

ANNEX 3

Special provisions for documentation of investments in working capital

What kind of documents prove that the support for working capital provided through the financial instrument was used for its intended purpose?

ESIF programme support for working capital in enterprises, as for any investment financing to enterprises through FIs, is subject to compliance with the below basic eligibility criteria: the types of enterprise and at least one of the seven support targets as mentioned in Article 37 (4) CPR and eligible activities. Moreover, support has to be in line with Fund-specific rules, the requirements set out under the relevant programme, and the requirements set out under the relevant 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.

When the conditions of eligible enterprise and eligible support target are fulfilled, support from an FI for working capital is possible, within the above described limitations. The CPR also requires that 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. In addition, there are business areas that ESI Funds should not be supporting taking into account also the regulatory framework related to sanctions and anti-money laundering.

The funding agreement should set the objectives for the use of the funds in line with the conditions explained above. In addition, the business plan together with other supporting documents, presented by the final recipient when applying for a loan, has to be analysed from this perspective. In addition, there is a need to keep evidence that the funds were used for the intended purposes (see Article 9(1)(d) CDR).

Furthermore, Article 9(1)(e) of CDR 480/2014 distinguishes between:

- application forms, or equivalent, submitted by final recipients with supporting documents, including business plans and, when relevant, previous annual accounts (point (vii));
- checklist and reports from the bodies implementing the financial instrument (point (viii));
- [loan] agreements signed in connection with the support provided to final recipients (point (x));
- "evidence that the support provided through the financial instrument was used for its intended purpose" (point (xi)); and
- "records of the financial flows between (...) within the financial instrument at all levels, down to the final recipients" (point (xii)).

Hence, the disbursement of the loan by the financial intermediary to the enterprise alone is not a sufficient proof that the loan for working capital was used for its intended purpose.

The intended use of the loan for working capital should be described, at least, in the submitted business plan. The latter should allow the financial intermediary/fund manager to assess whether the support for – including the working capital – falls under the objectives, and eligible activities and target investments expenditures stipulated in the funding agreement in

line with the above mentioned set of rules. During implementation, it would be necessary to have documentary evidence, such as: receipted invoices or accounting documents of equivalent probative value, or external audit reports, or a confirmation by the financial intermediary (or a third party), within the context of the monitoring and control procedures as established in the funding agreement (Annex IV CPR), that the loan was used as described in the business plan.

All these types of checks should be normal market practice of a diligent fund manager.

The Commission's guidance on management verifications for 2007-2013 programming period (COCOF 08/0020/04-EN) can be also be considered relevant in relation to the management verifications of the financial instruments as underlined below:

"Management verifications should focus on checking the supporting documents attesting observance of the funding conditions. The documentation may include application forms, business plans, annual accounts, checklists and reports of the financial instrument assessing the application, the signed investment, loan or guarantee agreement, reports by the enterprise, reports on visits and board meetings, reports by the loan intermediary to the guarantee fund supporting claims, environmental approvals, equal opportunities reports and declarations made in connection with receipt of de minimis aid.

Evidence of expenditure in the form of receipted invoices and proof of payment for goods and services by SMEs is only required as part of the audit trail where the capital, loan or guarantee to the SME is conditional on incurring expenditure on particular goods or services. However, in all cases, there must be proof of the transfer of the capital or loan by the venture capital fund or loan intermediary to the enterprise and evidence that the support provided through the financial instrument was used for its intended purpose."