

MS comments on the guidance note on combination following EGESIF presentation on 22 April 2015

	Ms	Ms comment	COM reply
1.	IT	<p>Referring to the above mentioned Guidance document, we would need some clarification about the application of combination of support in the following cases:</p> <p>Regulation 1303/2013. Art. 37.11: <i>“where financial instruments are combined with grants under paragraphs 7 and 8 of this Article, the provisions of Article 69(3) shall apply to the grant”.</i></p> <p>Considering an investment that consists of a single expenditure item of EUR 100, supported by ESIF program grant and ESIF program loan, can VAT be treated as follows? <i>Eligible cost: 100</i> <i>Grant support 30</i> <i>VAT: 20%</i> <i>Maximum value of the ESIF loan: 84 (70+VAT 20%)</i></p> <p>Regulation 1305/2013. Art. 45.5: <i>“Working capital that is ancillary to, and linked to a new investment in the agriculture or forestry sector, which receives EAFRD support through a financial instrument established in accordance with Article 37 of Regulation (EU) No 1303/2013, may be eligible expenditure. Such eligible expenditure shall not exceed 30 % of the total amount of the eligible expenditure for the investment”.</i></p> <p>Considering the investment under point 1, can working capital be treated as follows? <i>Eligible cost: 100</i> <i>Grant support 30</i> <i>Eligible working capital: 30%</i> <i>Maximum value of the loan through financial instrument: 91 (70+working capital 30%)</i></p>	Both questions have been answered and communicated to the Member State (in the framework of ESIF Q&A).
2.	EST	<p>1. The guidance note makes repeated references to combination financial instruments and <u>“other forms of support (including technical support, interest rate subsidies, and guarantee fee subsidies)”</u> – it should be clear if these other forms are limited to the three categories in brackets i.e. solely to technical support, interest rate and guarantee fee subsidies, or not. At the last the EGESIF meeting it was indicated that these are just examples. However, the guidance note currently appears to imply that only grants directly related to the FI can be combined with it and that only these three types of</p>	The guidance note quotes the wording of Article 37(7) by referring to <i>“other forms of support including technical support, interest rate subsidies, and guarantee fee subsidies”</i> . The market practice indeed provides mainly for these three types of

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		<p>grants are related to FIs (see page 3) i.e. that this is a closed list. Given that this is a key issue, it should be clear whether combination with grants is limited to these three types of grants or not.</p> <p>A situation to illustrate the question: The ex-ante assessment of financial instruments shows that that investments in a particular sector (e.g. resource efficiency) yield a profit only after a very long period and that banks do not lend easily for such investment. In addition, even if entrepreneurs got a loan to boost resource efficiency, they might not be very interested in engaging in resource efficiency investments, because it is not very profitable, albeit this is an important policy goal. Nevertheless, while not very profitable, investment in resource efficiency could yield some economic gains and enable thus servicing a loan covering partially the investment cost - there is some scope for use of financial instruments. Therefore, a solution may be a combination of a grant element and a loan for the same investment, to provide an incentive to engage in such investment.</p> <ul style="list-style-type: none"> • Is this possible within the same operation, or not? • We do understand that it is in any case possible in two different operations, even if the object of investment (also expenditure item) is the same. Is this correct? 	<p>support directly related to the financial instrument, i.e. <i>technical support, interest rate subsidies, and guarantee fee subsidies</i>. Indeed, CPR did not include more examples. As financial instruments operate in changing market conditions the legislator did not want to exclude any other possible support especially in the context of the regulation which will be binding for the next 10 years. This is why Article 37(7) does not make the list exhaustive and includes an opening allowing for possible new category of a grant. It should be, however, underlined that this grant will have to be directly linked to the financial instrument. The financial support through such grant should not be given directly to the final recipient but it should benefit the final recipient and at the same time facilitate and enhance the operation of financial instrument.</p> <p>On your example the loan and the grant cannot constitute part of the same operation. The grant is a separate operation which follows the grant</p>

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			rules (e.g. on substantiation of expenditure). The loan is part of FI operation which follows FI rules. The two types of support (constituting two different operations) can be nevertheless granted by the same body (it will be a "body implementing financial instrument" for FI and an "intermediate body" for grant) to the same final recipient (beneficiary in case of a grant) and for the same expenditure item.
3.	EST	To specify question 1, Section 3.1.2 seems to imply that where an investment includes multiple expenditure items (e.g. construction works and purchase of machinery) and where both grants and FI are used to finance different items, the investment must be divided in different operations (grants separated from FIs). Therefore, we need to double check if it is possible to finance a single operation where e.g. a loans used to support construction works and grants for purchase of machinery (within the same set of investments for the same financial recipients)? We would welcome the specification of this in the note.	See the answer above
4.	EST	<p>As for the combination of a financial instrument and other form of support in a single financial instrument operation, it is stated in the guidance note, that estimate of the ESIF programme contribution for such form of support must be covered by the ex-ante assessment.</p> <p>Two questions:</p> <ul style="list-style-type: none"> • Is it so only if financial instruments and grants are combined within a single financial operation? If they comprise two different operations, the ex-ante assessment for the grant element is not necessary? Please clarify in the guidance note. • The ex-ante assessment is undertaken at policy area or at sectoral level, not at 	<p>Ex-ante assessment needs to include "envisaged combination with grant support as appropriate".</p> <p>This implies that:</p> <ol style="list-style-type: none"> 1. For combination of a grant within one operation (e.g. interest rate subsidies) the ex-ante assessment should not only assess the need but also estimated contribution needed for such a grant

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		<p>the level of individual operations or recipients. Can you provide any guidelines on how to determine the need or size of the grant element /financial instrument for a particular final recipient within the same operation?</p>	<p>(interest rate subsidy). The amount needed for interest rate subsidy together with contribution for FI would constitute a single contribution from Managing Authority to the financial instrument. The amount relating to the grant component can be increased / decreased following the changing market conditions and revisions of ex-ante assessment.</p> <p>2. For combination of grant and financial instrument for the same expenditure item (or investment) within two separate operations the ex-ante assessment should underline that the type of projects supported by FI may require additional grant element (e.g. due to its low profitability). Therefore, to the possible extent, the ex-ante assessment should provide such estimation which may not be relevant for the size of FI operation but is relevant for the policy objectives to be pursued, for the proper definition of the support to be given and for the adequate functioning of the</p>

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			<p>envisaged combination, even if in two distinct operations</p> <p>In addition, there can also be an ad hoc (not systematic as described in point 2) combination at the level of final recipient, where a final recipient applies for a ESIF programme loan for part of it investment and for a grant for another type of its investment (within two separate operations). Such individual cases of combination cannot be envisaged in ex-ante assessment.</p>
5.	EST	At what level must "separate records be maintained for each form of support"- (see point 4 at page 3) -at the level of the body implementing FI, or the final recipient, or both? Any implications at the level of final recipients should be explicit in the note.	Separate records need to be kept throughout each of two operations. For the FI operation the records of ESIF programme support have to go down to the level of final recipient (c.f. Article 9(1)(e)(xii) of Regulation 480/2014).
6.	EST	Beyond the mechanics of the CPR, we would appreciate good practice guidance on how this combination can be done, what are the benefits, what are risk areas to pay attention to, how to make it simple for the final recipients where the combination takes place in two operations etc.	The two types of support (constituting two different operations) can be granted by the same body (it will be a "body implementing financial instrument" for FI and an "intermediate body" for grant) to the same final recipient (beneficiary

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			<p>in case of a grant) and for the same expenditure item. Practicalities depend on the type of instrument, on the type of projects supported and on the national framework.</p> <p>See also reply to question 4 above and ex-ante assessment methodologies available here:</p> <p>http://ec.europa.eu/regional_policy/index.cfm/en/funding/financial-instruments/</p> <p>Good practice case-studies are available on: http://www.fi-compass.eu/</p>
7.	EST	<p>"The 3 comments to the following excerpt have been made: <i>"As regards the condition under 1 the Commission considers interest rate subsidies and guarantee fee subsidies to be directly related to the financial instrument if they are associated and combined with ESIF programme loans and guarantees in a single financial package. As regards other grants the Commission considers them directly related to financial instruments if they concern technical support for the purpose of the technical preparation of the prospective investment and for the benefit of the respective final recipient (cf Article 5 of Regulation (EU) 480/2014). "</i></p> <ol style="list-style-type: none"> 1. It is unclear what is a "package"? Is it e.g. amount of money from FoF to body, implementing the FI? Please clarify. 2. Given the confusion between technical support and technical assistance, a clarification would be useful. 3. Even though in the last EGESIF meeting it was indicated that the types of grants that can 	<ol style="list-style-type: none"> 1. The requirement for having guarantee fee subsidies and interest rate subsidies combined with ESIF programme loans and guarantees in a single financial package means that interest rate subsidy/guarantee fee subsidy is given in relation to the loan or guarantee paid or committed from the financial instrument. It is not possible to combine within financial instrument interest rate subsidy/guarantee fee subsidy which will be offered in relation to loans/guarantees not linked with FI. Such interest rate subsidy or guarantee fee

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		<p>be combined with FIs are not limited to interest fee/guarantee fee subsidies and technical support, this paragraph implies that this is indeed a final and closed list, as “other grants” are considered directly related to financial instruments only if they are technical support”. Please indicate clearly, which is the case and notably, whether a grants and FI element can be combined in the same main investment.</p>	<p>subsidy offered for commercial loan not linked to the financial instrument should be treated as a grant operation in accordance with Article 69(3)(a).</p> <p>2. Technical assistance and technical support are two distinct terms used in the Regulation. The concept of technical support is explained in Article 5 of Regulation 480/2014. The concept of technical assistance is explained in title VI of Regulation 1303/2013</p> <p>3. See reply to question 2</p>
8.	EST	<p>A comment to the following excerpt has been made: <i>Separate records are maintained for each source of assistance. In the case of ESI Funds this means that separate records and supporting documents for the audit trail should be maintained for the financial instrument operation and for the other operation (e.g. grant operation).</i></p> <p>Please specify that this applies at FI manager level. Any implications at final recipient level should also be clearly specified.</p>	See reply to question 5
9.	SK	<p>The Article 37 (7) of the CPR clearly provides a non-exhaustive list of examples where a combination of a financial instrument with a grant is allowed in a single operation. We believe that the guideline should not go further than the CPR. A possibility should be left for other forms of combined support in a single operation.</p>	See reply to question 2

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		<p>A specific example where this should be possible is the social economy. A typical case may be the support of a social cooperative created by a group of formerly long-term unemployed persons. Since such group of persons is likely deeply lacking in both social and financial capital it is only logical and appropriate to support their undertaking with some basic security in the form of a partial grant ("seed money"). Furthermore, it should definitely be part of a single operation in order to avoid any possible disincentives in the form of additional administrative burden. The additional administrative burden also applies to the Managing Authority who is then discouraged from providing a combination of grants with financial instruments, and motivated to stick to the grant support.</p>	
10.	SK	<p>The guidance limits the possible use of interest rate subsidy to "<i>the private capital co-invested at the level of the relevant financial instrument</i>" whereas there seems to be no support whatsoever for such limitation in the CPR. We believe the interest rate subsidy should be possible also for the ESIF part of loans.</p> <p>Again, considering the example of social economy, it is not clear to what extent it will be possible to raise private capital. On the other hand, it is clear that some form of interest rate subsidy is necessary in the social economy: it is a well-known fact that many social enterprises would only consider loans at 0% interest rate.</p>	<p>Interest rate subsidy combined with a loan within financial instrument operation should be distinguished from a loan with lower (or even with no) interest rate designed and offered through a financial instrument. While both cases have the same economic impact (final recipient does not need to pay any interest rate) they result in different value of expenditure declared to COM.</p> <p>In the latter case financial instrument based on the ex-ante assessment and the market analysis offers an ESIF programme loan with 0% interest rate (in this case the definition of the interest rate to be charged is under the full control of the MA/national authorities). The eligible expenditure declared for COM reimbursement is</p>

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			<p>the amount of the loan.</p> <p>In the first case the combination of an ESIF programme loan with ESIF programme interest rate subsidy would imply that there is an ESIF programme loan offered at market rate (e.g.3%) and at the same time in order to support the final recipient, for whom such an interest rate would not be affordable, an interest rate subsidy is offered to lower the interest rate to 0%. In this case the eligible expenditure declared for COM reimbursement is the amount of the loan and the amount of the grant for interest rate subsidy. This solution is not only less efficient (the same result is achieved with more funds) but also questions the validity of ex-ante assessment which has proposed a financial product (a loan with 3% interest) not adjusted to the market need.</p> <p>Suh a solution, being sub-optimal in terms of efficiency, would not be compatible with the principle of sound financial management which applies to managing authorities and includes efficiency, in terms of relation between resources employed and results achieved.</p>

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11.	SK	<p>The guidance forbids the use of capital rebates in the Q&A: <i>"A financial instrument providing support in the form of a loan cannot include a capital rebate in its design. This would be noncompliant with the definition of a loan referred to in Article 2 (k) of the Financial Regulation as an agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time. Since the borrower is obliged to repay the borrowed amount of money, there is no scope to embed capital rebates within a loan."</i> While the statement is technically true, as far as Article 2 (k) of the Financial Regulation is concerned, it must be pointed out that nowhere in the CPR it is said that the financial instruments only cover 'loans' in the technical sense of this Article of the Financial Regulation, and thus there is no reason to believe that specific types of repayable instruments with a rebate conditional on the fulfilment of particular criteria should be disallowed. Indeed, Commission's draft terms and conditions for the "off-the-shelf" financial instruments themselves refer to this possibility: <i>"A grant may be also allocated as a capital rebate for final recipients under certain financial conditions (the overall amount reimbursed by the final recipients until maturity is not expected to be lower than the principal of the loans on which interest was calculated), performance conditions and for low income households."</i> (http://ec.europa.eu/regional_policy/sources/what/future/pdf/preparation/3_draft_standard_terms_conditions_financial_instruments_17072013.pdf)</p> <p>To provide you with an example, it is already standard practice for the cooperative associations in Slovakia to provide bridging loans to its members and motivate good payment discipline by cancelling the last instalment of the loan if all the previous repayments are given on schedule. There seems to be no reason why such practice could not be replicated within the financial instruments for social enterprises funded by the ESIF.</p>	<p>Article 2(11) CPR explicitly refers to the definition of financial instruments in Financial Regulation. The definition of financial instruments in Financial Regulation refers neither to the capital rebate nor to any other type of grant.</p> <p>Please note that the quoted text was included in a draft document. This text had been removed in the process of finalisation of legal framework and is not included in the adopted Commission Implementing Regulation 964/2014.</p> <p>In order to enable that part of the support to the project can become non-repayable as a reward for good performance of the project the managing authorities are invited to consider the possibility of using repayable assistance for the entire support to the project or of combining repayable assistance with financial instrument support. In case of such combination a loan would cover the part of the project which has to be unconditionally repaid and repayable</p>

