

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1157

of 11 July 2016

amending Implementing Regulation (EU) No 964/2014 as regards standard terms and conditions for financial instruments for a co-investment facility and for an urban development fund

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ⁽¹⁾, and in particular the second subparagraph of Article 38(3) thereof,

Whereas:

- (1) To facilitate the use of financial instruments which are set up at national, regional, transnational or cross-border level and managed by or under the responsibility of the managing authority in accordance with Article 38(3)(a) of Regulation (EU) No 1303/2013, Commission Implementing Regulation (EU) No 964/2014 ⁽²⁾ established rules on standard terms and conditions for three financial instruments: a portfolio risk sharing loan, a capped portfolio guarantee and a renovation loan.
- (2) To further facilitate the delivery of European Structural and Investment Funds to final recipients it is necessary to provide for rules on standard terms and conditions for two further financial instruments: a Co-Investment Facility and an Urban Development Fund.
- (3) A Co-Investment Facility is an appropriate financial instrument for supporting entrepreneurial development of small and medium-sized enterprises (SMEs) at different stages of development. The Co-Investment Facilities should develop the local equity market and attract additional equity investments in SMEs through a partnership approach with private investors.
- (4) An Urban Development Fund is an appropriate financial instrument for addressing the high concentration of economic, environmental and social problems of urban areas located in assisted areas identified in a regional aid map in accordance with Articles 107(3)(a) and (c) of the Treaty. Urban Development Funds should be used to mobilise co-investment from private investors to support implementation of urban development projects and should aim at addressing market failures by supporting sustainable urban development strategies where there is limited availability of funding or relatively low interest of investors in supporting urban development projects.
- (5) Implementing Regulation (EU) No 964/2014 should therefore be amended accordingly.

⁽¹⁾ OJ L 347, 20.12.2013, p. 320.

⁽²⁾ Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments (OJ L 271, 12.9.2014, p. 16).

- (6) The measures provided for in this Regulation are in accordance with the opinion of the Coordination Committee for the European Structural and Investment Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 964/2014 is amended as follows:

- (1) Article 1 is replaced by the following:

'Article 1

Subject matter

This Regulation lays down rules concerning the standard terms and conditions for the following financial instruments:

- (a) a portfolio risk sharing loan ("RS Loan");
- (b) a capped portfolio guarantee;
- (c) a renovation loan;
- (d) a co-investment facility;
- (e) an Urban Development Fund.;

- (2) in Article 3 the title is replaced by the following:

'Article 3

Grants under the standard terms and conditions';

- (3) the following Articles 8a and 8b are inserted:

'Article 8a

Co-investment Facility

1. The Co-investment Facility shall take the form of an equity fund managed by a financial intermediary investing contributions from the European Structural and Investment Funds (ESIF) programme into small and medium-sized enterprises (SMEs). The Co-investment Facility shall attract additional investments in SMEs through a partnership approach with private co-investors on a deal by deal basis.

2. The Co-investment Facility shall comply with the terms and conditions set out in Annex V.

Article 8b

Urban Development Fund

1. The Urban Development Fund shall take the form of a loan fund and shall be set up and managed by a financial intermediary with contributions from the ESIF programme and a mobilisation of co-financing of at least 30 % from the financial intermediary and co-investors. The Urban Development Fund shall finance and support implementation of urban development projects in assisted areas which are designated in a regional aid map for the period 1 July 2014 to 31 December 2020 in accordance with points (a) and (c) of Article 107(3) of the Treaty, as well as mobilise co-investment from private sources.

2. The Urban Development Fund shall comply with the terms and conditions set out in Annex VI.;

- (4) Annexes V and VI as set out in the Annex to this Regulation are added.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 July 2016.

For the Commission

The President

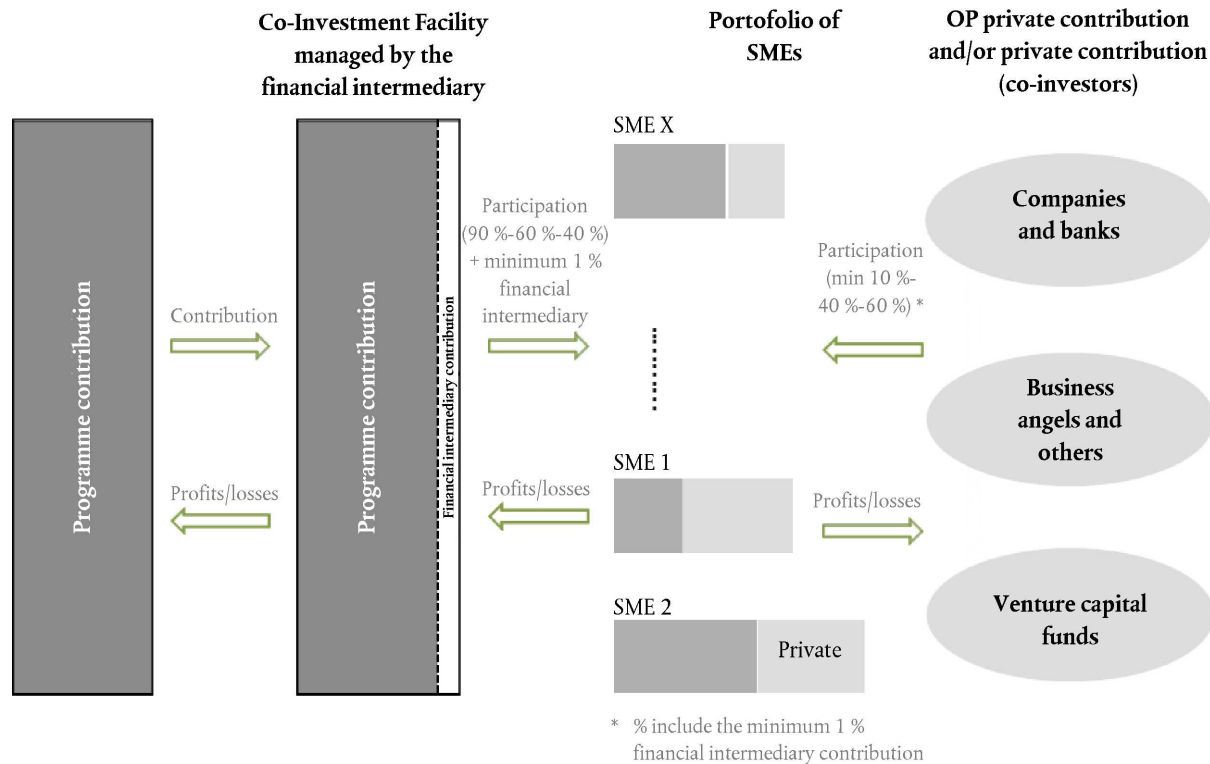
Jean-Claude JUNKER

ANNEX

‘ANNEX V

CO-INVESTMENT FACILITY

Schematic representation of the Co-Investment Facility principle



Terms and conditions for the Co-Investment Facility

Structure of the financial instrument

The Co-Investment Facility shall invest in the equity of SMEs with the contributions of the ESIF programme, the financial intermediary's own resources and private co-investors.

