



European Structural and Investment Funds

Guidance for Member States on Article 37(4) CPR– Support to enterprises/working capital

DISCLAIMER

“This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for colleagues and bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the programme implementation and to encourage good practice(s). This guidance is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.”

1. BACKGROUND

1.1. Regulatory references

Regulation	Articles
Reg. (EU) N° 1303/2013 Common Provisions Regulation <i>(hereafter CPR)</i>	Article 37 - Financial instruments
Reg. (EU) N° 1301/2013 European Regional Development Fund Regulation <i>(hereafter ERDF)</i>	Article 3 - Scope of support from the ERDF Article 5 - Investment priorities

Regulation	Articles
Reg. (EU) N° 1305/2013 European Agricultural Fund for Rural Development Regulation (<i>hereafter EAFRD</i>)	Articles 45 - Investments
Reg. (EU) N° 480/2014 Commission Delegated Regulation (<i>hereafter CDR</i>)	Article 9 - Management and control of financial instruments set up at national, regional transnational or cross-border level
Regulation (EU) N° 651/2014 General block exemption Regulation	Commission Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty
Regulation (EU) N° 1407/2013 <i>De minimis</i> Regulation	Commission Regulation on the application of Articles 107 and 108 of the TFEU to de minimis aid

1.2. Purpose of the guidance

The issue of eligibility of working capital was raised in the process of the implementation of financial engineering instruments in 2007-2013 and in the process of modifying Regulation (EC) No 1828/2006 in 2011. The legislative framework of 2007-2013 did not refer explicitly to working capital. Restrictions on eligibility of working capital stemmed from the provisions on eligible stages of enterprises under Article 45 of Regulation (EC) No 1828/2006, which were removed following the modification of 2011.

For the 2014-2020 framework, Member States requested that eligibility rules for financial instrument (FI), support to enterprises and the notion of working capital are included in the CPR. Therefore, Article 37(4) CPR sets out the eligibility rules for support to enterprises, including working capital.

2. GUIDANCE

2.1. General rule

For 2014-2020, support for working capital in enterprises is eligible as a mode of support to enterprises through FIs. Article 37(4) CPR lists the possible types of activities eligible for support through FIs. It provides that financing to enterprises, including SMEs, “shall target the establishment of new enterprises, early stage capital, i.e. seed capital and start-up capital, expansion capital, capital for the strengthening of the general activities of an enterprise, or the realisation of new projects, penetration of new markets or new developments by existing enterprises, without prejudice to applicable Union State aid rules, and in accordance with the fund-specific rules. Such support may include investment in both tangible and intangible assets **as well as working capital** within the limits of

applicable Union State aid rules and with a view to stimulate the private sector as a supplier of funding to enterprises... ”.

ESIF support for working capital in enterprises, as for any investment financing to enterprises through FIs, is subject to compliance with two basic eligibility criteria: the types of enterprise and support targets. Fund-specific rules, however, also apply.

2.1.1. Types of enterprise eligible

In line with Article 37(4) CPR, all **types of enterprises** are potentially eligible for support from FIs. However, as far as large enterprises are concerned, there are significant limitations on the possibility of using ESI Funds to provide support stemming from Fund-specific rules and from state aid rules. In addition, the relevant programme and priority may restrict support to SMEs.

2.1.2. Eligible targets

Under Article 37(4) CPR, ESIF programmes' support to enterprises delivered through FIs has to target at least one of the following:

- 1) establishment of new enterprises,
- 2) early-stage capital (i.e. seed capital and start-up capital),
- 3) expansion capital (such as growth of company or expansion of human and fixed capital stock),
- 4) capital for the strengthening of the general activities of an enterprise (such as activities aimed at stabilising and defending the existing market position, strengthening of capacity utilisation),
- 5) realisation of new projects (such as construction of new facilities, new marketing campaign),
- 6) penetration of new markets (such as expansion of product or service range, territorial expansion),
- 7) new developments by existing enterprises (such as new patents or products)

In addition, support through FIs for enterprises has to comply with Fund-specific rules and be in line with the requirements set out under the relevant programme and priority. This means that even if Article 37(4) CPR provides for the above range of targets, in a particular case the eligibility might be additionally restricted by programme provisions, e.g. a programme priority may focus only on support to start-ups.