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			assistance could cover the part of the project whose repayment would be conditional. These two streams of funding will formally constitute separate operations (see example 2.1 (a) in the guidance note)
12.	SK	Chapter 3.1.1, p.2 - "Financial instruments and other forms of support (including technical support, interest rate subsidies, and guarantee fee subsidies)...". In order to avoid misunderstandings, it should be clearly specified at the beginning of this chapter that only these forms of support may be combined within a single operation. Word "including" is a little bit misleading.	See reply to question 2
13.	SK	Whole document. Combination of FI and repayable assistance should be more elaborated in this document. There is only one short note on the p. 7 regarding repayable assistance. It is not clear how to proceed in case of a hybrid instrument providing loan which is partly converted into grant.	A paragraph was inserted on repayable assistance
14.	SK	Chapter 3.1.1 - With regard to the combination of off-the-shelf FI and grant for technical support, it should be useful to include into the text the provision of Article 3 of Commission implementing regulation No 964/2014, where is stated, that such a grant does not exceed 5 % of the ESIF Funds contribution to the FI.	Indeed, Commission implementing Regulation 964/2014 setting standard terms and conditions for financial instruments limits the amount of grant for technical support to 5% of ESI Funds contribution to financial instrument. This limitation is however not applicable to other financial instruments.
15.	SK	Chapter 3.1.2 (p.5) - Few CPR conditions for combination of FI support with grant (or other form of support) within two separate operations are mentioned here, except for	See reply to question 4

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		the need to cover the envisaged combination of FI and grants by ex-ante assessment (stated only for single operation, p. 4). Question: Does this ex-ante assessment concern the combination of support within two separate operations as well? (see the CPR Article 37 (2,e)) Please specify which combination of support with the FI needs to be covered by ex-ante assessment in compliance with CPR Article 37 (2,e).	
16.	SK	Chapter 3.1.1 – point 4 on the page 3 – we suggest to include in the text of this guidance concrete separate records which must be maintained for each form of support.	This is explained in the second last paragraph of point 3.1.1.
17.	EL	<p><u>Section 3.1.1, page 4, 2nd bullet-point: “...the sum of all forms of support combined must not exceed the total amount of the expenditure item concerned”.</u></p> <p>Please clarify whether the sum of all forms of support refers to the total budget or the eligible budget. Moreover, please specify whether the sum takes into account the Union contribution, or the total public expenditure, or even the private resources. For example, in case of risk-shared loans combined with interest rate subsidy, should it be taken into account only the loan part related to the public expenditure, or the total loan? Finally, please clarify whether for combinations with interest rate subsidies and guarantee fee subsidies we should take into account the whole amount of the loan/s (total nominal value), or the Gross Grant Equivalent. The same concerns apply to Section 3.1.2, page 5, 1st bullet-point.</p>	<p>The "sum of all forms of support" refers to ESIF programme support (i.e. ESIF and national co-financing) whether in the form of grant or financial product, which:</p> <ul style="list-style-type: none"> • In case of a grant covers the amount of the ESIF programme grant which is declared to COM as eligible expenditure ; • in case of a loan or equity covers the amount of the ESIF programme loan or equity; • In case of a guarantee covers the amount of the entire loan or risk bearing instrument covered by the ESIF programme guarantee. <p><i>"The total amount of the expenditure item concerned"</i> refers to the entire amount of the expenditure item.</p>

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			<p>According to Article 37(9), the support provided through a grant and a financial instrument may cover the same expenditure item provided that the sum of all forms of support combined does not exceed the total amount of the expenditure item concerned.</p> <p>Combination of interest rate subsidy or guarantee fee subsidy with the loan does not lead to the situation where both types of support cover the same expenditure item. In case of interest rate subsidy or guarantee fee subsidy the expenditure item is the financial cost. In case of a loan the expenditure item is the cost of investment financed by the loan.</p>
18.	EL	<p><u>Section 3.1.2, page 5 in the middle, 2nd bullet-point: “Grants must not be used to reimburse support received from the financial instrument”.</u></p> <p>Please refer (as example) a possible control mechanism/ practice which ensures the fulfillment of the above requirement.</p> <p>Hypothesis: If for instance, an investment plan of 100.000 € (total eligible cost of public contribution) consists of a grant part of 50.000 € and a loan part (FI) of 100.000 € of which 50.000 € is public contribution, and the loan precedes the grant, how could it practically be ensured that the grant will not be used by the final recipient to reimburse the loan? Would a reference and a respective statement/ declaration from the final recipient (that he/she will respect the above requirement) be sufficient, or is it necessary to provide for a specific control mechanism embedded in the financing plan?</p> <p>The same concerns apply to Section 3.1.1, page 4, 3rd bullet-point.</p>	<p>It is a practise to ask the beneficiary of EU support for a declaration that for the same project any other support from EU is requested. Thus as minimum a grant agreement signed with the beneficiary and a loan agreement signed with the final recipient should contain such declaration as well. In the process of management verifications at the level of grant beneficiary this aspect should be verified based on supporting documents allowing verification of compliance with Union and national law (see mainly Article 9 (e) (xi) and (xii) and (xiii) of Regulation 480/2014.</p>

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19.	EL	<p>Section 3.1.2, page 5 in the middle, 3rd bullet-point: <i>“The financial instrument must not be used to pre-finance the grants”</i>.</p> <p>Using the above mentioned hypothetical case, please refer a possible control mechanism/ practice which ensures the fulfillment of the requirement.</p> <p>The same concerns apply to Section 3.1.1, page 4, 4th bullet-point.</p>	See the reply above
20.	EL	Does a combination of Option 2 of SME initiative (securitisation instrument) with other FIs is allowed and how? Please provide examples.	The principles and conditions included in paragraphs 8 and 9 of article 37 apply equally to the combination with SME initiative which is an EU level instrument.
21.	LV	We would like to clarify the definition of ‘operation. If it is the definition provided for in CPR Article 2 (9), please include the reference to that in the guidelines.	Reference and explanations have been added
22.	LV	<p>Example provided for in Point 2. “Illustrative examples on combination in the context of two operations – Point 3.1.2.” of Annex I “Examples” of the guidelines shows that such combination options are possible:</p> <ul style="list-style-type: none"> a) FI ESIF and grant ESIF; b) FI ESIF and FI ESIF; c) FI ESIF and grant from another instrument supported. d) FII ESIF and another instrument supported by the budget of Union <p>However, we would like to clarify whether within one project (<i>case a</i>)) it is possible to receive grant, loan, guarantee, respecting state aid rules, holding separate records for each support, and not over financing the project? According to our understanding more than one form of FI (loan, guarantee) combined with grant could be perceived as two operations according to CPR 3.1.2. a) example.</p> <p><i>Example: The investment consists of 1 expenditure item of 100.000 which is financed</i></p>	In relation to the example presented it should be underlined that the three types of support: grant, loan and guarantee (formally constituting different operations) can be still granted by the same body, i.e. Development Financial Institution (considered as a "body implementing financial instrument" for loan and guarantee, and an "intermediate body" for grant) to the same final recipient, i.e. owner of the apartment (beneficiary in case of a grant) and for the same expenditure item (an investment in energy efficiency). The final recipient can in practice sign on the same day and with the same institution a

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		<p><i>by ESIF programme FI and ESFI programme grant</i></p> <p><i>Example</i></p> <p><i>To illustrate the concerns and questions raised above, an example of specific scheme is provided below. We would appreciate comments and clarifications on this example.</i></p> <p><i>Support scheme for energy efficiency improvement in multi-apartment buildings in Latvia has been designed. The support will be provided by the Development Financial Institution via a combination of grant (ERDF) and loan (ERDF and financial institution) with an additional possibility for a guarantee (ERDF and state guarantee) for 80% of the loans by commercial banks. The combination of grant and financial instrument will apply to one project proposed and implemented by beneficiary (owners of apartments).</i></p> <p><i>According to the guidance, it would be practically difficult if not impossible to combine financial instrument and grant in the support scheme for energy efficiency improvement in multi-apartment buildings in Latvia. The guidance is unclear on how financial instrument and grant can be combined in one project and for the same type of costs at the level of beneficiary. For the proposed scheme it would be important to be able to combine financial instrument and grant both, at the level of the fund and final beneficiary. Otherwise the scheme would have to be modified and that means abandoning the part of financial instrument, because in the case of support for energy efficiency improvement in multi-apartment buildings use of financial instrument alone is not possible. Energy efficiency projects have long payback period and combination with grant is needed in order to shorten project payback period and provide financial benefit to apartment owners.</i></p> <p><i>Overall, we consider it is possible to combine financial instrument and grant in one project at the level of the fund and project (beneficiary) if the conditions for the financial instrument don't apply for the grant. In addition, at the level of fund sound financial management and separate documentation for financial instrument and grant has to be ensured.</i></p>	<p>grant agreement and a loan agreement. The two flows of funding have to be separately recorded as formally they belong to two different operations. Naturally, at the level of final recipient this separation is also kept because the loan has to be repaid. Grant support falls under grant rules (e.g. expenditure must be incurred) and the loan support falls under FI rules (eligible expenditure is the payment to the owner of apartment).</p>
23.	LV	<p>1.3. We would like to draw your attention to that some examples describe the level of financial intermediaries, some – level of the final beneficiary. We propose to</p>	<p>The description of examples has been extended</p>

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		revise the description of examples and include clarification regarding both levels.	
24.	LV	Clear explanation that these guidelines refer only for combination projects financed from EU budget should be included into the guidelines.	This clarification was added
25.	LV	Could one project agreement to be signed with the final beneficiary in case of two separate operations, taking account that two separate records for each support will be provided in data system? (case 3.1.2.)	<p>Two types of agreements have different financial nature and are concluded between bodies acting in different formal capacities:</p> <ul style="list-style-type: none"> • loan agreement is signed between the final recipient and the beneficiary (body implementing financial instrument) • a grant agreement is signed between the intermediate body and the beneficiary (e.g. enterprise) <p>Nevertheless, it could be possible to cover by one legal agreement two types of support with clear distinctions of functions and type of operation</p>
26.	LV	In a) case could such operations (FI and grant) be implemented in the same time or there are some terms and some special order about that?	The timing of implementation of two forms of support should be adjusted to the investment need and should ensure compliance with the eligibility rules (e.g. the end of eligibility period).
27.	LV	We would like to suggest to change the division in point 3.1. not by single or separate operation but by eligible costs – the same or different eligible costs –	CPR Article 37(7), and 37(8) refer to the notion of

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		similar to the state aid division in cumulation rules.	operation.
28.	LV	To make the guidelines more comprehensible in places where references on the state aid rules are included it would be advisable to have reference (for example, in footer) to the state aid Regulations and Articles (where possible) that should be taken into account.	The reference was added. Nevertheless, COM underlines that the purpose of this guidance note is not to explain the applicability of State aid rules and any reference to a particular Article of State aid legislation should not be treated as an exhaustive reference.
29.	LV	To make the guidelines more complete we would suggest to include new chapter – combination of the ESIF financed financial instruments with other national state aid (not ESIF).	A new paragraph was added clarifying the non-applicability of this note to the combination with non EU support.
30.	HU	Chapter 3.1., Two types of combination of support from a financial instrument with other support: Hungary does not share the COM interpretation of CPR 37(7), according to which in case of combination of financial instruments with grants, the combined product cannot be managed within one operation. The legal text uses the term " <i>including</i> " for the specifications (interest rate subsidy, guarantee fee subsidy, technical support), which does not exclude other cases. In our interpretation grants can also be combined with FIs within one operation if - in line with the regulations - they (1) directly relate to the FI and (2) final recipients are the same. According to the legal text the two types of combination can be separated on the basis of these two conditions and not on the basis of the form of support.	The fact that the grant and the FI collectively support the same project does not imply that the grant is directly related to financial instrument. As referred to in CPR and defined in the Financial Regulation a "financial instrument" is a Union measure of financial support provided on a complementary basis from the budget in order to address one or more specific policy objectives of the Union. A grant targeting the same final recipient and related to the investment which is also supported through a financial product is not considered to be a grant related to financial instrument.