The financial intermediary shall be a private entity that takes all investment and divestment decisions with the diligence of a professional manager in good faith. The financial intermediary shall be economically and legally independent from the managing authority and from fund of funds.

Private co-investors shall be private bodies and shall be legally independent from the financial intermediary.

The Co-Investment Facility shall be made available in the framework of an operation which is part of the priority axis defined in the programme funded by the ESI Funds and specified in the context of the *ex ante* assessment required under Article 37 of Regulation (EU) No 1303/2013.

Aims of the instrument

The aims of the instrument shall be to:

- (1) Invest in SMEs at seed, start-up, and expansion stage or for the realisation of new projects, penetration of new markets or new developments by existing enterprises through co-investment agreements (partnership approach) with co-investors on a deal by deal basis. Such investments shall be made within the scope of Commission Regulation (EU) No 651/2014 (*).
- (2) Provide more capital to increase investment volumes for SMEs.

	<p>The aims are linked with the following conditions.</p> <p>The ESIF programme contribution to the Co-Investment Facility shall not crowd out financing available from other public or private investors.</p> <p>The Co-Investment Facility amount and rates shall be set to fill the equity gap identified in the <i>ex ante</i> assessment of the financial instrument in accordance with Article 37 of Regulation (EU) No 1303/2013.</p> <p>The ESIF programme shall provide funding to the Co-Investment Facility to build up a portfolio of investments in SMEs. The Co-Investment Facility shall participate with the financial intermediary and co-investors on a deal by deal basis.</p> <p>In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary in charge of the Co-Investment Facility.</p> <p>In addition to the ESIF programme contribution, the fund of funds may provide its own resources. State aid rules apply where the resources provided by the fund of funds are State resources. Where fund of funds resources are combined with other State resources Article 21 of Regulation (EU) No 651/2014 also apply.</p>
State aid implication	<p>The investment of the Co-Investment Facility shall be implemented as an instrument entailing State aid. It shall be considered compatible with the internal market and not requiring an ad hoc notification, provided conditions for compatibility under Article 21 of Regulation (EU) No 651/2014 are satisfied.</p> <p>The presence of State aid shall be assessed at the levels of the fund of funds, financial intermediary, the private investors and final recipients.</p> <p>In particular, on a deal by deal basis the aggregate private participation rate at the level of the SME shall reach at least the following thresholds:</p> <ul style="list-style-type: none"> (a) 10 % for risk finance provided to the eligible undertakings prior to their first commercial sale on any market; (b) 40 % for risk finance provided to eligible undertakings operating in any market for less than 7 years following their first commercial sale; (c) 60 % for risk finance provided either to eligible undertakings requiring an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographic market, is higher than 50 % of their average annual turnover in the preceding 5 years, or for follow-on investments in eligible undertakings after the 7-year period of the first commercial sale. <p>Private participation is here considered as investments made by private bodies.</p> <p>For the purposes of the Co-Investment Facility there is allowable aid at the level of the final recipients if:</p> <ul style="list-style-type: none"> (a) there is allowable aid to private co-investors; (b) the financial intermediary is managed on a commercial basis and its financing decisions are independent and profit-driven; (c) the ceiling of private participation as set out in Article 21(10) of Regulation (EU) No 651/2014 are satisfied. <p>The costs associated with the development of the investment projects, for the due diligence and for accompanying the final recipients shall be covered by the management costs and fees of the financial intermediary managing the Co-Investment Facility.</p> <p>Activities supported by the EAFRD, are subject to general State aid rules.</p>

Investment policy**(a) Disbursement from the managing authority or from the fund of funds to the Co-Investment Facility**

Following the signature of a funding agreement between the managing authority or fund of funds and the financial intermediary, the relevant managing authority or fund of funds shall transfer the contributions from the programme to the Co-Investment Facility. The amount of the transfer shall cover the needs in terms of investments and management costs and fees. The transfer shall be carried out in tranches.

The target investment volume shall be confirmed within the *ex ante* assessment carried out in accordance with Article 37 of Regulation (EU) No 1303/2013.

The investment policy of the Co-Investment Facility shall include a clear exit strategy. That strategy shall be described in the funding agreement.

(b) Disbursements from the Co-Investment Facility to the eligible SMEs

The Co-Investment Facility shall co-invest, within a pre-determined limited period of time, with the financial intermediary and other private investors.

On a deal by deal basis, the selected financial intermediary shall leverage additional finance from the financial intermediary or a vehicle affiliated to the financial intermediary for at least 1 % for the purpose of alignment of interest; and from co-investors, i.e. private investors.

Investments decisions shall be profit-driven. In order to be considered profit driven the investment shall comply with the following conditions:

- (i) the financial intermediary is established in accordance with the applicable laws and provides for a due diligence process ensuring a commercially sound investment policy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments;
- (ii) investment in eligible SMEs is based on a viable business plan, containing details of product, sales and profitability development, establishing the *ex ante* viability of the investment;
- (iii) a clear and realistic exit strategy exists for each investment.

The financial Intermediary shall implement a consistent investment policy that complies with the applicable industry standards and that is aligned with the financial interests and policy objectives of the managing authority.

(c) Disbursements from the Co-Investors to the eligible SMEs

The financial intermediary shall identify, screen and assess potential co-investments in final recipients as well as any co-investors. The financial intermediary shall carry out a due diligence assessment on a deal by deal basis. The due diligence shall assess key aspects such as the business plan, the viability of the investment and the exit strategy. The business plan shall contain details on product, sales and profitability development.

