EUROPEAN COMMISSION

European Structural and Investment Funds

Guidance for Member States and Programme Authorities

CPR_37_4 support to enterprises/working capital

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1. Regulatory references and text

Regulation (EU) No 1303/2013, Article 37(1), 37(4), (Common Provisions Regulation "CPR")

Regulation (EU) No 1301/2013, Article 3, 5

Regulation (EU) No 1305/2013, Article 45(5)

Commission Regulation (EU) No 651/2014 (General Block Exemption Regulation)

Commission Regulation (EU) 1407/2013 (*de minimis* Regulation)

Regulation Delegated Regulation (EU) No 480/2014

2. Support for working capital in enterprises in 2014-2020 programmes

BACKGROUND

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 support to enterprises and the notion of working capital, are included in the CPR. Therefore, Article 37(4) of Regulation (UE) No 1303/2013 sets out the eligibility rules for support to enterprises, including working capital.

GENERAL RULE

For 2014-2020, support for working capital in enterprises is eligible as a mode of support to enterprises through financial instruments. Article 37(4) CPR lists the possible types of activities eligible for support through financial instruments. 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 financial instruments, is subject to compliance with two basic eligibility criteria: the types of enterprise and support targets. Fund-specific rules, however, also apply.

TYPES OF ENTERPRISE ELIGIBLE

In line with Article 37(4) CPR all **types of enterprises** are potentially eligible for support from financial instruments. 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. In addition the relevant programme and priority may restrict support to SMEs.

ELIGIBLE TARGETS

Under Article 37(4) CPR, ESIF programmes' support to enterprises delivered through financial instruments 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 financial instruments 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.

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 a financial instrument 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 financial instruments 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) of Regulation (EU)480/2014). 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 a financial instrument 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 non-consumer 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 below). 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 financial instrument 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 financial instrument 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, however, underlined that even for considering the FI as meeting 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 programme[1], 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),

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

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

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 a financial instruments established in accordance with the CPR, may be eligible expenditure (Article 45(5) of Regulation (EU) No 1305/2013). 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 financial instrument and the relevant request shall be duly substantiated. In the forestry sector, it is also subject to State aid rules.[2] Working capital for non-agricultural and non-forestry activities cannot be supported by the EAFRD financial instruments as this is not foreseen by Article 45 of Regulation (EU) No 1305/2013.

An example of support for working capital by a financial instrument would be the case when investment on an agricultural holding (e.g. creation of orchard) to be supported by a financial instrument 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.

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