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			<p>It is not possible to consider a traditional grant as a part of financial instrument operation. Inclusion of such grant in financial instrument operation would:</p> <ul style="list-style-type: none"> • pose a legal problem of eligibility of expenditure linked to such grant. Article 42(1)(a) CPR sets the eligible expenditure of grants combined within financial instrument as "the payment for the benefit of final recipient". This provision limits the grants practically to interest rate subsidies, guarantee fee subsidies or technical support. All of these grants benefit the final recipient without an effective payment to the final recipient. • would result in the necessity of application of financial instrument rules also to grant and at the same time release from grant rules (e.g. necessity of having the expenditure incurred by the beneficiary). This would have an effect of circumventing grant rules and using FI delivery mechanism for traditional grant support.
31.	HR	Hereby I am sending you Croatian comment on guidance on <i>Combination of support from a financial instrument with other support</i> as follows	The consideration on distinct eligible

	Ms	Ms comment	COM reply
		Reference section Annex II.4. Notion of “distinct eligible expenditure” within a single investment should be further clarified (i.e. with some examples). The reference to CPR 37(8) does not look appropriate to the case in subject.	expenditure was added to the guidance note
32.	PL	<p>General remark:</p> <p>It was a clear intention of the legislator to make it possible to combine grants with loans or other FIs in a simple way by providing support to the same expenditure item, in this way avoiding the need to artificially split expenditure into sub-operations. In certain areas, such as energy efficiency, such an approach can effectively limit the need for public support by substituting a part of grant by a repayable form of assistance while at the same it would allow to significantly simplify financing for beneficiaries by providing a “one-stop shop” where an appropriate project-specific blend of a grant with FIs could be awarded covering up to 100% of any given project’s costs. Using a financial instrument in such a combination is functionally no different than an EIB loan, which is often used to cover national co-financing.</p> <p>The draft guidelines not only do not provide any encouragement to use the simplest option, but without any legal basis, they try to effectively restrict combination to only those cases where the option of covering the same expenditure item explicitly provided by Art. 37(9) is not used. However, artificially splitting an investment into 2 parts with distinct eligible expenditure, one of them benefiting from a financial instrument and the other from a grant is too complex, destroys transparency, creates audit risks, leads to inevitable funding gap (since as a general rule 100% could no longer be covered) and defeats the whole purpose of combination: it is no longer any real combination, but 2 separate streams for 2 separate sub-investments.</p> <p>There is a general rule which is expressed unequivocally in the first sentence of Art. 37(7) that “<i>Financial instruments may be combined with grants, interest rate subsidies</i></p>	<p>While the Commission shares the view of the MS on the need to facilitate the support to final recipient, the Commission sees the combination of grant and financial instrument as proposed by the MS as questioning the main principles of EU funding and cohesion policy.</p> <p>For the Commission it is not possible to consider traditional grant as a part of financial instrument operation and apply financial instrument rules (including on substantiation of expenditure) to traditional grants. This would imply circumvention of rules on grants.</p> <p>It is equally not possible to use the combination between FI and a grant as a way of providing double declaration of the same expenditure. The loan and the grant cannot be given for the same underlying expenditure. Such practise would only serve the purpose of increasing ESIF programme expenditure without any economic justification.</p>

	Ms	Ms comment	COM reply
		<p><i>and guarantee fee subsidies.”</i> This rule applies both to a situation in which a grant is combined with a FI in the same operation, and to a situation in which the combination is provided by 2 separate operations:</p> <p>1. Combination within the same operation.</p> <p>The restriction proposed in the draft guidelines (see comment no 1) limits the grant-component amount only to the financial costs, requiring all the capital to be covered by a financial instrument only. There is no legal basis for such a restriction, neither in Art. 37, nor in the financial regulation: the provisions are open and the general rule allowing for combination applies. Therefore it is legally possible to give grants which cover also the capital part of the expenditure provided that applicable State aid rules and other conditions established in Art. 37(9) are fulfilled.</p> <p>In accordance with art. 2(11) both the grant component and the repayable component would be considered as a FI. This means in particular that the grant part will be taken into account when calculating the amounts to be included in the requests for payment in accordance with Art. 41. However, it means also that the grant component will be subject to all additional requirements which are applied to FIs, in particular it would have to be covered by the <i>ex ante</i> assessment which would need to establish inter alia that there is a market failure and that the envisaged intervention is proportional and designed in a way to minimize market distortion. These strict requirements significantly limit the types of mechanisms which could be supported this way (as usually they would lead to a conclusion that the grant component is well below the maximum level allowed for grants), and should provide sufficient safeguards to avoid this possibility to be misused. Anyway, if additional measures would be required, the Commission should propose an amendment to the regulation, and not try to impose additional conditions</p>	<p>See the reply to question 22 on energy efficiency scheme.</p> <p>EIB loan is not a loan from ESIF programme. Under State aid rules it is treated equally as loans from commercial banks.</p> <p>The draft guidance note explicitly refers to the possibility of covering the same expenditure item (the last paragraph of section 3.1.2).</p> <p>The combination of FI with grant cannot replace the requirement of national co-financing and lead to double declaration of the same expenditure. This safeguard is explicitly provided for in Article 37(8).</p> <p>Moreover, the general principle of avoiding double declaration of the same expenditure is</p>

	Ms	Ms comment	COM reply
		<p>via guidelines.</p> <p>2. Combination within 2 operations in respect of the same expenditure item.</p> <p>In this approach the grant part constitutes one operation, while the FI part is included in a separate operation. E.g. the beneficiary of a project with eligible expenditure equal to 100, would receive an EU grant equal to 50 with a co-financing rate 50%. In a separate operation, it would be a final recipient of a loan covering the remaining 50, i.e. all of national co-financing. The same expenditure item will be covered in the national co-financing part, but there would be no over-financing as the sum of all forms of support (grant=50 + FI=50) would not exceed 100, fulfilling the requirement of Art. 37(9). Such an approach would be more complicated for the MA than combination within the same operation, but if properly set-up in a way that combine the procedures for awarding the grant and FI within the same process or by the same intermediary, from the beneficiary point of view it could still be simple, removing the need to artificially split expenditure, allowing to cover up to 100% of expenditure and in this way avoiding a funding gap, and – if properly set up – using a “one stop shop” to receive both forms of financing. In such a set-up only the FI part would be taken into account when calculating the amounts to be included in any request for payment in accordance with Art. 41, so there would be no effect on the financial flows.</p> <p>Such an approach is definitely legally possible in a situation which the grant component and the related FI operation are in the same programme and within the same priority axis. While Art. 37(8) requires expenditure to be distinct, it applies only to a situation when the recipient receives assistance from “another priority or programme” – but Art. 37(8) does not apply to a situation in which both operations are within the same priority. The situation of implementation within the same priority is covered by Art. 37(7)</p>	<p>enshrined in Article 65(11).</p> <p>The combination at the level of final recipients as provided for in Article 37(8) implies that for the same investment two different streams of ESIF programme support (grant and loan) are combined. The concept of combination does not mean that grants discontinue falling under CPR grant rules and become a new form of financial instrument.</p> <p>1. FI as referred to in Article 2(11) CPR and defined in Financial Regulation cannot take the form of a grant.</p> <p>It is not possible to consider traditional grant as a part of financial instrument operation, also due to:</p> <ul style="list-style-type: none"> • a legal problem of eligibility of expenditure linked to such grant. Article 42(1)(a) CPR sets the eligible expenditure of grants combined within financial instrument as "the payment for the benefit of final recipient". This provision limits the grants practically to interest rate subsidies, guarantee fee subsidies or technical support. All of these grants benefit final recipient without an effective payment to the

	Ms	Ms comment	COM reply
		<p>(though only the first, general sentence applies to it, as the second sentence applies to different situation described in part. 1) – and therefore benefits from Art. 37(9).</p> <p>In addition, even in a situation of implementation in different priority axes or different programmes it seems that the intention of the legislator was to allow combination of grants and loans for the same expenditure item: Art. 37(9) refers to “the combination (...) as referred to in paragraphs 7 and 8 may cover the same expenditure item” which would be meaningless if the exactly opposite condition imposed by Art. 37(8) requiring eligible expenditure to be distinct were to be applied in all cases covered by Art. 37(8).</p> <p>Therefore we request the Commission to:</p> <ul style="list-style-type: none"> - Remove all the restrictions from the draft guidelines which go beyond the regulation. As this flexibility clearly extends the possibility to use financial instruments for a broader range of projects, decreases audit risks and provides significant simplification for beneficiaries given political priority of the Commission to increase use of financial instruments, reduce error rates and simplify procedures for beneficiaries it would be difficult to understand if the Commission insists on keeping the unreasonable restrictions. We hope for a prompt confirmation before the informal meeting of ministers in Riga so we do not need to raise the issue at political level. - Include in the guidelines both above mentioned options. 	<p>final recipient.</p> <ul style="list-style-type: none"> • condition of Article 37(7) which requires application of financial instrument rules also to grant and at the same time release a grant from "grant rules" (e.g. necessity of having the expenditure incurred by the beneficiary) would lead to circumvention of grant rules and use of FI delivery mechanism for traditional grant support. <p>2. ESI Funds delivered through FI cannot be used to co-finance ESI funds in grant operations. The same expenditure cannot be declared twice for ESIF programme support irrespective of the form of support used.</p> <p>One stop shop approach is also possible when grant and FI constitute formally two distinct operations (see reply to question 22).</p> <p>The combination of grant and FI under the same priority at the level of final recipient is indeed not covered by Article 37(8) as it is not covered by 37(7) either.</p> <p>This is why COM in the draft guidance note in the second paragraph of point 3.1.2 offers the possibility to follow the approach of Article 37(8)</p>

	Ms	Ms comment	COM reply
			also to the situation where grant and FI to the same investment are supported from the same priority axis.
33.	PL	<p>The guidelines on combination of support from a financial instrument with other form of support should be in line with CPR and cannot be more restrictive than CPR.</p> <p>The draft guidelines restrict the possibilities of combining IF with a grant within a single operation to 3 forms of grants only, namely: grants for technical support, interest rate subsidies and guarantee fee subsidies. This is not in line with art. 37(7) of CPR, which uses “including”, therefore opening the possibility of combining FI also with different forms of grants.</p> <p>Answer 2 in annex II Q&A is also not in line with art. 37(7) CPR.</p>	See reply to question 2
34.	PL	<p>PL would also welcome some additional information on combining technical support with financial instruments. What kind of costs are eligible under technical support? Are the costs incurred under technical support still eligible even if in the end the final recipient does not receive the support from FI because for example the manager of FI assesses the investment negatively and does not grant a loan? In case the loan turns out not to be eligible under support from EFSI are the costs of the technical support still eligible?</p>	<p>Technical support should be used for preparation of the prospective investment for the benefit of the final recipient to be supported by that operation.</p> <p>If the final recipient eventually does not receive FI support the related technical support should not be eligible.</p> <p>If managing authority sees the need for general support to potential final recipients in the process of preparation of investments (or training), then managing authority should</p>

	Ms	Ms comment	COM reply
			consider a separate grant operation (falling under grant rules), whose aim would be to assist specific target group (possible future final recipients) in preparation of investments. In such designed grant support its eligibility does not need to be conditional on the prospective support from financial instrument.
35.	PL	Whether the FI is combined with other form of support within one operation or different operations, it is necessary to maintain the separate records for all forms of support. In art. 37(8) there is additional requirement added that “the ESI Funds financial instrument support shall be part of an operation within the eligible expenditure distinct from other sources of assistance”, which is also mentioned in point 3.1.2 of the guidelines. What is the rationale for such additional requirement in the guidelines if in any case the separate records should be maintained for each form of support which implies that the expenditure can be allocated only to one form of support (either FI or other form of support)?	<p>Separate records need to be kept even if the grant (e.g. interest rate subsidy) and a loan are part of the same operation (see point 4 under section 3.1.1)</p> <p>The requirement that "the ESI Funds financial instrument support shall be part of an operation within the eligible expenditure distinct from other sources of assistance" under 3.1.2 implies that grant (or other type of support) cannot be part of FI operation and cannot benefit from FI rules (e.g. on substantiation of eligible expenditure)</p>
36.	PL	Art. 37(7) CPR allows that the same expenditure item can be supported by grant and financial instrument provided that the sum of all forms of support combined does not exceed the total amount of the expenditure item concerned. Can the COM provide the practical example on combination of different forms of support at the level of the same expenditure item? Does art. 37(7) CPR allow only to combine FI and grant at the level of	See reply to question 5 and 17

	Ms	Ms comment	COM reply
		<p>the same expenditure item exclusively within one operation (for example the expenditure item is the machine and 50% of the purchase is covered by grant and 50% of the purchase is covered by support from FI, but there is only one invoice on the purchase of the machine) – how in such situation can separate records for each form of support be maintained and how to assure that the expenditure supported by FI is distinct from grant support?</p> <p>Can COM give some further explanation on the condition that the sum of all forms of support combined does not exceed the total amount of the expenditure item concerned? Does the word “support” refers only to:</p> <ul style="list-style-type: none"> - ESIF; - ESIF and national co-financing, <p>ESIF, national co-financing and private contribution (private funding combined with programme contribution within FI)?</p>	
37.	PL	<p>The guidelines should also include the examples for combing different forms of support within the same operation or two separate operations in cases when the final recipient/beneficiary is obliged to provide private financing according to state aid rules. Some examples on cumulation of state aid should also be added.</p>	An example has been be added
38.	PL	<p>The guidelines should also include the examples of combination of equity or quasi-equity investment with loans or grant support. How to maintain the separate record for such forms of support?</p> <p>For example: there is a loan fund for innovative enterprises, but the preferential loan is issued only when an innovative SME obtained equity funding (for example from business</p>	<p>Support through a loan and through equity are distinguished forms of finance and are separately recorded in the balance sheet of final recipient.</p> <p>Application form and business plan submitted by the final recipient should clearly describe the</p>

	Ms	Ms comment	COM reply
		angels). The loan is supported from ESIF, can the equity funding in such cases be also supported by ESIF? If yes – how separate record should be maintained so there is no doubt that the equity funding was not used for the repayment of the loan?	purpose of ESIF programme funding. Records of the financial flows (with different accounting codes) within the financial instrument at all levels, down to the final recipients should exist. These documents together with agreements are the basis for management verifications by the managing authority, monitoring, control and on the spot visits by the financial intermediary.
39.	CZ	<p>1) Is it possible to set-up the financial instrument which combines loan and grant within one operation in relation to achieved reduction of final energy consumption? Now we suppose that it is necessary to administrate the project in the context of two operations with different levels of co-financing and evaluation/selection procedures.</p> <p><u>Specific example</u>: Final recipient has planned the project with reduction of final energy consumption of 35%. According to table below he can count with grant for 10 % of eligible expenditure. Therefore the final recipient will apply for funding of 100% of eligible expenditure within one FI operation consisting from 10% grant and 90% loan. Is it possible?</p>	See reply to question 22
40.	CZ	2) Where support from ESI Funds is provided by means of financial instruments and combined in a single operation, with other forms of support directly related to financial	See reply to question 22.