The private participation rate of eligible SMEs shall reach the minimum threshold set in Article 21 of Regulation (EU) No 651/2014.

The co-investment agreement between the financial intermediary and co-investors shall establish the terms and conditions for investment in the final recipients and shall comply with Article 1(3) of Commission Implementing Regulation (EU) No 821/2014 (**), where that Article is applicable.

Fund Contribution to financial instrument: amount and rate (product details)	<p>The Co-Investment Facility shall provide capital to unlisted SMEs which fulfil at least one of the following conditions:</p> <ul style="list-style-type: none"> (a) the SMEs have not been operating in any market; (b) the SMEs have been operating in any market for less than 7 years following their first commercial sale; (c) the SMEs require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographic market, is higher than 50 % of their average annual turnover in the preceding 5 years; (d) the SMEs require follow-on investments in eligible undertakings, including after the 7-year period of the first commercial sale. <p>The co-investment amount and rate per deal shall be determined by applying at least the following factors:</p> <ul style="list-style-type: none"> (a) the size and focus of the Co-Investment Facility; (b) the participation of co-investors; (c) the expected catalytic effect of the Co-Investment Facility; remaining within the ceilings set out in Article 21(10) of Regulation (EU) No 651/2014. <p>Amounts returned to the Co-Investment Facility from the investments within the timeframe for investments as set out in the funding agreement shall be re-used as provided for under Articles 44 and 45 of Regulation (EU) No 1303/2013.</p> <p>Preferential remuneration of private investors aimed solely at asymmetric profit-sharing shall be set in line with Article 44(1) of Regulation (EU) No 1303/2013 and Article 21(13)(b) of Regulation (EU) No 651/2014.</p>
Programme contribution to financial instrument (activities)	<p>The underlying transactions portfolio funded by the Co-Investment Facility shall include investments provided for the benefit of final recipients.</p> <p>The eligibility criteria for inclusion in the portfolio are determined in accordance with Union law, the ESIF programme, national eligibility rules, and with the financial intermediary. The financial intermediary shall have a reasonable estimation of the portfolio risk profile.</p> <p>The co-investment shall be made in final recipients for the required period before an exit in line with the investment policy.</p>
Managing authority's liability	<p>The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Commission Delegated Regulation (EU) No 480/2014 (**).</p> <p>On liquidation of the Co-Investment Facility, the financial intermediary shall make a thorough assessment of the risk of claims against the Co-Investment Facility and ensure suitable sums are held in escrow accounts to meet such claims.</p>
Duration	<p>The Co-Investment Facility has an indicative duration of 10 years and may be extended with the consent of the managing authority.</p> <p>The investment period of the financial instrument shall be set to ensure that the programme contribution referred to in Article 42 of Regulation (EU) No 1303/2013 is used for investments to final recipients at the latest by 31 December 2023.</p> <p>Investments made after 31 December 2020 shall be assessed for compliance with the State aid rules which enter into force after that date.</p>

**Investment and risk-sharing
at financial intermediary level
(alignment of interest)**

Alignment of interest between the managing authority and the financial intermediary shall be achieved through:

- performance fees as provided for under Articles 12 and 13 of Delegated Regulation (EU) No 480/2014,
- the remuneration of the financial intermediary that shall reflect the current market remuneration in comparable situations, including carried interest, if any,
- a co-financing by the private co-investors that shall be at the minimum level in accordance with Article 21(10) of Regulation (EU) No 651/2014,
- a co-financing with own resources by the financial intermediary of a minimum of 1 % on each deal under the same conditions as the Co-Investment Facility; additional co-investment by the financial intermediary shall be subject to the same conditions as the Co-Investment Facility,
- the co-financing by other co-investors which shall be made on identical terms and conditions as those applicable to the Co-Investment Facility except if the *ex ante* assessment referred to in Article 37(2)(c) of Regulation (EU) No 1303/2013 estimates that an asymmetric profit-sharing shall be set between the public and private investors; such arrangements shall be in line with Article 21(13)(b) of Regulation (EU) No 651/2014,
- the financial intermediary shall not engage in investment activities under a new investment vehicle targeting the same type of final recipients until either such a time as 75 % of the Co-Investment Facility commitments have been invested and the remaining 25 % are committed to be invested, or, the end of the investment period of the Co-Investment Facility, if earlier.

Procedures aimed at avoiding conflict of interest between the financial intermediary, co-investors and investees shall be laid down before any investment made in a final recipient by the financial intermediary selected.

Eligible Financial Intermediary and Co-investors

The selected financial intermediary (fund manager of the Co-Investment Facility) shall be a private body established at international, national or regional levels in the Member States. Such body shall be legally authorised to provide equity to enterprises established in the Member States, such as financial institutions, or any other institution authorised to provide financial instruments.

Private bodies shall be considered as private legal entities owned by private or public investors investing at their own risk and from their own resources.

The managing authority and fund of funds shall comply with Union law when selecting financial intermediaries. The selection of financial intermediaries shall be open, transparent and non-discriminatory. The selection of the financial intermediaries shall establish appropriate risk-sharing arrangements in the case of preferential remuneration and determine possible carried interest.

The financial intermediary shall specify, in the context of its selection, the conditions and criteria for the evaluation of co-investors. Those shall be understandable and available to potential co-investors. The financial intermediary shall demonstrate a non-discriminatory approach to find and invest with co-investors. The evaluation of co-investors may be controlled *ex post*. Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled if the conditions laid down in Article 21(15) of Regulation (EU) No 651/2014 are fulfilled.

The Co-Investment Facility shall seek to mobilise Co-investors implementing best practice. The co-investors shall be long-term private investors investing own resources including venture capital funds, business angels, high net worth individuals, family offices, or companies with proven know-how and operational capacity.