2.2. Specific points on support for working capital

For the purpose of this note, **working capital** is understood to be the difference between current assets and current liabilities of an enterprise. Working capital forms an essential and necessary ingredient of business financing needs for the conduct of any business. The level of need for working capital varies with the macro economic situation and seasonality, the business sector, the type of borrower and investment undertaken as well as the markets targeted.

When the conditions of eligible enterprise and eligible support target are fulfilled, support from an FI for working capital is possible. Such support must comply with the limits of applicable state aid rules and be with a view to stimulating the private sector as a supplier of funding to enterprises.

For FIs implemented in accordance with Article 38(1)(b) CPR, evidence of compliance with the eligibility conditions will be provided by the application forms, with supporting documents including business plans. These documents are an explicit part of the audit trail (in accordance with Article 9(1)(e)(vii) CDR). For EU-level instruments implemented in accordance with Article 38(1)(a) CPR, evidence will be provided in the equivalent documentation in accordance with the delegation agreement or funding agreement applicable to the instrument.

An example of support for working capital by an FI would be to provide support to a stable working capital base to allow an enterprise to strengthen its general activities. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, labour; inventories and overheads, funding to finance trade receivables and nonconsumer sales receivables.

The support to enterprises to finance working capital facilities would be expected generally to have a term of at least two years (notwithstanding shorter tenors on a revolving basis). The utilisation of the working capital line may fluctuate upwards and downwards during its lifetime.

No specific threshold has been established apart from EAFRD (see Point 2.3). Nevertheless, the amount and proportion of working capital should be justified in business and economic terms.

Finally, financing of working capital, as well as tangible and intangible assets, should be linked to co-investments by the private sector which takes a certain part of the financing burden and risk.

The level of required independent private participation will in most cases result from the state aid rules. Risk finance aid provided in Regulation (EU) 651/2014 sets out certain minimum participation by the independent private investor. Private co-investment can take place either at the level of FI or at the level of investments in final recipients (enterprises). The minimum level of private co-investment depends on the maturity of enterprises and varies between 10%, 40% or 60%.

The absence of participation of an independent private investor would be possible under other categories of state aid which may be more appropriate to achieve the same objectives and results (e.g. regional investment aid or start-up aid).

Moreover, the managing authority may also choose to design the FI in such a way that it does not entail state aid because it fulfils the conditions of the applicable *de minimis* Regulation.

It should be underlined, however, that even for considering the FI as meeting the market economy operator test, a simultaneous, *pari-passu* and significant (i.e. minimum 30% participation) private intervention is needed.

Involvement of private co-investor for different types of FIs:

- a) **in guarantee funds** the requirement of private co-investor is automatically ensured because at least 20% of the bank's and guarantee institution's risk is not

covered by the ESIF programme¹, furthermore the financial intermediary has to originate loans or to provide guarantees with its own resources;

b) **in equity funds** in most cases private participation must be ensured (as the state aid framework on risk finance requires private participation);

c) **in loan funds** private participation would generally take place at the level of the loan fund itself.

2.3. Specific provisions on EAFRD

Working capital that is ancillary and linked to a new investment in the agriculture or forestry sector, which receives EAFRD support through an FI established in accordance with the CPR, may be eligible expenditure (Article 45(5) EAFRD). It shall not exceed 30% of the total amount of the eligible expenditure for the investment (or the part of it) which is supported through the FI and the relevant request shall be duly substantiated. In the forestry sector, it is also subject to state aid rules². Working capital for nonagricultural and non-forestry activities cannot be supported by the EAFRD FIs as this is not allowed by Article 45 EAFRD.

An example of support for working capital by an FI would be the case when investment on an agricultural holding (e.g. creation of orchard) to be supported by an FI would need also additional resources by the time it becomes productive. Some categories of expenditure for which working capital could be used can include, amongst others, funds required for the maintenance of the orchard until it enters productivity including labour costs, inputs, etc.

¹ As provided for in the state aid framework, programme guarantee cannot exceed 80% of the underlying loan. Moreover, in line with Article 42(1)(b) CPR the amount of programme resources committed for guarantee contracts shall result from a prudent ex-ante risk assessment.

² State aid clearance, for example, can be obtained under Regulation (EU) No°651/2014 or granted as *de minimis* aid under Regulation (EU) No 1407/2013.