	Ms	Ms comment	COM reply
		<p>instruments targeting the same final recipients (in our case Grant), the provisions applicable to financial instruments shall apply to all forms of support within that operation. Does it mean we don't have to use different evaluation/selection procedures and we can evaluate/select grant within loan's conditions?</p> <p><u>Specific example:</u> Final recipient applies for the support through financial instrument which consists from loan combined with grant. Final recipient uses one application form and one contact point (e.g. financial intermediary's office). Financial intermediary does common evaluation and provides loan + grant in one package to the final recipient while separate records are kept. Loan and grant is provided from one financial allocation for FI from one operational programme. Is this scheme possible?</p>	
41.	CZ	<p>3) EGESIF guidance mentions that eligible expenditures of loan and grant component should be distinct. Does it mean the grant component cannot finance the same activity as the loan?</p> <p><u>Specific example:</u> There are three possibilities:</p> <p>a, Grant for project documentation, loan for project realization</p> <p>b, Grant for defined part of eligible expenditure (e.g. replacement of windows), loan for different defined part of eligible expenditure (e.g. thermal insulation of the envelope)</p> <p>c, Grant for part of eligible expenditure (e.g. 10% eligible expenditure for replacement of windows), loan for the rest of the same eligible expenditure (e.g. 90% eligible expenditure for replacement of windows)</p>	<p>Three of them are possible. In the third option the expenditure declared as eligible expenditure under the grant operation cannot be declared as a loan, i.e. grant of 10% will be declared to COM as eligible expenditure and to this expenditure the co-financing rate of priority axis will be applied and corresponding ESIF paid. In the same way 90% will be declared to COM as eligible expenditure of a loan being part of FI operation (to this expenditure the co-financing rate of priority axis will be applied).</p> <p>Please note, that grant for project documentation can be part of technical support which can be included as part of financial</p>

	Ms	Ms comment	COM reply
		Which of these options are possible?	instrument operation.
42.	CZ	<p>Our strategy is focused on market failures and gap solution recommended by EC rules and its best practices. The EBRD fund SlovSEFF in the Slovak Republic for instance provides the final recipient soft loans, and if the project is successfully implemented, they can get 5-20% cash grant/money back/ depending on the achieved energy efficiency improvements of the completed project. Our idea of the support of energy efficiency projects in the business sector within the ESIF is described in the following steps:</p> <ul style="list-style-type: none"> • grant for technical preparation of the project (e.g. an energy audit - motivation to check the possibilities of investments into energy efficiency) • soft loan to finance the investment part of the project (using the appropriate leverage effect with private resources inside financial instrument) or combination both • after the project find out whether the energy efficiency targets of the project have actually been achieved (indicator) • get bonus on <u>the same eligible expenditure</u> (in any form of assistance) in range 5-25%, depending on the improvement of energy efficiency (model example - if the project has helped to shift energy class of buildings from B to A, bonus eg. 10%; if from B to A + bonus e.g. 20% etc.). <p>The bonus would motivate the final recipients to maximize energy efficiency. We believe that this system might be used similarly for example for projects introducing innovation in enterprises. In this view, why Art. 37 CPR explicitly states the impossibility of a combination of a grant and FI on the same eligible</p>	<p>The bonuses linked to the results of operation are the typical feature of repayable assistance.</p> <p>As provided for in the guidance on repayable assistance the support granted via repayable assistance is subject to implementation conditions that are linked to repayment obligations.</p> <p>The loan is unconditional agreement where the lender is obliged to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time. Thus there is no possibility to embed a capital rebate within the loan.</p> <p>However, in order to enable that part of the support to the project can become non-repayable as a reward for good performance of the project the managing authorities are invited to consider the possibility of using repayable assistance for the entire support to the project or of combining repayable assistance with</p>

	Ms	Ms comment	COM reply
		expenditure (and the appropriate guidance also for the repayable assistance), with the exception of the technical preparation of projects?	financial instrument support. In case of such combination a loan would cover the part of the project which has to be unconditionally repaid (e.g. 75%) and repayable assistance could cover the part of the project whose repayment would be conditional (25%). These two streams of funding will formally constitute separate operations (see example 2.1 (a) in the guidance note)
43.	CZ	<p>General examples of the combination of FI and interest rate subsidy in FI for SMEs</p> <p>Example NO. 1</p> <p>Cost of investment project: € 1,000,000</p> <p>Sources of funding:</p> <ul style="list-style-type: none"> - - Own resources of the final recipient: EUR 100 000 - Soft loans from the contribution ESIF : 300 000 EUR, 9 years maturity, interest rate 0.5% pa, deferring principal repayments of the loan 5 years 	<p>Example 1: In the first example the interest rate subsidies paid from ESIF programme allocation to FI and the ESIF programme loan can be combined. The need and the amount of interest rate subsidy should be assessed in the ex-ante assessment.</p> <p>See also reply to question 17</p> <p>Example 2: if the interest rate subsidy is paid in relation to the loan guaranteed by ESIF programme guarantee then the interest rate</p>

	Ms	Ms comment	COM reply
		<p>- Bank loans 500 000 5 years maturity, interest rate 6M PRIBOR + 3% pa</p> <p>bank loan will be complemented by interest rate subsidies under these conditions.</p> <p>-</p> <p>- The financial contribution in form of interest rate subsidies may not exceed the amount of interest from the bank loan paid by the final recipient for payment period (we suppose 1 year), while the total amount of the interest rate subsidies shall not exceed 7% of the initial loan amount.</p> <p>- interest rate subsidies can be paid only for a period of 5 years.</p> <p>EXAMPLE NO. 2</p> <p>Cost of investment project: € 1,000,000</p> <p>Sources of funding:</p> <p>-</p> <p>- Own resources of the final recipient: 250 000 EUR</p> <p>- Bank loans: € 750 000 8 years maturity, interest rate 6M PRIBOR + 2.3% pa secured guarantees amounting to 80% of the loan principal.</p> <p>Bank loan will be complemented by interest rate subsidies under these conditions.</p>	<p>subsidies can be combined with the guaranteed loan as a one financial package and be part of a single financial instrument operation. If, however, the commercial loan is not covered by ESIF programme guarantee, the interest rate subsidy should be treated as a distinguished grant operation as it does not constitute a single financial package with FI. Then the rules on grants, including Article 69(3)(a) apply.</p>

	Ms	Ms comment	COM reply
		<p>-</p> <ul style="list-style-type: none"> - The financial contribution in form of interest rate subsidies may not exceed the amount of interest on bank loans paid by the final recipient for payment period (we suppose 1 year), while the total amount of the interest rate subsidies shall not exceed 9% of the initial amount of the guaranteed loan. - interest rate subsidies can be paid only for a period of 8 years. 	
44.	CZ	<p>Operational Programme Environment</p> <p>According to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, Article 37, paragraph 7, financial instruments may be combined with grants. Draft of the document “Guidance note on combination of financial instruments with other forms of support” (Guidance note) that is currently being prepared describes following situation:</p> <p>In the context of combination of support within two operations as specified in article 3.1.2 of the Guidance note (specifically a grant and a financial instrument in form of a loan) it is described in an illustrative example 2.a) that financial instrument and grant may be combined if both are financed from the same priority axis under same ESIF programme.</p> <p>One of the conditions for combination of support within two operations defined in the Guidance note, article 3.1.2 states that “2. The ESIF financial instrument support is part of an operation with eligible expenditure distinct from the other source of assistance.”</p> <p>The illustrative example 2.a) presents the possibility of a combination of a financial instrument and a grant “financed from the same priority axis under the same ESIF</p>	<p>Yes, the combination of a grant and FI is possible also at the level of one expenditure item.</p> <p>The example in point 3.1.2 follows the rules of CPR37(8) and not 37(7). In your example the separate records need to be kept for grant operation and FI operation for each one of the 3 projects. See also reply to question 5.</p> <p>The pro-rata split of expenditure at the level of each one of the 3 projects as you propose can be in fact only applied at the level of a single expenditure item which cannot be further divided is sub-items.</p>

	Ms	Ms comment	COM reply
		<p>programme” under condition that “two distinct forms of support .. form parts of two separate operations .. with distinct eligible expenditure”. However, the example 2.a) describes a situation when the investment consists of only 1 expenditure item which is financed by an OP grant and an OP loan.</p> <p>Could you please clarify whether combination of OP grant and an OP loan is possible at the level of one expenditure item (under all conditions described in the Guidancenote and CPR)?</p> <p>If it would not be possible and OP grant must be provided for distinct expenditure items than OP loan, could you please clarify how the division of expenditure items that will be supported from OP grant and OP loan shall be done? Is it possible that it will be done for each final recipient individually (under all conditions described in the Guidancenote and CPR)?</p> <p>Example:</p> <p>Operational Programme Environment, Priority Axis 5: Energy savings, Specific objective 5.1: To reduce the energy intensity of public buildings and increase the use of renewable energy sources</p> <p>Consider three projects: A – primary school, B – municipal house, C - courthouse. Each project consists of three categories of expenditure items: a) thermal insulation of the building envelope, b) replacement of windows and doors, c) replacement of heat sources. Each category is further dividable into individual expenditure items (e.g. window or heat pump). Percentage share of each category (a, b, c) on total project expenditures differs for each project (A, B, C). Percentage share of individual expenditure items on each category differs.</p> <p>Managing authority wants to provide abovementioned combination of OP grant and OP</p>	

	Ms	Ms comment	COM reply
		<p>loan, according to results of an ex ante assessment, specifically 30 % OP grant and 70 % OP loan of total project expenditures (with condition that gross grant equivalent does not exceed State-aid limit).</p> <p>How shall be done the division of expenditure items between those supported from OP grand and OP loan?</p> <ul style="list-style-type: none"> a) Total project expenditures will be divided in ratio 30/70 without further specification b) Total project expenditures will be divided in ratio 30/70 with specification which expenditure item is supported by OP grant and which by OP loan c) Each category of expenditure items will be divided in ratio 30/70 without further specification d) Each category of expenditure items will be divided in ratio 30/70 with specification which expenditure item is supported by OP grant and which by OP loan e) Each expenditure item will be divided in ratio 30/70 <p>In order to reduce administrative burden we prefer option a).</p>	
45.	CZ	<p>Could you provide an example how a guarantee and a guarantee fee subsidy could be combined within a single operation?</p>	<p>Guarantee fee subsidy should not be paid in relation to the ESIF programme guarantee. The design of the ESIF programme guarantee product should ensure that the guarantee fee reflects the market needs.</p>

	Ms	Ms comment	COM reply
			<p>It is however possible to pay the ESIF programme guarantee fee subsidy in relation to a commercial guarantee for a commercial loan which is not covered by ESIF programme guarantee but which is combined in a single financial package with the commercial loan guaranteed by ESIF programme guarantee.</p> <p>A theoretical example would be:</p> <p>For an investment of EUR 500.000 two non ESIF loans (e.g. commercial loans) are granted.</p> <p>One loan of EUR 400.000 is guaranteed with a guarantee (not from ESIF programme) to which ESIF programme guarantee fee subsidy is paid. As the guarantee is not offered by ESIF programme there is no possibility to influence the guarantee fee. The only possibility to lower the guarantee fee is to offer a guarantee fee subsidy form ESIF programme.</p> <p>The other loan of EUR 100.000 is guaranteed by ESIF programme guarantee. In this case the guarantee fee (if any – it could be decided not to charge it) should be already adjusted to the market need in the design of this ESIF</p>

	Ms	Ms comment	COM reply
			programme FI product See also our reply to question 17.
46.	CZ	In case of combination of support within a single operation, CPR lists “other forms of support (<u>including</u> technical support, interest rate subsidies, and guarantee fee subsidies).” The wording suggests that there are other forms of support that can be combined with FI within a single operation than the three mentioned explicitly. If our interpretation is correct, would the Commission kindly provide an example?	See reply to question 2
47.	CZ	Could the three explicitly mentioned other forms combined with FI within a single operation be further combined? I.e. could an operation/project of final recipient combine commercial loan, interest rate subsidy and technical support for the project preparation?	In your example there is no ESIF programme financial instrument and no investment supported by ESIF programme financial instrument. It seems that the two elements mentioned, i.e. interest rate subsidy in relation to a commercial loan and technical support for preparation of investment supported by a commercial loan are two grants.
48.	CZ	In our opinion, the statement contradicts the answer to question 6 in the Q and A below. As regards the condition under 1 the Commission considers interest rate subsidies and guarantee fee subsidies to be directly related to the financial instrument if they are associated and combined with ESIF programme loans and guarantees in a single financial package The statement here enables combination of ESIF programme loan with interest rate subsidies whereas the answer below implies that it’s not possible (“interest rate subsidies should not be used to improve conditions of the support already received from ESIF” = ESIF programme loan).	There is no contradiction in these statements. The expression " interest rate subsidies and guarantee fee subsidies ... associated and combined with ESIF programme loans and guarantees in a single financial package" does not mean that interest rate subsidies and guarantee fee subsidies should be paid in respect of ESIF programme loans and guarantees "

	Ms	Ms comment	COM reply
		Would the Commission kindly comment?	ESIF programme loan and ESIF programme guarantee should be designed in such way as to ensure that their funding conditions (interest rate and guarantee fee) reflect the market need.
49.	CZ	Would the Commission kindly specify what is meant by an expenditure item? Is it the whole “project budget” of investment financed by ESIF FI plus other form of support? All the examples in the guidance imply it.	There is no definition of expenditure item provided for in CPR. In the context of Articles 65(11) and 37(9) expenditure item is the amount declared as eligible for Union funding under a budget category.
50.	CZ	<p>A similar distinction will have to be applied when financial instrument support is combined with repayable assistance.</p> <p>We understand the statement in a way that FI support may be combined with repayable assistance, correct?</p> <p>Example: MA wants to stimulate energy savings and energy efficiency. High energy efficiency and savings may be achieved by incentivizing the final recipient of a loan by remission of instalments according to level of achieved energy saving. Since capital rebates can't be combined with FI, we suggest (complying with the structure of the guidance examples):</p> <p>The energy efficiency investment (if investment equals expenditure item, see the previous comment) consists of 1 expenditure item of 100 000 EUR financed by ESIF programme loan and</p>	<p>A combination between a loan and repayable assistance is possible as long as conditions in Article 37(8) and (9) are complied with, i.e.</p> <ul style="list-style-type: none"> • Loan and repayable assistance are formally parts of two separate operations (they can be however granted for the same investment item). In your example it would imply that 60.000 is declared to COM as eligible expenditure in a FI operation, and 40.000 is declared to COM as repayable assistance expenditure