	<p>Co-investors shall be deemed to be any investors which, in the reasonable determination of the financial intermediary are investors operating in circumstances corresponding to the market economy investor principle in a free market economy, irrespective of their legal nature and ownership.</p> <p>Co-investors and the financial intermediary shall be independent from the final recipients of the investment except in the case of follow-on investment in final recipients that are already part of the Co-Investment Facility.</p>
Final recipient eligibility	<p>The final recipients shall be eligible under Union and national law, the relevant ESIF programme, funding agreement and with the condition referred to in Article 21(5) of Regulation (EU) No 651/2014. The following eligibility criteria shall be met by the final recipients at the date of the signature of the investment:</p> <ul style="list-style-type: none"> (a) they shall be a micro, small and medium enterprise ("SMEs" (including individual entrepreneurs/self-employed persons) as defined in Commission Recommendation 2003/361/EC (****); (b) they shall not be excluded by Article 1(2) to (5) of the Regulation (EU) No 651/2014. (c) they shall not be part of one or more restricted sectors (*****); (d) they shall not be an undertaking in difficulty as defined by Article 2(18) of the Regulation (EU) No 651/2014; (e) they shall not be in default in respect of any other loan or lease either granted by a financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy; (f) they shall be established and operating in the relevant region/jurisdiction under the ESIF programme; (g) for reasons related to State aid considerations, investment shall not be made in listed companies (SMEs listed on an alternative trading platform shall not be considered listed for the purposes of this instrument); (h) they shall not receive investment as replacement capital (including management buyout or buy-in); (i) they shall comply with Articles 10 and 11 of Regulation (EU) No 508/2014 of the European Parliament and of the Council (*****), if they are SMEs active in the fisheries and aquaculture sector.
Characteristics of the product for the final recipients	<p>The Co-Investment Facility amount and rates shall be aligned with the results of the <i>ex ante</i> assessment referred to in Article 37(2) of Regulation (EU) No 1303/2013 and shall comply with Regulation (EU) No 651/2014.</p> <p>The financial intermediary shall invest in SMEs in the form of equity or quasi-equity investment co-financed by the programme public contribution, the financial intermediary's own contributions and the co-investors contributions (the private contribution may be included for co-financing of the ESI Funds as a programme private contribution) under a co-investment agreement signed between the financial intermediary and the co-investors. Such investment of the Co-Investment Facility shall contribute to the ESIF programme objective.</p> <p>The total investment (i.e. one or more investment rounds including follow-on) combining public and private resources provided shall not exceed EUR 15 000 000 per eligible final recipient as set in Article 21(9) of Regulation (EU) No 651/2014. The total investment allowed per eligible final recipient shall be verified by including risk finance investments made under other risk finance measures.</p>

Reporting and targeted results	<p>The financial intermediary shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope.</p> <p>The report shall include all the relevant elements for the managing authority to comply with Article 46 of Regulation (EU) No 1303/2013.</p> <p>Member States shall also fulfil their reporting and transparency obligations pursuant to Regulation (EU) No 651/2014.</p> <p>Indicators shall be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and with the expected results specified in the <i>ex ante</i> assessment. They shall be measured and reported at least quarterly for the Co-Investment Facility and aligned as a minimum with the requirements of Regulation (EU) No 1303/2013. In addition to the common indicators of the priority axis of the ESIF programme other indicators are:</p> <ul style="list-style-type: none"> (a) amount invested into SMEs (with breakdown); (b) number of SMEs financed; (c) value of the investments financed; (d) gain or loss generated by the investment (if applicable); (e) number of employees at “investment” and “number of employees” at “exit” in SMEs supported.
Evaluation of the economic benefit of the programme Contribution	<p>The financial support of the programme public contribution to the instrument shall be transferred to the final recipients. This principle shall be reflected in the funding agreement between the managing authority or fund of funds and the financial intermediary.</p>

(*) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

(**) Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data (OJ L 223, 29.7.2014, p. 7).

(***) Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ L 138, 13.5.2014, p. 5).

(****) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Enterprise with less than 250 employees and having a turnover of less than EUR 50 million or total assets less than EUR 43 million; also not belonging to a group exceeding such thresholds. According to the Commission Recommendation, “an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form.”

(*****) The following economic sectors are together referred to as the “restricted sectors”:

(a) illegal economic activities: any production, trade or other activity, which is illegal under the laws or regulations of the home jurisdiction for such production, trade or activity;

(b) tobacco and distilled alcoholic beverages. The production of and trade in tobacco and distilled alcoholic beverages and related products;

(c) production of and trade in weapons and ammunition: the financing of the production of and trade in weapons and ammunition of any kind. This restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies;

(d) casinos. Casinos and equivalent enterprises;

(e) IT sector restrictions. Research, development or technical applications relating to electronic data programs or solutions, which (i) aim specifically at: (a) supporting any activity included in the Restricted Sectors referred to a to (d) above; (b) internet gambling and online casinos; or (c) pornography, or which (ii) are intended to enable to illegally (a) enter into electronic data networks; or (b) download electronic data;

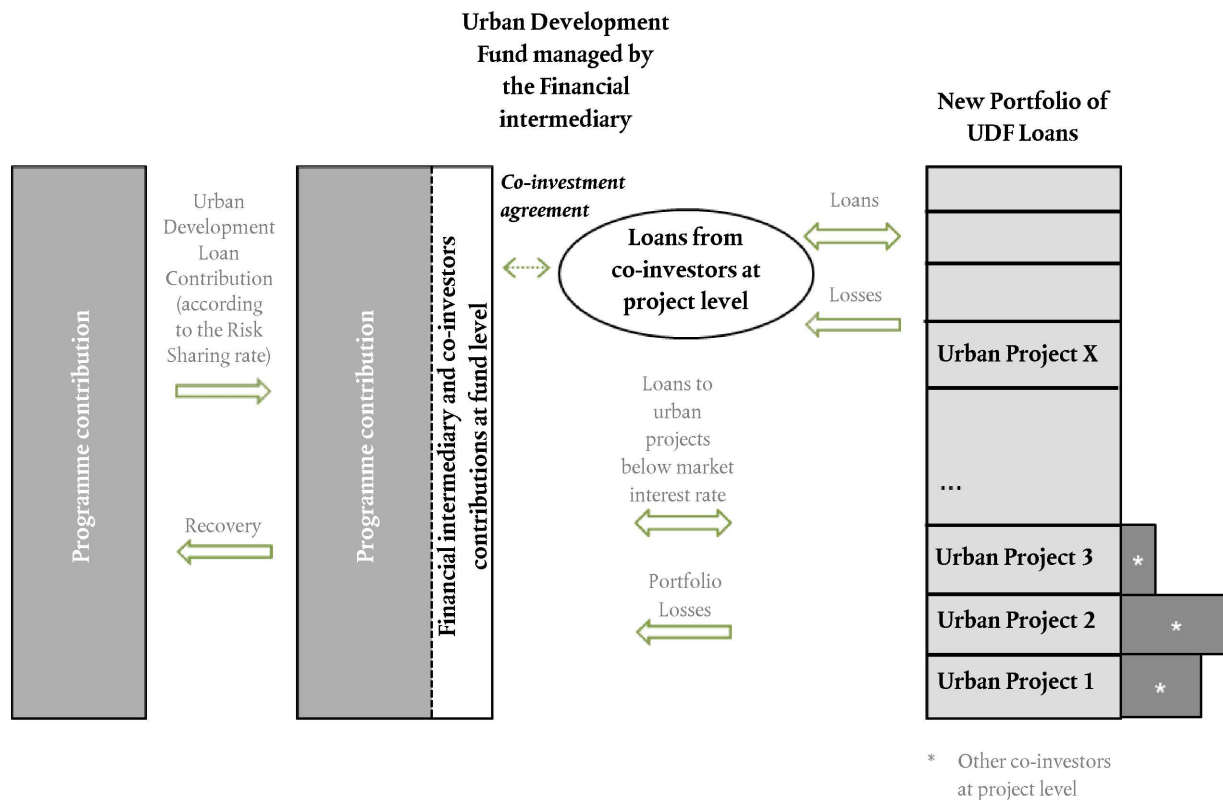
(f) life science sector restrictions. When providing support to the financing of the research, development or technical applications relating to: (i) human cloning for research or therapeutic purposes; or (ii) Genetically Modified Organisms (“GMOs”).

