <p>The managing authority may:</p> <ul style="list-style-type: none"> <li>– invest in the capital of existing or newly created legal entities managing FI, or</li> <li>– entrust implementation tasks to <ul style="list-style-type: none"> <li>- EIB,</li> <li>- international financial institutions</li> <li>- public or private institution selected in accordance with</li> </ul> </li> </ul>	<p>The Commission’s proposal offers different <b>implementation options</b> from which Member States and managing authorities may choose the most suitable solution.</p> <p>More <b>freedom of choice</b> for entity carrying out the fund. MA can implement loans or guarantees themselves.</p>

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	<p>(i) to the EIB or to the EIF; or (ii) to a financial institution if this is pursuant to a national law compatible with the Treaty.</p> <p>(1083/2006, art. 44)</p>	<p>applicable Union and national rules.</p> <p>– Directly implement FI (consisting solely of loans or guarantees) may be implemented directly by MA.</p> <p>(2011/0276, art 33, (4)).</p> <p>The entities referred to may further entrust part of the implementation to financial intermediaries. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interests.</p> <p>(2011/0276, art 33, 5)</p>	
<b>Audits</b>	<p>On the spot verifications and audits by bodies entrusted with the implementation of the financial instruments.</p>	<p>No on-the-spot verifications or audits of operations comprising financial instruments implemented by EC itself. Instead regular control reports from the bodies entrusted with the implementation of these financial instruments.</p> <p>Specifications for audits and on the spot verifications for FI implemented national/regional or local to follow in delegated acts.</p> <p>(2011/0276, art 34)</p>	<p>Discussion element.</p>

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Request for payment	<p>The statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds.</p> <p>(1083/2006, art. 78 (6))</p>	<p>For contributions to an EU-level financial instrument under Commission management. the request for payment shall include and separately disclose the total amount of support paid to the financial instrument.</p> <p>For contributions to national or regional financial instruments under shared management, managing authorities are required to make phased contributions, while also having the possibility to include in the payment declaration the anticipated national contributions that are to be mobilised at the level of the financial instrument for the corresponding twoyear period (e.g. in the form of co investments made at the level of final recipients). For the calculation of the phased contribution, payment applications should take into consideration both the capital requirements of the financial instrument over a maximum of two years (in line with its business plan) and the remaining balance of previously paid but unspent OP support available at the level of the financial instrument, including corresponding national contributions.</p> <p>(2011/0276, art 35)</p>	<p>Specific rules regarding requests for payment (some sort of N+2).</p>

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<p><b>Closure guideline</b></p>	<p>At the partial or final closure of the operational programme, eligible expenditure shall be the total of:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) any payments for investment in enterprises from each of the abovementioned funds; or</li> <li>(c) any guarantees provided including amounts committed as guarantees by guarantee funds; and</li> <li>(d) eligible management costs.</li> </ul> <p>The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary. The corresponding statement of expenditure shall be corrected accordingly.</p> <p>(1083/2006, art. 78 (6))</p>	<p>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:</p> <ul style="list-style-type: none"> <li>(a) payments to final recipients;</li> <li>(b) resources committed for guarantee contracts, whether outstanding or already come to maturity,</li> <li>(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 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)</li> <li>(d) reimbursement of management costs incurred or payment of management fees of the financial instrument.</li> </ul> <p>(2011/0276, art 36)</p>	<p>Taking into account <b>more specifics</b> of FI and including <b>wider range</b> of costs even after eligibility period.</p>

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<b>Interest</b>	<p>Interest generated by payments from operational programmes to funds as defined in Article 44, shall be used to finance urban development projects in the case of urban development funds or financial engineering instruments for small and medium-sized enterprises in other cases.</p> <p>(1083/2006 Art. 78.7)</p>	<p>Interest and other gains attributable to support from the CSF Funds paid to financial instruments shall be used for the same purposes as the initial support from the CSF Funds within the same financial instrument.</p> <p>(2011/0276, art 37)</p>	comparable
<b>Resources paid back</b>	<p>Resources returned to the operation from investments undertaken by funds as defined in Article 44 or left over after all guarantees have been honoured shall be reused by the competent authorities of the Member States concerned for the benefit of urban development projects or of small and medium-sized enterprises.</p> <p>(1083/2006 Art. 78.7)</p>	<p>Capital resources paid back to financial instruments (before closure programme) from investments or from the release of resources committed for guarantee contracts, which are attributable to the support from the CSF Funds, shall be re-used for further investments through the same or other financial instruments, in accordance with the aims of the programme or programmes.</p> <p>(2011/0276, art. 38 (1))</p>	comparable
<b>Gains generated by investments</b>	<p>Managing authorities shall take precautions to minimize distortion of competition in the venture capital or lending markets.</p> <p>Returns from equity investments and loans, less a <i>pro rata</i> share of the management costs and performance incentives, may be allocated preferentially to investors operating</p>	<p>EU share of gains, earnings, or yields generated by investments is to be used for:</p> <ul style="list-style-type: none"> <li>- management costs/fees</li> <li>- preferential remuneration of investors operating under the market economy investor principle (MEIP) and providing co-investment at the level of financial instrument or final recipient; and/or</li> </ul>	comparable

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	<p>under the market economy investor principle up to the level of remuneration laid down in the by-laws of the financial engineering instruments, and they shall then be allocated proportionally among all co-financing partners or shareholders.</p> <p>(1828/2006, art 43 (7))</p>	<p>- further investment in the same or other instruments, in line with the OP.</p> <p>(2011/0276, art 38 (2))</p>	
<b>After closure</b>	<p>General statement on durability:</p> <p>The Member State or managing authority shall ensure that an operation retains the contribution from the Funds only if that operation does not, within five years from the completion of the operation or three years from the completion of the operation in Member States which have exercised the option of reducing that time limit for the maintenance of an investment or jobs created by SMEs, undergo a substantial modification:</p> <p>(a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and</p> <p>(b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.</p> <p>(1083/2006, art. 57)</p>	<p>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 10 years after its closure.</p> <p>(2011/0276, art. 39)</p>	<p>More emphasis on <b>long term</b> benefits from FI.</p>

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<b>Reporting</b>	No specific requirement in yearly reports?	The new framework requires managing authorities to send to the Commission a specific report on operations comprising financial instruments as an annex to the annual implementation report.  (2011/0276, art. 40)	new
<b>Business plan</b>	Obligated (1828/2006, art. 43 (2))	Expected in delegated act	?
<b>Management costs</b>	Specific percentages (1828/2006, art. 43 (3))	Expected in delegated act	?
<b>Funding agreement</b>	funding agreement signed by representative of the financial engineering instrument and the Member State or the managing authority (1828/2006, art. 43 (4))	Expected in delegated act	?
<b>In kind</b>	No specific comments made for FI  (1828/2006, art. 51)	Contributions in kind are not eligible expenditure in respect of financial instruments, except for contributions of land or real estate.  (2011/0276, art. 32 (3))	?
<b>Exit policy etc</b>	Obligatory in businessplan and funding agreement to specify procedure for withdrawal and exit.  (1828/2006, art. 43/44)	Expected in delegated act	?