	Ms	Ms comment	COM reply
		<p>ESIF programme repayable assistance. ESIF FI loan is provided to a final recipient to cover part of the investment, thus 60 000 EUR constitutes part of FI operation. 40 000 EUR constitutes ESIF repayable assistance.</p> <p>Energy savings are desired goal of the project. However, level of the achieved energy savings depends on project implementation. Could the repayable assistance operation be used to “remit instalments of the whole investment”? In effect, if certain levels of energy savings would be achieved, only part of the repayable assistance operation would turn into grant and no capital rebate concerning FI would take place. Is such approach described in the example possible?</p>	<ul style="list-style-type: none"> • State aid rules are respected • Separate records are kept • Sum of all forms of support does not exceed the total amount of expenditure item (in your case 60.000+40.000 does not exceed 100.000)
51.	Cz	<p>Do we understand the Commission answer correctly that an interest rate subsidy can be provided only towards loans which are provided to the fund manager or other investor to be invested in the financial instrument?</p>	<p>Please note that loans are not provided to the fund manager but by the fund manager. Interest rate subsidies can be provided as part of FI operation only if they are associated and combined in a single financial package with ESIF programme FI.</p> <p>If the interest rate subsidies alone are offered in relation to commercial loan which is not considered as a single financial package with ESIF programme financial instrument, these interest rate subsidies have to be treated as a pure grant operation (c.f. Article 69(3)(a) CPR)</p>

	Ms	Ms comment	COM reply
52.	CZ	<p>Could you confirm that it is prohibited to provide an interest rate subsidy to a commercial loan used by final recipient for co-financing of project which is simultaneously co-financed by a loan from the financial instrument?</p> <p>Could you explain whether the same ban has to be applied to the interest from a commercial loan supported by the guarantee from the financial instrument?</p>	<p>No, it is not prohibited. It is possible that the same project is in parallel financed by the ESIF programme loan and a commercial loan and that the interest rate subsidies in relation to the commercial loan are paid from ESIF programme FI. Of course there must be a reason why a single loan (from commercial and ESIF programme) should not be used.</p> <p>It is also possible to cover with ESIF programme guarantee a commercial loan and to pay from ESIF programme financial instrument interest rate subsidies in relation to this commercial loan. Of course the fact that the part of the risk of the commercial loan is covered by the ESIF programme guarantee should have already impact on lowering the interest rate.</p>
53.	CZ	<p>"In order to make the best use of the programme contribution transferred to the financial instrument, interest rate subsidies and guarantee fee subsidies should be used only to improve for the final recipient the conditions of access to the private capital co-invested at the level of the relevant financial instrument (i.e. they should not be used to improve conditions of the support already received from ESIF or from national public co-financing through the financial instrument). "</p>	<p>Yes, provided that the commercial loan is indeed associated to and co-invested with ESIF programme loan. Usually the private investor is the financial intermediary which is adding its own resources to the ESIF programme loan (risk sharing loan). In this case it will be possible to grant interest rate subsidies in relation to the commercial part of the loan (which normally is</p>

	Ms	Ms comment	COM reply
		Does the statement mean that e.g. there's a FI providing interest rate subsidies for commercial loans of collaborating financial institutions and their loans are treated as private capital co-invested at the level of the FI?	offered at market rates).
54.	SI	<p><u>Section 3.1.1, pages 2, 3</u></p> <p><u>(and elsewhere where relevant)</u></p> <p>┆ "Financial instruments and other forms of support (including technical support, interest rate subsidies, and guarantee fee subsidies)".</p> <p>Taking into account the CPR Article 37 (7) where defined that financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies it is not clear that definition in the draft "Guidance on the combination of support from a financial instrument with other support" enables combination of financial instruments and grants</p> <p>in addition to the directly-mentioned technical support, interest rate subsidies, and guarantee fee subsidies.</p> <p>Potentially limitation of combinations enabled in the CPR through the definitions in draft "Guidance on the combination of support from a financial instrument with other support"</p> <p>- in our opinion - it does not seem appropriate.</p> <p>In this section is required to ensure adequate explanations for the combination of financial instruments with grant in addition to the directly-mentioned technical support, interest rate subsidies, and guarantee fee</p>	See our reply to question 2

	Ms	Ms comment	COM reply
		<p>subsidies within single operation (if it is not adequately explained).</p> <p>We kindly ask for detailed explanations.</p>	
55.	SI	<p><u>Annex II. Questions and Answers (2) - also in relation with Section 3.1.2, pages 4, 5 - "Is it possible to combine within a single FI operation a grant (other than technical support, interest rate subsidy or guarantee fee subsidy) and a loan for an investment by final recipients? No, the combination of a grant and support from a financial instrument aiming at investments in a final recipient is covered by provisions under Article 37(8). In this case a grant and a FI constitute two separate operations with distinct eligible expenditure."</u></p> <p>Taking into account previously written comment and request for clarification, specifically mentioned question and answer can also mean a redefinition of CPR Article 37, because this article is one, which in our understanding provides option for combination of financial instruments and grants under one operation. It is necessary to add that the combination of forms of support in the context of the two operations can not be directly seen as a possible combination option, but rather a measure of complementarity and coordination of support and avoidance of double funding.</p> <p>We kindly ask for detailed explanations.</p> <p>As a conclusion we highlight that definition the possible combinations of financial instruments and grants constituted in the same operation in our</p>	See our reply to question 2.

	Ms	Ms comment	COM reply
		understanding mean a serious added value providing significant synergy effects of support. That is in our understanding baseline identified in the CPR in Article 37.	
56.	LT	<p>3.1.1., page 3</p> <p>"As regards other grants the Commission considers them directly related to financial instruments if they concern technical support for the purpose of the technical preparation of the prospective investment and for the benefit of the respective final recipient (cf Article 5 of Regulation (EU) 480/2014)."</p> <ul style="list-style-type: none"> • Does this mean that the same final recipient that received technical support should definitely receive a loan (a loan should be committed and disbursed)? • What if the final recipient that received technical support eventually does not receive the loan? Will this affect the eligibility of expenditure? • In ESF financial instrument for entrepreneurship we are planning to combine a loan with advice and training services for preparation of business plan for potential start ups/loan recipients. Could there be some percentage of „failure“ rate if prepared business plan will not be accepted by financial intermediary or participant will change his mind, because he is not ready to start up own business and to take the loan due to other possible human reasons. Will expenses of the technical support in such cases be eligible for the Fund? ESF invests in people, but even in the usual grant measures it is not possible to have 100 % employment rate after the participation in various “soft” activities (trainings, motivation and consultation services). Could the requirement „grants the Commission considers them directly related to financial instruments if they concern technical support for the purpose of the technical preparation of the prospective investment and for the benefit of the respective final recipient“ be applied to ESF 	<p>See reply to question 34</p> <p>Training on business plan is not considered to be technical support for preparation of prospective investment. Such training can be organised as a separate grant operation.</p>

	Ms	Ms comment	COM reply
		measures more flexible?	
57.	LT	<p>.1.1., page 3</p> <p>"The technical support, interest rate subsidies and guarantee fee subsidies follow the provisions applicable to financial instruments (e.g. on co-financing rate, payments, management costs and fees, reporting). The existence of such grant elements within a financial instrument operation does not exclude the possibility to apply a preferential co-financing rate for the priority axis under Article 120 (5) or measure in EAFRD under Article 59(4)(d) of Regulation (EU) No 1305/2013."</p> <p>It should be clear if the subsidy elements included into the „single package“ are managed in the same way as financial instruments (i.e. there is no need for delegation of functions and designation procedures as in grant measures); it is also very important to indicate which procedure of supporting /substantiation of expenditure is used, as in case of subsidies controls are much stricter.</p> <p>The proposed addition:</p> <p>„The technical support, interest rate subsidies and guarantee fee subsidies follow the provisions applicable to financial instruments (e.g. on governance structure, substantiation of expenditure, co-financing rate, payments, management costs and fees, reporting)“</p>	<p>All the rules and procedures of financial instruments apply including the definitions of beneficiary/final recipient and including substantiation of expenditure. The expenditure in this case is incurred by the body implementing financial instrument and it is a payment for the benefit of final recipient in accordance with article 42(1)(a). The only exception is different treatment of VAT, c.f. Article 37(11).</p> <p>The proposed text was inserted in the guidance note.</p>
58.	LT	<p>3.1.1., page 3</p> <p>"As regards the condition under 3, as the same final recipient may receive a technical support grant for the preparation of the investment and repayable support for this investment (e.g. in the form of a loan) the State aid rules on the cumulation of aid must be respected."</p>	<p>"May" suggests merely that repayable support (e.g. loan) can be combined with technical support. Another possibility is that final recipient receives only loan.</p> <p>Please note the paragraph quoted refers to</p>

	Ms	Ms comment	COM reply
		<p>Referring to our first comment we should note that the expression „<i>the same final recipient may receive a technical support grant for the preparation of the investment and repayable support for this investment <...></i>“ may be interpreted that a financial instrument product may be used not necessarily with the subsidy element. Is that right?</p> <p>According to Art. 66 of the Regulation 1303/2013 financial instruments and repayable assistance are different forms of financing, therefore the term „repayable assistance“ should not be used in this section. O maybe it is a reference to the “repayable advance“, indicated in Article 2 (21) GBER?</p>	<p><i>repayable support</i> which is not the same as <i>repayable assistance</i> under Article 66 of CPR.</p>
59.	LT	<p>3.1.1., page 4.</p> <p>"2. Insofar as Article 37(9) CPR allows for the support provided through a grant and a financial instrument to cover the same expenditure item, the sum of all forms of support combined must not exceed the total amount of the expenditure item concerned."</p> <p>Do we understand correctly that the state aid amount (amount of support in the form of public contribution) and not, e. g. the total amount of loans + grant, should be taken into account for the calculation?</p> <p>We propose an addition as stipulated in Art. 37(9) of the Regulation 1303/2013:</p> <p><...> the sum of all forms of support combined must not exceed the total amount of the expenditure item concerned subject to applicable Union State aid rules“</p>	<p>No, the understanding is not correct. Article 37(9) does not refer to state aid element. See our reply to question 17</p>
60.	LT	<p>3.1.2., page 5.</p>	<p>The condition that the financial instrument must</p>

	Ms	Ms comment	COM reply
		<p>"3. The financial instrument must not be used to pre-finance the grants."</p> <p>Could the Commission provide an example how compliance with this requirement is ensured/or when it is violated in case where the same expenditure item is financed from a grant and FI.</p>	<p>not be used to pre-finance the grants will be complied with when for one expenditure item of 100 an ESIF programme grant of 40 is given (in the declaration to COM the amount of 40 will be declared as eligible expenditure of this grant operation) and a loan of 60 is given (in the declaration to COM the amount of 60 will be declared as eligible expenditure of this loan). It does not matter whether the grant and the loan are given simultaneously or not.</p> <p>If, however, the grant of 80 is agreed in the grant agreement (the amount of grant expenditure which will be declared to COM once the expenditure is incurred will be 80), and at the same time a loan of 60 is given (in the declaration to COM the amount of 60 will be declared as eligible expenditure of this loan), then it means that the loan was partly (the amount of 40) used to pre-finance a grant.</p>
61.	LT	<p>All examples</p> <p>Please specify the amount of expenditure which is eligible for declaration to the Commission in each of the examples.</p>	COM added examples

	Ms	Ms comment	COM reply
62.	LT	<p>"2. Illustrative examples on combination <u>in the context of two operations</u> – (point 3.1.2)"</p> <p>Please provide an example on combination of FI and grant in the form of interest rate subsidy when interest rate subsidy and FI are parts of two separate operations. Please note, that example 2(a) should not be applicable in this situation whereas interest rate subsidy does not finance the same expenditure item, e. g. part of equipment which is financed from loan.</p>	<p>A final recipient decides to run two distinct investments. One investment which is more risky is financed through an ESIF programme loan. Another investment is financed through a commercial loan for which a grant in a form of interest rate subsidy is paid.</p> <p>Such construction falls under Article 37(8) but indeed it is not a combination at the level of the same expenditure item.</p>
63.	LT	<p>"2. a) <u>Both FI and grant</u> are financed (from the same priority axis or measure or different priority axes or measures) under the same ESIF programme or two different ESIF programmes <u>(FI ESIF + G ESIF)</u>: in this case these two distinct forms of support combined at the level of investment in final recipient form parts of two separate operations (financial instrument operation and grant operation) with distinct eligible expenditure. "</p> <p>Please clarify the meaning of distinct eligible expenditure, whereas the example describes situation with 1 expenditure item, i. e. the same eligible expenditure. Maybe „distinct“ could be explained as „specific part of the expenditure item“ as in the example it as a percentage of the same expenditure item.</p>	<p>The reference to a percentage of the same expenditure has been added</p>
64.	LT	<p>"2. a), page 7.</p>	<p>It is not possible to combine repayable assistance and FI under Article 37(7) (i.e. within the same</p>