(*****) Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

ANNEX VI

URBAN DEVELOPMENT FUND

Schematic representation of the Urban Development Fund principle



Terms and conditions for the Urban Development Fund

Structure of the financial instrument

The Urban Development Fund (hereinafter referred to as “UDF”) shall take the form of a loan fund to be set up and managed by a financial intermediary with contributions from the programme, the financial intermediary and co-investors to finance newly originated loans for urban development projects.

The UDF shall be made available in the framework of an operation which is part of the priority axis defined in the programme co-funded by the European Structural and Investment Fund (ESIF) and defined in the context of the *ex ante* assessment required in (EU) No 1303/2013.

Aim of the instrument

The aims of the instrument is to:

- (1) Combine resources from the ESIF programme, the financial intermediary and co-investors to support financing of urban development projects.
- (2) Provide urban development projects located in assisted areas as designated in an approved regional aid map for 1 July 2014 to 31 December 2020 in application of points (a) and (c) of Article 107(3) of the Treaty with easier access to finance offering projects funds at preferential conditions. Such investments shall be made within the scope of Regulation (EU) No 651/2014.

The aims are linked with the following conditions.

The UDF instrument shall be part of the implementation of interventions envisaged in an integrated approach for a sustainable urban development strategy.

The contribution from the ESIF programme to the financial intermediary shall not crowd out financing available from other private or public investors.

	<p>The ESIF programme shall provide funding to the financial intermediary in order to build up a portfolio of loans to urban development projects. The programme shall also participate in the losses and defaults, revenues and recoveries on the UDF loan in this portfolio on a loan by loan basis.</p> <p>The co-financing of the ESIF programme shall be provided by one of the following: the programme contribution by the managing authority, the financial intermediary contribution, and co-investors' contributions at the level of co-investments in the fund, co-investments through loans into urban development projects and co-investments by other co-investors.</p> <p>In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary.</p> <p>In addition to the ESIF programme contribution, the fund of funds may provide its own resources which are combined with the financial intermediary's resources. In this instance, the fund of funds shall take a part of the risk sharing between the contributions in the portfolio of loans. Article 16 of Regulation (EU) No 651/2014 will have to be applied if the resources provided by the fund of funds are State resources or are combined with other State resources.</p>
Urban development project	<p>The urban development project shall be part of the implementation of interventions envisaged in an integrated approach for a sustainable urban development strategy and which contributes to the achievement of the objectives defined therein.</p> <p>In addition all urban development projects shall demonstrate the following parameters:</p> <p>Financial sustainability:</p> <ul style="list-style-type: none"> — urban development projects shall be based on a business model, estimating cash flows and targeting potential private investors, — urban development projects shall be structured in such a way that they generate revenue or reduce expenditures, sufficient to repay the loan received from the UDF and they shall be structured such that any State aid support is set at the minimum amount necessary to enable the project to proceed so as not to distort competition. The projects shall have an internal rate of return (IRR) which is not sufficient to attract financing on a purely commercial basis. <p>Strategic alignment:</p> <ul style="list-style-type: none"> — urban development projects shall be part of an integrated sustainable urban development strategy and have the potential to attract additional funding from other public and private investors, — urban development projects shall comply with the objectives and interventions envisaged by the ESIF programme and shall contribute to meet relevant output indicators of the ESIF programme, — urban development projects shall be located in the relevant region/jurisdiction and contribute to the achievement of objectives (including quantitative outputs) as stipulated in the ESIF programme. <p>The following investment priorities may be supported by the UDF:</p> <ul style="list-style-type: none"> — investment in low-carbon strategies for urban areas, — investment to ensure disaster resilience, — investment for adaption to climate change,