	Ms	Ms comment	COM reply
		<p><...> A similar distinction will have to be applied when financial instrument support is combined with repayable assistance."</p> <p>Is it possible to combine in a single operation repayable assistance and financial instrument support if the former is directly related to the financial instrument? The guidelines are silent on this type of combination, it only appears in the annex - could you elaborate on this in the guidelines?</p>	<p>operation) as there will be no possibility to declare repayable assistance as eligible expenditure (Article 42(1)(a) distinguishes the "payment for the benefit of final recipient" from the "payment to final recipient")</p>
65.	LT	<p>"2. b), page 7.</p> <p>b) A FI financed from an <u>ESIF programme</u> is combined with <u>another FI financed from an ESIF programme (the same or other) (FI ESIF +FI ESIF)</u>: in this case these two sources of financing combined at the level of investment in the final recipient form parts of two separate FI operations under the CPR with distinct eligible expenditure. "</p> <p>Does under this example also fall a combination of FI ESIF +repayable advance (ESIF), as defined in Article 2 (21) GBER?</p>	<p>Repayable advance is not a form of support under CPR.</p>
66.	LT	<p>"2. c), page 8.</p> <p>A FI financed from <u>ESIF programme</u> is combined with a <u>grant</u> financed from <u>another instrument supported by the budget of the Union (FI ESIF + G non-ESIF)"</u></p> <p>Does this option also cover the combination with national resources, in particular, resources returned from FI of period 2007-2013 (which are used outside the OP resources)?</p> <p>Could the guidelines provide some information on eligibility of combination with national funds - what rules are applied if the FI financed from ESIF programme is combined with a grant from the member state's national funds, not OP resources?</p>	<p>Clarification has been added. See the reply to question 29</p>

	Ms	Ms comment	COM reply
		Which provisions of the CPR are in force in this case?	
67.	LT	<p>"2. d), page 8.</p> <p>A FI financed from an <u>ESIF programme</u> is combined with a FI financed from <u>another instrument supported by the budget of the Union (FI ESIF + FI non-ESIF)"</u></p> <p>Does this option also cover the combination with national resources, in particular, resources returned from FI of period 2007-2013 (which are used outside the OP resources)?</p>	No, only instruments supported by EU budget are covered. Clarification has been added
68.	LT	<p>Annex II</p> <p>"5. Can an ESIF programme guarantee be used to cover the ESIF programme loan?</p> <p>The purpose of a guarantee is to share the financial risk linked to the underlying loan between the lender and the guarantor. The situation where the lender and guarantor represent the same financing source (ESIF programme) <u>does not make any economic sense.</u></p> <p>Moreover, such construction would be in contradiction with the <u>principle of sound financial management</u> applicable to managing authorities."</p> <p>• Could you rephrase this provision to a less categorical way. Because there could be two different FIs, the need of which is proved by an ex-ante assessment. In such a case the support of final recipients by two different FIs should be justifiable. There is added value of having two FIs (a loan and a guarantee) that could be combined for the single investment project of the same final recipient, as the loan solves the problem of required financing resource not available in the market, while the guarantee solves the problem</p>	<p>ESIF loan should be designed in such way as to address the market failure (including lower collateral requirements). The financial intermediary which is implementing a loan fund does not bear any risk if it only transfers public resources from ESIF programme.</p> <p>If financial intermediary is adding its own resources (e.g. risk sharing loan) indeed there is a possibility to use ESIF programme guarantee but only in relation to the commercial loan.</p>

	Ms	Ms comment	COM reply
		<p>of lending risk and insufficient collaterals. One of the major obstacles for SMEs to receive loans is insufficient collateral, therefore without guarantees the goal to increase access to finance in many cases will not be reached. If a guarantee cannot be granted on ESIF loan, the availability of the loan in principle does not make big difference as the loan will not be granted because of too high lending risk.</p> <ul style="list-style-type: none"> • Could you indicate which part o the principle of sound financial management in particular would be infringed? <ul style="list-style-type: none"> • Can ESIF programme guarantee be used to cover the loan financed form other resources, i. e. national resources, in particular, resources returned from FIs of period 2007-2013 or can guarantee financed from other resources be used to cover the ESIF programme loan? Would it have no impact on eligibility of ESIF operation? 	<p>Infringed will be the principle of efficiency which concerns the relationship between resources employed and results achieved.</p> <p>The same result (investment of EUR 100 by final recipient) can be achieved through:</p> <ul style="list-style-type: none"> • ESIF programme loan of EUR 100 which is offered at preferential terms (i.e. much lower collateral) , or • ESIF programme loan of EUR 100 which is offered at market terms as regards collateralisation and ESIF programme guarantee of EUR 30 in relation to the this loan. <p>In the first case EUR 100 ESIF programme resources is used, in the second example EUR 130 resources is used.</p>
69.	LT	<p>Annex II</p> <p>"6. Can the interest rate subsidy combined within the financial instrument operation be used in relation to the ESIF programme loan?</p> <p>In order to make the best use of the programme contribution transferred to the financial</p>	<p>The objective of the Interest rate subsidy is to improve the conditions offered by the market. Interest rate subsidy cannot be treated as a</p>

	Ms	Ms comment	COM reply
		<p>instrument, interest rate subsidies and guarantee fee subsidies should be used only to improve for the final recipient the conditions of access to the private capital co-invested at the level of the relevant financial instrument (i.e. they should not be used to improve conditions of the support already received from ESIF or from national public co-financing through the financial instrument)."</p> <ul style="list-style-type: none"> • There is no legal basis for limiting interest rate subsidy/guarantee fee subsidy to the private capital part of the loan. The illustrative example No. 1 on combination of FI and grant within FI operation also does not illustrate such restriction. • Provisions on using a subsidy element within a single package with FI should be applied consistently which would mean that a part of technical preparation of investment (business plan, technical documentation, etc.) would also be borne by the final recipient. Such unfavourable restriction would make the MAs to decline from using the option of a single package and to implement separate measures (for interest rate rebates, technical preparation). The latter case would mean more complicated implementation structure. • It can be described by the following example of debt FI for public buildings modernization. As public buildings need to achieve C energy class, this means deep renovation is needed. Deep renovation has a longer payback period which limits the opportunities to attract ESCOs, private investors. In order to shorten the payback period, the ex ante assessment identified that 20 % of subsidy is necessary. However, because the combination of loan and subsidy in the context of two operations is rather difficult (different institutions, different monitoring scheme, different indicators, different eligible expenditure etc.) we have decided to provide technical support and interest rate subsidy (reaching no more than 20 percent of the investment project value). Technical support is provided in a way of expenditure compensation (in this way we can make sure that the technical support is provided only for those projects that obtain a loan and technical support is directly related with the potential investments) whereas interest rate subsidy is provided IF good results of the project are achieved. We would really like to continue it this way because otherwise there will 	<p>bonus for good result in the project. And it cannot be used to circumvent the rules on capital rebates. This is irrespective of whether interest rate subsidy is part of FI operation or whether it is a separate grant operation.</p>

	Ms	Ms comment	COM reply
		<p>be only very sophisticated alternatives to provide a grant to partially finance a project.</p> <ul style="list-style-type: none"> • Does this provision mean that interest rate subsidies from ESIF cannot be used to finance interest rates of the ESIF FI loan if there are two separate measures, separate operations? 	
70.	LT	<p><i>Annex II "c) A FI financed from <u>ESIF programme</u> is combined with a <u>grant financed from another instrument supported by the budget of the Union <...></u>"</i></p> <p>Does this include national resources, in particular, resources returned from FI of period 2007-2013?</p>	No, it does not. Clarification has been added.
71.	RO	<p>Following the 14th meeting on 22/4/2015, please find below a comment representing the position of the Romanian Ministry of Agriculture and Rural Development on the "Guidance on the combination of support from a financial instrument with other support":</p> <p>Due the fact that FI can be designed in compliance with state aid rules, we do not sustain the narrowing provisions for the combination of support under EAFRD, in which case the cumulative support (IF + grant) <i>shall not go beyond the admissible rate of support defined in Annex II of Regulation (EU) No 1305/2013.</i></p> <p>We consider that a form of support that is compatible with state aid, thus do not distorts competition, should not be subject of cumulation of aid.</p> <p>Moreover, we are not aware of any restriction of this kind stated in Reg. no.</p>	The Commission does not share the opinion of the MS.

	Ms	Ms comment	COM reply
		1303 and 1305/2013.	
72.	UK	<p>As a general point, our key interest at this stage is in understanding better how the provisions on combination of support work with regard to grants. At the meeting on 22 April you clarified that where support from an FI and a grant were being combined as part of a larger operation, it should probably be structured as two projects.</p> <p>However, we can also see specific circumstances where a smaller operation might receive support from different sources and think that this is still permissible providing there is no double funding i.e. the funding gap is met but not exceeded. Our reading of the paper would suggest that both scenarios would be compatible with the guidance. Please confirm that this is correct.</p>	<p>If a grant and a FI provide support to the same investment (project) at the level of final recipient, then, irrespective whether the investment (project) is large or small, the two interventions (i.e. grant and FI support) formally constitute parts of two separate operations (grant operation and FI operation understood as programme contribution to FI and subsequent disbursement in final recipients).</p>
73.	UK	<p>Finally, although this point was raised on 22 April, further information on the timing issues around grants and loans and how these should be implemented would be appreciated. How does the timing work where a project is part financed by FI and part by grant, since the first is provided in advance and the second is reclaimed by the project in arrears? At what point can the grant stream be reclaimed by the beneficiary (bearing in mind that the grant cannot be used to reimburse support from the FI and the FI must not be used to pre-finance the grant)?</p>	<p>If the combination of a grant and FI takes place in the same project but a grant and a FI support different expenditure items, then the sequencing of timing should be adjusted to the project nature (e.g. first works, then the installation of equipment). The expenditure item supported by the grant (e.g. works) needs to be incurred by the beneficiary and only then can be presented for reimbursement from ESI Funds. The expenditure item supported by the FI (e.g. equipment) will be pre-financed (in line with FI</p>

	Ms	Ms comment	COM reply
			<p>rules and the eligibility in FI).</p> <p>If a FI and a grant support the same expenditure item (e.g. support for equipment) then the part of equipment which will be assigned to FI operation will receive support from FI (pre-financing) and another part of equipment which will be assigned to the grant operation will have to be incurred by the beneficiary and only later declared as eligible expenditure.</p>
<p>MS comments on the guidance note on combination following EGESIF presentation on 17 June 2015</p>			
74.	SK	<p>Regarding the response to question 10: We suggest that the Guidance is amended in the light of this response as follows:</p> <p>“In order to make the best use of the programme contribution transferred to the financial instrument, interest rate subsidies and guarantee fee subsidies should be used only to improve for the final recipient the conditions of access to the private capital co-invested at the level of the relevant financial instrument (i.e. they should not be used to improve conditions of the support already received from ESIF or from national public co-financing through the financial instrument).</p> <p>Interest rate subsidy combined with a loan within financial instrument operation should</p>	<p>An insertion was made in the guidance note.</p>

	Ms	Ms comment	COM reply
		<p>be distinguished from a loan with lower (or even with no) interest rate designed and offered through a financial instrument. In the latter case financial instrument based on the ex-ante assessment and the market analysis offers an ESIF programme loan with 0% interest rate. The eligible expenditure declared for COM reimbursement is the amount of the loan. No interest rate subsidy either needs to be provided or would be efficient.</p>	
75.	SK	<p>Regarding the response to question 11: This response states that: “Article 2(11) CPR explicitly refers to the definition of financial instruments in Financial Regulation. The definition of financial instruments in Financial Regulation refers neither to the capital rebate nor to any other type of grant.”</p> <p>However, what question 11 pointed out was that “nowhere in the CPR it is said that the financial instruments only cover 'loans' in the technical sense of this Article of the Financial Regulation“ (emphasis added). The response provided does not touch upon this statement, which is straightforwardly true. In particular, the phrase ‘financial instruments’ as defined in the Financial Regulation, Article 2(p) “means Union measures of financial support provided on a complementary basis from the budget in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants“ (emphasis added). In other words, while all loans are financial instruments, it does not follow that all financial instruments are loans.</p> <p>The Guidance as provided appears to disallow the kind of financial instrument described in earlier comments by Slovakia, namely those where clients are</p>	<p>COM does not share the views of MS. Financial instruments in whatever form should not be used to deliver non repayable support (e.g. through capital rebate) to the final recipients.</p> <p>In COM view the support whose repayment is linked to certain conditions should take the form of repayable assistance as this is one of the forms of support provided for in CPR Article 66. Further details are available in the EC guidance note on repayable assistance.</p>

	Ms	Ms comment	COM reply
		<p>motivated towards good payment discipline by cancelling the last instalment of the bridging credit if all the previous repayments are made on schedule. This is standard practice, well-known in finance, falling under the rubric of a combination of quasi-equity investment with a grant. As the Financial Regulation, Article 2(n) states, quasi-equity is “a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity” (emphasis added). In other words, a debt instrument which includes a conditional grant in case of good payment discipline is by no means excluded by the definition of ‘loan’ in the Financial Regulation.</p> <p>(Furthermore, given that the grant is conditional, it is certainly not the case that “the expenditure declared to the Commission would exceed the amount of the underlying investment” – this is impossible by definition.)</p> <p>In the light of this, it is proposed that the Guidance is amended as follows:</p> <p>“A financial instrument providing support in the form of a loan cannot include a capital rebate in its design. This would be non-compliant with the definition of a loan referred to in Article 2 (k) of the Financial Regulation as an agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time. Since the borrower is obliged to repay the borrowed amount of money, there is no scope to embed capital rebates within a loan.</p>	

	Ms	Ms comment	COM reply
		<p>However, it is possible to design a financial instrument in the form of debt, which would fulfil the definition of quasi-equity in Article 2(n) of the Financial Regulation and to which a grant element would be directly related as required by Article 37(7) CPR (e. g. when the last instalment of the repayment schedule is provided as a grant conditional on the good payment discipline).</p> <p>It should be underlined that a capital rebate cannot be presented as a grant to a final recipient receiving support from financial instrument as this would be non-compliant with the provisions of Article 37(9) which forbid using grants to reimburse support received from financial instruments. The purpose of such a grant would be to enable full or partial repayment of the loan. Such a grant would be ineligible as it is used to reimburse support received from a financial instrument. Moreover, such construction would also imply an inefficient use of ESIF programme resources, as the expenditure declared to the Commission would exceed the amount of the underlying investment, e.g. a loan of 100 and a grant of 20 (serving the purpose of capital rebate) are declared to the Commission in respect of the underlying investment of 100.”</p> <p>Further regarding the response to the question 11. – the suggestion to use a combination of a financial instrument and repayable assistance is unsatisfactory for precisely the reason described in the response: namely, that this would constitute two separate operations. This not only makes such a combination administratively far more demanding, but also goes directly against the spirit of the Article 37(7) of the CPR, since it is perfectly obvious that in the case described the grant is indeed most directly related to the financial instrument (indeed, it is conditional on the appropriate use of the financial instrument).</p>	

	Ms	Ms comment	COM reply
76.	LV	<p>According to 16th MEETING of the EXPERT GROUP on ESIF (EGESIF) in 17 June point "Guidance note on combination of support (financial instruments, grants), we have general comment:</p> <p>Please explain how combination restrictions in guidelines contributes with statements provided in DG ENERGY Technical guidelines "Financing the energy renovation of buildings with Cohesion Policy funding" section 4.3."Evaluate potential combinations of form of support" that allow possibility to combine non reimbursable grant combined with financial instruments in one single operation?</p> <p>http://ec.europa.eu/energy/sites/ener/files/documents/2014_guidance_energy_renovation_buildings.pdf</p>	<p>COM does not find any statement in the referred guidelines which would refer to the notion of operation or would allow the combination within one single operation.</p> <p>As explained in reply to question 22 the combination between a grant and FI in the same project is possible but the two forms of support become formally two separate operations.</p>
77.	PL	<p>1. New wording for the last paragraph in point 2 <i>Background</i> (for further clarification): <i>„This note is not applicable to the cases where ESIF programme support, in the form of a financial instrument, is combined with national or regional schemes not supported by an ESIF programme or by the budget of the Union. It is therefore not applicable if ESIF programme support in the form of a financial instrument is combined with support from</i></p>	<p>The proposed changes were inserted in the guidance note.</p>

	Ms	Ms comment	COM reply
		<i>resources paid back from financial engineering instruments set up in the 2007-2013 period as these resources are no longer considered to be programme resources or resources supported by the budget of the Union. any more;</i>	
78.	PL	<p>2. The Commission’s draft guidelines go beyond the scope of the regulatory provisions by introducing an additional condition excluding the possibility to pay any grant component directly to final recipients in the case of combining the grant with a FI (<i>“The support is for the benefit of final recipients <u>but it is not directly paid to the final recipient</u>”</i> (point 3.1) the last condition derives neither from Art. 37(7) nor Art. 42(1)(a) of the CPR.</p> <p>The added condition would make it obligatory that in any case when FI is combined with grant within a single operation the grant cannot be paid to final recipient but only to another body for the benefit of final recipient. If that had been the intention of the EU legislator then such requirement should have been explicitly expressed in Art. 37(7) of the CPR. But Art. 37(7) is silent about such a requirement, so are the relevant provisions of the financial regulation. Neither such a restriction can be derived from Art. 42(1)(a) of the CPR. Indeed , in both the CPR and the Financial Regulation the legislator used the term “to the benefit of final recipient”, but such a notion has nothing to do with whether the final recipient’s benefit is delivered directly or indirectly. Any grant paid directly to the final recipient is clearly for the final recipient’s benefit , hence the intention of the legislator must have been to cover both situations: the wording clearly reflects not the intention to limit direct payments, but the intention not to exclude indirect ones.</p> <p>Art. 42(1)(a) of the CPR should be interpreted as allowing the grant combined with FI in a single operation to be eligible even in cases when this grant is paid directly to the final recipient. We believe ex ante assessment is a sufficient safeguard protecting against</p>	<p>COM does not share the view of MS. Article 42(1)(a) distinguishes between the payment to final recipient and payments to the benefit of final recipients in case of grants under Article 37(7). The understanding of the Commission is reinforced in DCR 480/2014 where Article 13(2)(b)(v) referring to grants under Article 37(7) speaks exclusively about amount paid for the benefit of final recipients.</p>

	Ms	Ms comment	COM reply
		<p>using the provision to circumvent the normal provisions applicable to grants, but even if it was not the case, for lack of any legal basis such a weakness cannot be addressed by Commission's guidelines but should be addressed via proper legislative process</p> <p>Therefore to stay in line with CPR the wording of the draft guidelines should be amended as follows: <i>"The support is for the benefit of final recipients but and in cases justified by ex ante assessment may it is not be directly paid to the final recipient"</i>.</p> <p>Accordingly, the answer to question 9 in Annex II should read: <i>"The financial support through such a grant may be is not paid directly to the final recipient. It must however be for the benefit of the final recipient"</i>.</p>	
79.	PL	<p>3. Art. 38(9) explicitly allows to provide national public and private contribution <u>at the level of final recipient</u>. The Commission's interpretation that under the EU regulation national co-financing cannot be provided by the final recipient is not justified: the legislative text has to be interpreted as a whole and provisions of Art. 42 of the CPR should be read in conjunction with other provisions, including Art. 38.</p> <p>As for any grant private expenditure incurred by the beneficiary can be counted as eligible national co-financing, there is no reason to restrict such a possibility in the case of financial instruments. Such a restriction cannot be derived from Art. 42(1)(a) of the CPR as the COM suggests, because the COM takes into account only the literal meaning of letter a) – that if there is no payment to a final recipient or for the benefit of a final recipient then any costs incurred are not eligible. But Art. 41(1) states that <i>"At closure of a programme, the eligible expenditure of financial instrument shall be the total amount of programme contributions effectively paid .."</i></p> <p>If the MA decided that national co-financing might be both public and private and it</p>	<p>COM would like to underline that any Article in CPR should be read in conjunction with other Articles.</p> <p>The eligible expenditure in FIs which can be declared to COM, as provided for in Article 42, is the total amount of programme contributions paid to final recipient (in case of a loan or equity) or the amount committed for guarantee contract.</p> <p>The comparison to grants should not be used as a justification as the eligible expenditure in grants is defined differently. Moreover, the governance of a FI operation differs from a governance of a grant operation where the</p>

	Ms	Ms comment	COM reply
		<p>obtains from the final recipient the proof of private expenditure incurred within the investment supported from the financial instruments then the CPR does not forbid MA to account such expenditure as eligible national co-financing. Art. 42(1) is clear that the costs of a financial recipient to be considered as eligible must be effectively paid and there should be a proof for that – which is the same as in case of grants.</p> <p>PL does not see why the COM interprets the CPR in such a restrictive way as not allowing the incurred costs of final recipient to be counted as a national co-financing, when the costs incurred by the beneficiary might be counted as eligible under national co-financing for grants in an analogous situation.</p> <p>Therefore to stay in line with the overall provisions of the CPR and the intention of EU legislator it is necessary to delete from the note on combination of support any references that suggests that <i>“the own contribution by the final recipient cannot be declared as eligible expenditure under the financial instrument operation, because in accordance with Article 42(1)(a) eligible expenditure is the payment to the final recipient”</i>.</p>	<p>recipient of support has a status of "beneficiary".</p> <p>Detailed provisions on managing contributions at the level of final recipient constituting national co-financing are provided in Article 1 of CIR 821/2014</p>
80.	PL	<p>4. Please verify calculation of eligible costs under guarantee in the numerical example in point 2.1.b. In case of a guarantee for a commercial loan of 45.000 EUR, the eligible costs should not exceed 7.200 EUR (and not reach 9.000 EUR as in the Commission’s example). Point 2.1.b does not take into account that the guarantee can cover only up to 80% of the loan.</p> <p>When deciding on the amount of eligible costs under guarantee we should take into account not only the guarantee cap rate, which is determined in the ex ante risk assessment, but also guarantee rate, which according to State aid rules cannot be higher</p>	<p>Both Article 42(1)(b) CPR and Article 8 CDR 480/2014 refer to the ratio between the amount committed for guarantee and the loan (loan portfolio). Thus the calculation in example 2.1.b where 20% is applied to the loan portfolio is correct.</p> <p>The guarantee rate of max 80% implies that in</p>

	Ms	Ms comment	COM reply
		that 80% of the loan. Please correct if our understanding is wrong.	case of default of any of the loan, the risk of at least of 20% of the loan amount has to stay always with the lender.
81.	PL	5. We suggest to add to the note for the sake of further clarification the definition of “expenditure item”, and the explanation that “ <i>the sum of all forms of support combined</i> ” means only EFSI support and corresponding national co-financing.	Reply to question 10 was extended to include the definition of the expenditure item. Article 37(8)(9) allows specifically for combination between ESIF Financial Instrument and other instruments supported by the budget of the Union. In this regard referring only to ESIF and national co-financing would be restrictive.
82.	PL	6. In point 3.1.2 <i>Combination of support at the level of the final recipient (combination of two separate operations)</i> it should be added that at the level of final recipient the support from the same priority axis may also be combined. Therefore the first paragraph of point 3.1.2 should be as follows: <i>“Support from a financial instrument may be combined at the level of final recipient under Article 37 (7) and (8) CPR with other form of support from the same or another ESI Funds priority or programme or another EU financed instrument”.</i>	Point 3.1.2 speaks about the situation where combination takes place within two separate operations. Thus, referring to article 37(7) is not appropriate. As regards the reference to the same priority axis this is already included in the paragraph underneath.
83.	PL	7. In point 1 Annex I Examples in the chart “interest rate subsidy, guarantee fee subsidy, technical support” there should also be added “other”, according to the explanation to question 7 in Annex II that art. 37(7) of the CPR allows to combine with FI other forms of grants than those mentioned in this article.	Annex I presents examples. As provided for in the reply to question 7 these three types of grants are the only known examples for grants directly linked, i.e. facilitating the implementation of the financial instrument.

	Ms	Ms comment	COM reply
84.	PL	8. The examples in point 2.1 c) and d) are the same except that in c) there is a grant and in d) there is a loan, but the way in which the expenditure is declared to the Commission is the same. Therefore the two examples (c and d) could be merged into a single example.	COM finds it useful to present in a distinct way two examples.
85.	PL	9. Please include an example showing treatment of VAT when combining FI with other form of support as in example presented by IT (no. 1 in MSs' comments)	As referred in reply 8 the special rules on eligibility of VAT as stipulated in Article 37(11) are applicable only in relation to the investments in final recipients in a form of equity, quasi equity, loans, guarantee or other risk sharing instrument. For the grants which are combined with a financial instrument the VAT rules under Article 69(3)(c) apply. Still the issue of eligibility of VAT could be treated in a separate guidance note on eligibility.
86.	PL	10. PL supports LT proposal to delete answer 2 in Annex II, which was mentioned on EGESIF on 17 June 2015, because the question is not clear (uses "operation" and "investment" in a context which is not clear) and the provided answer is not in line with Art. 37(7) of the CPR. It is possible to combine a FI and a grant within a single operation as it is explicitly stated in Art. 37(7) of the CPR.	For the sake of clarity COM revised the text of the reply.
87.	PL	11. PL supports the other MS when it comes to allowing the capital rebate to be used as a part of FI within a single operation – we believe it is one of the "other" cases provided by Art. 37(7) and use of such a rebate is in line with Art. 37(9) as the rebate is different than reimbursement of supported received from FIs. The alternative solution proposed	See reply to question 75. The numerical example in the reply to question 3 is placed under the second paragraph of the reply which speaks about the capital rebate presented as a

	Ms	Ms comment	COM reply
		<p>by the Commission in the draft note to use combination of FI and repayable assistance in two different operations would be difficult in practice. Capital rebate is a useful and simple incentive to increase quality and value of investments. It cannot be seen as a way to give grants under FI operations but as a tool to increase quality and value of the investment. Anyway every MA is free to decide whether to use grants or financial instruments, so the combination of these two should not be restricted beyond what is really necessary.</p> <p>Moreover the answer to question no. 3 in Annex II suggests that in case such a capital rebate is granted then more than 100% of the investment costs could be declared to the COM as eligible expenditure. This assumption is wrong, as since the capital rebate is a part of the same operation, the amount of capital rebate is not declared to the Commission, only the amount of the issued loan is declared and anyway the sum of costs declared for reimbursement from EU budget does not exceed 100% of the investment. There is also no double financing, only the amount of State aid may increase.</p>	<p>combination of a grant and FI. Thus, the numerical example is correct.</p>
88.	PL	<p>12. PL suggests to delete the passage concerning restrictions in the context of Art. 14 of GBER (p. 8 of the fiche). "Support" in the context of implementation of financial instruments differs from "support" in the meaning of GBER. Restrictions concerning 25% of own contribution which is "free of any public support" result from aid intensities and should be considered in the context of actual/real benefit/advantage to the beneficiary/final recipient, so the support offered by FIs shouldn't be treated as actual benefit unless it is given under favourable conditions – in such case as support in the meaning of GBER we should treat only the part which accounts for the difference between market and non-market conditions.</p>	<p>COM revised the text.</p>