	<ul style="list-style-type: none"> — investment to improve the urban environment, including regeneration of brown-field sites and reduction of air pollution, — investment in sustainable urban mobility, — investment support for self-employment and business creation, — investment in infrastructure for public employment services, — investment in the health and social sectors, be it in infrastructure, R & D or innovative services, which contribute to local development and to the transition from institutional to community-based and primary forms of healthcare as well as to enhance access to health and social services, — investment in the physical and economic regeneration of deprived urban and rural communities, — investment towards the conservation, protection, promotion and development of cultural heritage, — investment in higher education, including collaboration with companies, — investment in ICT development.
State aid implication	<p>The investment shall be considered compatible with the internal market and not requiring an ad hoc notification, provided it complies with Article 16 of Regulation (EU) No 651/2014.</p> <p>The presence of State aid shall be assessed at the levels of the fund of funds, financial intermediary, the private investors and final recipients. In this regard the financial intermediary and the fund of funds shall comply with the following conditions:</p> <ul style="list-style-type: none"> (a) the management costs and fees of the financial intermediary and the fund of funds reflects the current market remuneration in comparable situations, which is the case when the latter has been selected through an open, transparent, non-discriminatory call or if the remuneration is aligned with Articles 12 and 13 of Delegated Regulation (EU) No 480/2014 and no other advantages are granted by the State. Where the fund of fund only transfers the ESIF contribution to the financial intermediary, and has a public interest mission, and has no commercial activity when implementing the measure, and is not co-investing with its own resources — therefore it is not considered a beneficiary of aid — it is enough that the fund of fund is not overcompensated; (b) the private contribution to each urban development project is not lower than 30 % of the total financing provided in compliance with Article 16(6) of Regulation (EU) No 651/2014; (c) the UDF is managed on a commercial basis and shall ensure profit-driven financing decisions. <p>Private contribution is here considered as investments made by private bodies.</p> <p>The costs for the due diligence of the urban development projects shall be covered by the management costs and fees of the financial intermediary managing the UDF.</p> <p>Preferential remuneration (asymmetric conditions on risk-sharing arrangements) for fund of funds, financial intermediary contribution and co- investors contributions at fund level and project level in a form of loans, if any, shall be set in line with Article 44(1) of Regulation (EU) No 1303/2013, points (b) and (c) of Article 16(8) of Regulation (EU) No 651/2014, as further specified under the pricing policy.</p> <p>No asymmetric conditions are possible for the other co-investors at project level since their contributions are not invested in loans and outside UDF.</p>

Lending policy**(a) Disbursement from the managing authority or from the fund of funds to the financial intermediary**

Following the signature of a funding agreement between the managing authority or fund of funds and the financial intermediary, the relevant managing authority or fund of funds shall transfer public contributions from the programme to the financial intermediary which shall place such contributions in a dedicated UDF. The transfer shall be carried out in tranches and shall respect the ceilings of Article 41 of Regulation (EU) No 1303/2013.

The target lending volume and range of interest rate shall be confirmed within the *ex ante* assessment in accordance with Article 37 of Regulation (EU) No 1303/2013 and shall be taken into account to determine the nature of the instrument (revolving or non-revolving instrument).

(b) Origination of a portfolio of loans

The financial intermediary shall be required to originate within a pre-determined limited period of time a portfolio of eligible loans for urban development projects in addition to its current loan activities, partly funded from the disbursed funds under the programme at the risk sharing rate agreed in the funding agreement.

The financial intermediary shall implement a consistent lending policy based on an agreed investment strategy enabling sound credit portfolio management; while complying with the applicable industry standards and while remaining appropriate to the managing authority's financial interests and policy objectives. The investment strategy shall be defined within the integrated sustainable urban development strategy, target activity, target spatial areas and eligible expenditure.

The identification, selection, due diligence, documentation and execution of the loans to final recipients shall be performed by the financial intermediary in accordance with its standard procedures and in accordance with the principles set out in the relevant funding agreement.

In case of co-investors providing loans into urban development projects a co-investment agreement between the financial intermediary and co-investors providing loan directly to an urban development project should be signed. Such agreement defines the terms and conditions for investment in the final recipients and is, if applicable, compliant with Article 1(3) of the Commission Implementing Regulation (EU) No 821/2014 (*). Such co-investment agreement shall specify the conditions for risk-sharing arrangements if any.

(c) Re-use of resources paid back to financial instrument

Resources paid back to financial instrument shall be either reused within the same financial instrument (revolving within the same financial instrument) or after being paid back to managing authority or fund of funds they shall be used in accordance with Article 44 and 45 of Regulation (EU) No 1303/2013.

This revolving approach as referred to in Articles 44 and 45 of Regulation (EU) No 1303/2013 shall be included in the funding agreement.

When revolving within the same financial instrument, as a matter of principles the amounts that are attributable to the support of the ESIF and that are reimbursed and/or recovered by the financial intermediary from loans to final recipients within the time framework for investments shall be made available for new use within the same financial instrument.

Alternatively, if managing authority or fund of funds is directly repaid, the repayments shall occur regularly mirroring (i) principal repayments (ii) any recovered amounts and losses deductions of the loans and (iii) any interest rate payments. These resources have to be used in accordance with Articles 44 and 45 of the Regulation (EU) No 1303/2013.

	<p>(d) <i>Loss recoveries</i></p> <p>The financial intermediary shall take recovery actions in relation to each defaulted loan financed by the UDF in accordance with its internal guidelines and procedures.</p> <p>Amounts recovered by the financial intermediary (net of recovery and foreclosure costs, if any) shall be allocated between the financial intermediary, the managing authority and the fund of funds.</p> <p>(e) <i>Interest and other gains</i></p> <p>Interest and other gains generated by support from the ESI Funds to financial instrument shall be used as referred in Article 43 of Regulation (EU) No 1303/2013.</p>
Pricing policy	<p>When proposing its pricing, the financial intermediary shall reduce the overall collateral requirement and the interest rate charged on each loan included in the Portfolio, to the allocation provided by the public contribution of the programme and the risk-sharing arrangements.</p> <p>The pricing policy shall at least include the following elements:</p> <ol style="list-style-type: none"> (1) The interest rate on the financial intermediary participation shall be set at market basis (i.e. according to the financial intermediary own policy). (2) The overall interest rate, to be charged on loans to the eligible urban development projects included in the portfolio, must be reduced proportionally to the allocation provided by the public contribution of the programme. This reduction shall take into account the fees that the managing authority might charge on the programme contribution and the risk-sharing arrangements. (3) The pricing policy shall remain constant during the eligibility period.
Programme contribution to financial instrument: amount and rate (product details)	<p>The actual risk sharing rate, programme public contribution, preferential remuneration and interest rate on loans shall be based on the <i>ex ante</i> assessment findings and shall be such as to ensure that the benefit to the final recipients complies with Article 16(8)(b) of Regulation (EU) No 651/2014.</p> <p>The size of the target portfolio of the UDF shall be established on the basis of the <i>ex ante</i> assessment justifying the support to the financial instrument in accordance with Article 37 of Regulation (EU) No 1303/2013 and shall take into account the revolving approach of the instrument, if applicable.</p> <p>The UDF allocation and the risk-sharing rate shall be set to fill the gap identified in the <i>ex ante</i> assessment, and shall comply with the conditions laid down in this Annex.</p> <p>The minimum co-financing rate agreed with the financial intermediary shall be defined for each eligible loan included in the portfolio, corresponding to the maximum portion of the eligible loan principal amount financed by the programme. The risk sharing rate agreed with the financial intermediary shall determine the portion of the losses which are to be shared between the financial intermediary, co-investors (at fund level and at project level) and the programme contribution in absence of any other arrangement.</p> <p>Detailed terms and conditions for financing to be provided by a UDF shall be determined prior to making an investment for each urban development project on the basis of financial forecasts prepared for the urban development project and verified by the financial intermediary.</p>

Programme contribution to financial instrument (activities)	<p>The underlying transactions portfolio funded by the UDF shall include loans for urban development projects.</p> <p>The eligibility criteria for inclusion in the portfolio are determined in accordance with Union law, the ESIF programme, national eligibility rules, the investment strategy (part of the integrated approach for sustainable urban development strategy) and with the financial intermediary. The financial intermediary shall have a reasonable estimation of the portfolio risk profile.</p> <p>The financial intermediary shall be required to identify, invest in and manage in a sustainable manner a portfolio of urban development projects based on an investment strategy confirmed within the <i>ex ante</i> assessment. The financial intermediary shall manage a portfolio of urban development projects that are part of the implementation of interventions envisaged in an integrated approach for a sustainable urban development strategy.</p> <p>For each urban development project, the financial intermediary shall provide at least the following:</p> <ul style="list-style-type: none"> (a) a general description of the project and the project's timetable, including a description of the co-financing partners and shareholders and the project's detailed financing plan; (b) a justification for selection for the contribution from the programme, including an initial assessment of the viability of the project and the subsequent need for UDF investment; (c) an identification of the risks; (d) the compliance with the project's objectives described in the relevant programme. This means that selected urban development projects shall contribute to the achievement of the programme objectives, including quantitative outputs, as stipulated in the relevant priority axes of the programme. <p>When implementing the portfolio, the financial intermediary shall in particular:</p> <ul style="list-style-type: none"> (a) identify, invest in and lead the negotiation and structuring of financial investments in viable urban development projects which meet the requirements and criteria applicable to the relevant programme; (b) carry out both compliance and investment appraisal with the requirements of the investment strategy. A viability test must demonstrate that the project would not proceed without UDF investment; (c) report on urban development projects in accordance with the Article 46 of Regulation (EU) No 1303/2013; (d) ensure that at least 30 % of the total financing provided to an urban development project is from private origin and that the best possible leverage of private resources is achieved.
Managing Authority's liability	<p>The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Delegated Regulation (EU) No 480/2014.</p> <p>The losses covered are principal amounts due, payable and outstanding and standard interest (but excluding late payment fees and any other costs and expenses).</p>
Duration	<p>The lending period of the financial instrument shall be set in order to ensure that the programme contribution as referred in Article 42 of Regulation (EU) No 1303/2013 is used for loans disbursed to final recipients no later than the 31 December 2023.</p> <p>Investments done after 31 December 2020 need to be checked for compliance with State-aid rules, which will enter into force after that date.</p>

Lending and risk-sharing at financial intermediary level (alignment of interest)

Alignment of interest between the managing authority, co-investors and the financial intermediary shall be achieved through:

- performance fees as provided for under Articles 12 and 13 of the Delegated Regulation (EU) No 480/2014,
- the remuneration of the financial intermediary that shall reflect the current market remuneration in comparable situations,
- the financial intermediary shall ensure the financing of at least 30 % of the total financing commitment for lending to the urban development projects. Out of this 30 %, minimum 1 % of the total financing commitment of the UDF to each project shall be invested by the financial intermediary from its own resources on the same terms and conditions as the programme contribution. The other minimum 29 % shall be provided by the financial intermediary, co-investors at fund level or co-investors at project level through loans,
- the total amount of private co-financing shall be at least 30 % of the total financing provided to an urban development project,
- co-financing by co-investors could be regarded as either national co-financing of the ESI Fund as long as it doesn't come from final recipients' own resources (where such co-financing is then invested in eligible project expenditures) or complementary to the programme public contribution,
- the risk-sharing with the financial intermediary and with co-investors (at fund level or at urban development project level) shall be made pro-rata as for the programme contribution except if the *ex ante* assessment as referred in Article 37(2)(c) of Regulation (EU) No 1303/2013 estimates that a preferential remuneration is needed in the form of an asymmetric risk-sharing set between the public and private co-investors. Such arrangements shall be in line with Article 16(8)(b) and c of Regulation (EU) No 651/2014 and included in the co-investment agreement between the parties. Such arrangements do not apply to the 1 % invested by the financial intermediary from its own resources as required here above for the purpose of alignment of interest.

Eligible Financial Intermediaries

The selected financial intermediary shall be a public or private body established in a Member State and shall be legally authorised to provide loans to urban development projects located in the jurisdiction of the programme which contributes to the financial instrument. The eligible financial intermediary shall also demonstrate capacity to manage a UDF and monitor the portfolio of urban development projects. It concerns the elements required at the Article 7 of Delegated Regulation (EU) No 480/2014. Eligible financial intermediary shall also demonstrate experience in the relevant targeted market and a suitable track record in the management of equivalent or similar projects or financial vehicles investing in similar projects to those envisaged by the UDF, including experience in the use of ESIF.

The financial intermediary shall be appropriately regulated by the relevant national financial services regulatory body and it shall follow professional fund management best practice.

The financial intermediary shall be managed on commercial basis. This requirement shall be considered to be fulfilled if the conditions set in Article 16(9) of Regulation (EU) No 651/2014 are complied with.

Private bodies shall be considered as private legal entities owned by private or public investors investing at their own risk and from their own resources.

The legal structure of the UDF shall allow additional funding to leverage programme contribution from other investors into urban development projects.

	<p>The managing authority and fund of funds shall comply with Union law when selecting financial intermediaries. The selection of financial intermediaries shall be open, transparent and non-discriminatory. The selection of the financial intermediaries shall aim at establishing appropriate risk-sharing arrangements in case of preferential remuneration.</p> <p>The selection process of the financial intermediary shall evaluate the UDF investment strategy, decision making and overall governance approach, management capacity and contribution by the financial intermediary on its own resources to the UDF. Within the selection process, one of the eligibility criteria for the selection of the financial intermediary shall be its capacity to propose and develop a portfolio of urban development projects to be financed, taking into account the most competitive pricing policy proposed by the financial intermediary participating in the selection process.</p> <p>The financial intermediary shall be responsible for the identification and evaluation of urban development projects. Once selected, the financial intermediary shall manage an urban development project pipeline.</p> <p>The pipeline of urban development projects shall contain projects that the financial intermediary undertakes to finance, based upon the information available at that time.</p> <p>Investors shall be deemed to be any investors which, in the reasonable determination of the financial intermediary are investors operating in circumstances corresponding to the market economy investor principle in a free market economy, irrespective of their legal nature and ownership.</p> <p>The financial intermediary shall specify, in the context of its selection, the conditions and criteria for the evaluation of co-investors. Those shall be understandable and available to potential co-investors. The financial intermediary shall demonstrate a non-discriminatory approach to find and invest with co-investors. The evaluation of co-investors may be controlled <i>ex post</i>.</p>
Final recipients eligibility	<p>The final recipients shall be eligible under Union and national law, the relevant ESIF programme, funding agreement and with the condition referred in Article 16 of Regulation (EU) No 651/2014. The following eligibility criteria shall be met by the final recipients at the date of the signature of the loan:</p> <ul style="list-style-type: none"> (a) they shall be urban development actors, meaning undertakings with a legal status allowing for taking debts and implementing urban development projects, with various ownership structures, for example combining private and public capital; (b) they shall be active partners for regional and local authorities stimulating urban development by investing in urban development project. Final recipients must have suitable legal interest in the asset which the investment is made; (c) they shall not be excluded by Article 1(2) to (5) of the Regulation (EU) No 651/2014; (d) they shall not be part of one or more restricted sectors (**); (e) they shall not be a company in difficulty as defined by Article 2(18) of the Regulation (EU) No 651/2014; (f) they shall not be delinquent or in default in respect of any other loan or lease either granted by the financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy; (g) they shall invest in urban development projects that are implemented in assisted areas as designated in an approved regional aid map for the period 1.7.2014-31.12.2020 in application of Article 107(3)(a) and (c) of the Treaty.

	<p>In addition, at the time of the investment and during the reimbursement of the loan, final recipients shall have a registered place in a Member State and the activity for which the loan was disbursed shall be located in the relevant Member State and region/jurisdiction of the ESIF programme.</p>
<p>Characteristics of the product for the final recipients</p>	<p>The UDF shall deliver to final recipients the loans that contribute to the objective of the programme and that are co-financed by the programme. The UDF amount and rates shall be aligned with the results of the <i>ex ante</i> assessment referred in Article 37(2) Regulation (EU) No 1303/2013 and shall comply with Regulation (EU) No 651/2014.</p> <p>The loans shall be used exclusively for the following permitted purposes:</p> <ul style="list-style-type: none"> (a) investments in tangible and in intangible assets; (b) working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the urban development project and the amount of the financing). <p>The following eligibility criteria shall be met at all times by UDF loans included in the portfolio:</p> <ul style="list-style-type: none"> (c) loans shall be newly originated, to the exclusion of the refinancing of existing loans or financing of completed projects; (d) the total investment amount of the UDF for the urban development project shall not exceed EUR 20 000 000 as set out in Article 16(3) of Regulation (EU) No 651/2014; (e) loans shall provide financing for one or more of the permitted purposes in EUR and/or national currency in the relevant jurisdiction and/or, as the case may be, in any other currency; (f) loans shall not be in the form of mezzanine loans, subordinated debt or quasi equity; (g) loans shall not be in the form of revolving credit lines; (h) loans shall have a repayment schedule: including regular amortising and/or bullet payments; (i) loans shall not finance pure financial activities and shall not finance the provision of consumer finance; (j) maturity: loans shall have the minimum maturity of 12 months (including the relevant grace period, if any) and a maximum maturity of up to 360 months.
<p>Reporting and targeted results</p>	<p>The financial intermediary shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope.</p> <p>The report shall include all the relevant elements for the managing authority to comply with Article 46 of Regulation (EU) No 1303/2013.</p> <p>Member States shall also fulfil their reporting and transparency obligations pursuant to Regulation (EU) No 651/2014.</p>

	<p>Indicators shall be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and with the expected results specified in the <i>ex ante</i> assessment. They shall be measured and reported at least quarterly for the UDF and aligned as a minimum with the requirements of Regulation (EU) No 1303/2013. In addition to the common indicators of the priority axis of the ESIF programme other indicators are:</p> <ul style="list-style-type: none"> (a) numbers of loans/projects financed; (b) amounts of loans financed; (c) defaults (numbers and amounts); (d) resources repaid and gains.
Evaluation of the economic benefit of the programme contribution	<p>The financial advantage of the programme's public contribution to the instrument shall be transferred to the final recipients taking into consideration, if applicable, the favourable funding conditions provided by the programme's public contribution to the UDF.</p> <p>The financial intermediary shall reduce the overall effective interest rate and collateral policy, where appropriate, charged to the final recipients under each eligible loan included in the portfolio reflecting the favourable funding conditions of the programme contribution to the UDF.</p> <p>This principle shall be reflected in the funding agreement between the managing authority or fund of funds and the financial intermediary.</p>

(*) Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data (OJ L 223, 29.7.2014, p. 7).

(**) The following economic sectors are together referred to as the "restricted sectors":

- (a) illegal economic activities: any production, trade or other activity, which is illegal under the laws or regulations of the home jurisdiction for such production, trade or activity;
- (b) tobacco and distilled alcoholic beverages. The production of and trade in tobacco and distilled alcoholic beverages and related products;
- (c) production of and trade in weapons and ammunition: the financing of the production of and trade in weapons and ammunition of any kind. This restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies;
- (d) casinos. Casinos and equivalent enterprises;
- (e) IT sector restrictions. Research, development or technical applications relating to electronic data programs or solutions, which (i) aim specifically at: (a) supporting any activity included in the Restricted Sectors referred to a to d above; (b) internet gambling and online casinos; or (c) pornography, or which (ii) are intended to enable to illegally (a) enter into electronic data networks; or (b) download electronic data;
- (f) life science sector restrictions. When providing support to the financing of the research, development or technical applications relating to: (i) human cloning for research or therapeutic purposes; or (ii) Genetically Modified Organisms ("GMOs").