	Ms	Ms comment	COM reply
89.	PL	<p>13. There is no legal basis for the Commission's requirement that distinct eligible expenditure have to be defined for combination of grants and FIs when the combination is done through 2 separate operations (point 3.1.2) within the same priority axis. Adding together eligible expenditure underlining both of such operations may appear to result in situations in which more than 100% is supported, but due to ex ante assessment requirements such a combination could be justified only when in fact public support and effective support from the EU budget would decrease as the result of such a combination as compared to pure grant scenario, hence increasing leverage and effectiveness of ESIF.</p> <p>It was a clear intention of the legislator, strongly supported by Poland and drafted in relation to a specific case of this nature under the 2007-2013 with full awareness of the Commission, to make sure such a combination is permitted:</p> <ul style="list-style-type: none"> - Art. 37(7) allows for combination of grants and FIs. All the restrictions included in its second sentence apply to only to a situation in which FIs and grant are a part of the same operation, but the first sentence applies also to separate operations (otherwise the introductory part of the second sentence "<i>Where the support is provided (...) in a single operation...</i>" would appear in the beginning of the paragraph, not the second sentence). - Art. 37(8) introduces additional restrictions, including the requirement to have eligible expenditure distinct between separate operations, but it intentionally does NOT cover a situation in which both separate operations are implemented under <u>the same</u> priority of the same programme. - Art. 37(9) applies to all situations covered in par. 7 and par. 8. For 2 separate operations which are implemented under the same priority only first sentence 	<p>The guidance note which is the COM's interpretation of the legal provisions does not set out new legal requirements.</p> <p>COM does not share the view of MSs that the aim of paragraph 7 of Article 37 is to provide for two different types of combination. The intention of the legislator was to cover by this paragraph only the combination of FI with grants directly related to financial instrument (such as interest rate subsidy, guarantee fee subsidy or technical support) which takes place within the FI operation.</p> <p>COM does not share the view of MS that financial instruments combined with grants within the same priority axis and for the same expenditure item can be used as a way to provide national co-financing for grants. Such understanding would lead to double declaration of the same eligible expenditure for reimbursement from ESI funds.</p> <p>COM would like to point out that the notion of</p>

	Ms	Ms comment	COM reply
		<p>of par. 7 applies (which includes no restriction on combination), and par. 8 is not applicable, hence the only conditions applicable are those provided by par. 9. Par. 9 explicitly provides for a situation in which both operations cover THE SAME EXPENDITURE ITEM which is equivalent to say that they relate to the same (not distinct) eligible expenditure. The legal notion of “the same expenditure item” is well known in EU law and it is clear how it should be understood. This reference to the same expenditure item was introduced in the negotiations on request of Polish and other delegations with the explicit intention of legislators to allow for such a situation.</p> <p>Moreover, the restriction introduced in par. 9 clearly refers to “sum of all forms of SUPPORT combined”, not to eligible expenditure. The support is equal to the sum of amount of public support for the grant operation (EU financing and national financing if any) and the amount of support under the FI operation (e.g. for a loan it would be the amount of the loan). This sum indeed cannot exceed 100%, as that would correspond to a situation of double financing, e.g. in a situation when you re-finance expenditure previously financed by FI through a loan. But that does not mean that the sum of eligible expenditure cannot exceed 100%: during negotiations the Commission wanted to introduce such a condition, but that would make the possibility to cover the same eligible item meaningless and was rejected by the legislators and the Commission in the end did not oppose the different condition. The Commission cannot now disregard the clear intention of the legislator and attempt to amend regulatory provisions via guidelines.</p> <p>We strongly disagree with the statements in Commission’s answer to question no. 6 that claims that the situation described above would contradict the principle of sound</p>	<p>“the same expenditure item” (cf. Article 37(9)) is distinct from the notion of “eligible expenditure” (cf. Article 37(8)). While the support from a grant and from a financial instrument is possible in relation to the “same expenditure item” it is not possible in relation to the same “eligible expenditure” as this leads to double declaration of the same eligible expenditure.</p> <p>The Commission understanding is that the same eligible expenditure cannot be declared twice for ESI funding. The introduction of the wording referring to distinct expenditure in paragraph 8 was explicitly to reinforce this understanding.</p>

	Ms	Ms comment	COM reply
		<p>financial management. Indeed, it would result in the same expenditure in the underlying investment being used to justify 2 different operations, but that's only an accounting effect of the explicit provision allowing for 2 separate operations to refer to the same underlying expenditure item. This is not an unusual situation, as e.g. in the case of an EIB loan the same documents would have to be used for 2 different purposes. The principle of sound financial management, both in economic terms and the legal sense defined in the Financial Regulation and jurisprudence of the Court refers to economy, efficiency and effectiveness – i.e. in particular the best relationship between resources employed and results achieved. In relation to any specific operation, what matters is the amount of public/EU budget support needed to have it completed.</p> <p>For operations which by nature are not self-financing, but which generate some revenues, the available choice is between pure grant support and the support by combination of a grant and EU-supported loan. The optimal choice depends very much on local markets, types of risks, availability and conditions of commercial loans, etc. Availability of a subsidized FI should as a general rule decrease the amount of grant necessary, hence resulting in effectively less public money being spend, hence in greater efficiency, i.e. SOUNDER financial management. Possibility to use FI in such a case would be restricted by the requirements of ex ante assessment: if there is no benefit (e.g. in terms of decreased grant amount) because private financial financing is available anyway, such a combination would be not eligible. But restricting such a possibility up front, irrespectively of the lack of legal basis for such a restriction, limits the financing options and inevitably leads to potentially less effective financial support. The choice is not between a project with a grant only and a project with the same grant amount plus FI. The choice is, as a general rule, between a grant if no combination is possible and a LOWER grant combined with heavily leveraged FI. We would welcome if the Commission</p>	

	Ms	Ms comment	COM reply
		<p>could propose in the guidelines some ideas how ex ante assessment could look like for such cases and how case by case assessment of such cases should look like to minimize the risk auditors would later question rationale for such a combination, but we cannot accept a misguided blanket refusal which is contrary to what legislator intended and which in effect limits effectiveness of ESI Funds and – contrary to what the Commission preaches at political level – will result in less use of financial instruments.</p> <p>In the final version of the guidance the Commission should:</p> <ul style="list-style-type: none"> - Introduce a specific example dealing with the case of combination of 2 operations with respect to the same expenditure item under the same priority axis which does not pose additional conditions for which there is no legal basis in the regulations; <p>Revise its answers to questions 6 and 10.</p>	
90.	LT	<p>2014-2020 period should be also indicated as resources will be paid back as well</p> <p><i>"This note is not applicable to the cases where ESIF programme support, in the form of a financial instrument, is combined with national or regional schemes not supported by an ESIF programme or by the budget of the Union. It is therefore not applicable if ESIF programme support in the form of a financial instrument is combined with support from resources paid back from financial engineering instruments set up in the 2007-2013 and 2014-2020 periods as these resources are not considered to be programme resources any more. "</i></p>	The text has been revised
91.	LT	<p>A lot of questions rise concerning the combination of ESIF and EFSI (European Fund for Strategic Investments). Some provisions in relation to EFSI would be very useful.</p>	COM will prepare a separate guidance on ESIF and EFSI synergies

	Ms	Ms comment	COM reply
92.	LT	<p>Please extend the guidelines by adding:</p> <ul style="list-style-type: none"> • particular costs that could be financed via technical support; • the mechanism of providing such technical support. <p>In the answer No 56 the EC explained that trainings should not be considered as technical support. However in the ex ante methodology (Volume III, section 7.3.2, page 47 it is provided that “Another relevant option is to use grants to provide capacity building to SMEs. This could help them overcome their weaknesses in terms of inefficient management and governance structure, which as discussed in Chapter 3, can have a negative impact on the risk perception by potential lenders, thus limiting their access to finance. Training and coaching can also help raise awareness of existing financing opportunities, particularly for SMEs operating in sectors or regions where banking penetration is relatively weak.”</p> <p><i>Tab 4, page 48 also provides an example of combination of risk sharing loan with capacity building “Grant element could be used to subsidise technical support e.g. for capacity building to develop in-house management expertise“.</i></p> <p><u>Consistency with the officially adopted methodology must be ensured.</u></p>	<p>While it is true that chapter 7.3.2 of the Volume III (SMEs) of the ante assessment methodologies) refers to the possibility of combining FIs support with grant support for capacity building of the SME as final recipient, this possibility was not intended to be presented, as a combination of FI and grant support within the same operation. On the contrary, the purpose of the referred chapter was to present several possibilities of combination of FIs support with grant support within the same operation as well as in two distinct operations – this is clear from the several examples presented in the referred chapter. This is also why sub-chapter 7.3.2.1 refers that “<i>The ex-ante assessment of a FI combined with a grant element must ensure compliance with Article 37 (7), (8), (9) of the CPR in addition to the relevant State aid Regulations</i>”, so to highlight the rules for combination within the same or in two distinct operations. Therefore the EC position expressed in reply to Questions 4, 34 and 56 is still valid and is not in contradiction with the chapter 7.3.2 of the Volume III (SMEs) of the ante assessment methodologies.</p>

	Ms	Ms comment	COM reply
93.	LT	<p>We propose inclusion of the word “necessarily”</p> <p>"The support is for the benefit of final recipients but it is not necessarily directly paid to the final recipient."</p>	<p>In COM view the eligible expenditure in grants under Article 37(7) is solely the payment for the benefit of final recipient which is distinct from the payment to final recipient (which takes place e.g. in case of a loan or equity).</p>
94.	LT	<p>In the Q&A sheet question No. 34 it was also stated that <i>if the final recipient eventually does not receive FI support the related technical support should not be eligible.</i></p> <p>These points close the doors for providing the technical support since the mechanism becomes not implementable. Technical preparation of the project and a loan occurs in a different time. However, according to this explanation the compensation of incurred technical preparation costs is not possible, since the support cannot be paid directly to final recipient. The payment of incurred costs at the time they occurred is also not possible since the FI manager does not yet know whether the loan for the particular final recipient will be approved.</p> <p>Combination of support becomes impossible especially in ESF FI dedicated for socially sensitive target groups - young or older unemployed persons who do not have financial sources - this technical support for the preparation of projects is needed before the loan is issued. The current explanation will lead to implementation of different/separate measures, but in this case we can not see the</p>	<p>Technical support as referred to in Article 37(7) has to be directly linked to the financial instrument. If in the end technical support granted does not result in financial instrument support to the final recipient the direct link with financial instrument required under Article 37(7) does not exist, thus such support does not comply with provisions of Article 37(7).</p>

	Ms	Ms comment	COM reply
		<p>rationale of this “single package” type of financing any more.</p> <p>Please note that repayable assistance proposed by the EC in this case would make the mechanism very complicated - as repayable assistance is managed by IBs (not beneficiaries (financial institutions) as it is in FI) the financial institutions such as EIB would have to be designated as IBs and included into the management and control system. In the end the financial result would be the same, just the administration structure more complicated/unattractive.</p>	
95.	LT	<p>Please provide examples when only part of (not the entire) loan is declared to the Commission.</p> <p>If we have a loan part of which is financed from ESIF, part of which – resources of the bank (e. g. 75/25). How can we provide 80% guarantee for such a loan if it is impossible to separate bank’s part and ESIF part (guarantee is provided for the entire loan as a whole)? Could you, please, provide an example.</p> <p><i>Example:</i> the investment consists of 1 expenditure item of EUR 100.000 which is financed by an ESIF programme grant and an ESIF programme loan. The programme loan of EUR 45.000 constitutes part of a FI operation which, is financed by ESIF and national co-financing. The programme grant operation of EUR 55.000 includes both ESIF and national co-financing</p>	<p>If a final recipient receives an ESIF programme loan and a commercial loan which is covered by ESIF programme guarantee in order to ensure distinction of eligible expenditure these two loans should be provided in a distinct way such as based on distinct loan agreements.</p>

	Ms	Ms comment	COM reply
96.	LT	<p>We have a question how the additional contribution of the ESCO Company would be treated: the ESIF programme loan is approved to the public body, implementing public building modernization project. If the public body decides that the best way to implement the project is to procure an ESCO company, the ESCO Company must bring its own resources (the requirement is at least 20 percent). In this situation the final recipient is the public body obtaining a loan whereas an ESCO is an investor which invests in public body's infrastructure. In this case ESCO acts as an intermediary body therefore we believe the contribution of an ESCO company can be treated as eligible expenditure because it would be paid to the final recipient (in the form of investment). Could you include this question into the annex?</p> <p>Could you please add the explanation how this provision correlate with Article 38(9) which provides that „National public and private contributions <...> may be provided at the level of the fund of funds, at the level of the financial instrument or at the level of final recipients“.</p> <p>"It should be underlined that the own contribution by the final recipient cannot be declared as eligible expenditure under the financial instrument operation, because in accordance with Article 42(1)(a) eligible expenditure is the payment to the final recipient."</p>	<p>The question of eligibility of expenditure in case of ESCO model will be covered by a separate guidance note on eligibility.</p> <p>The national co-financing at the level of final recipient which can be declared as eligible expenditure is an investment in final recipient made by a third party (private or public entities) and linked to the ESIF investment from FI. Management of national co-financing at the level of final recipient is provided for in Article 1 of CIR (821/2014). Please see also reply to question 79</p>

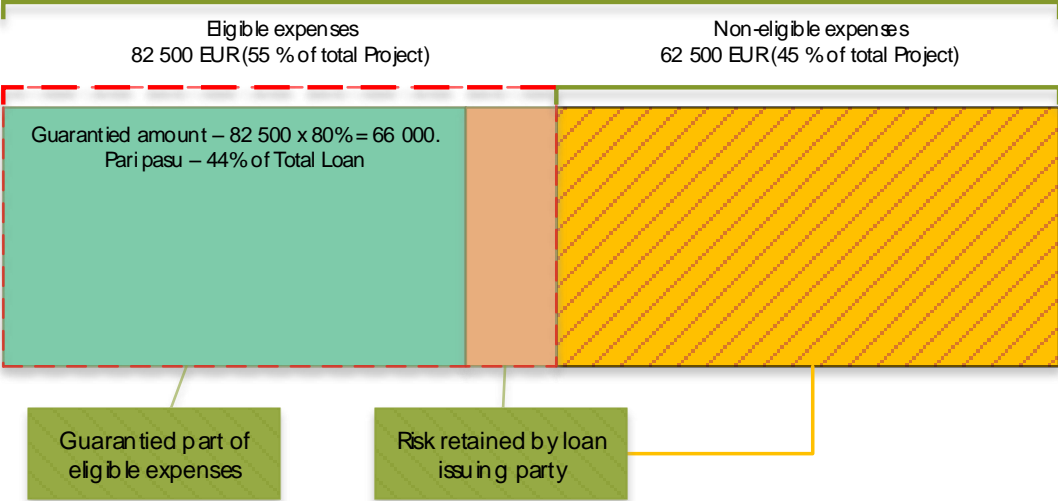
	Ms	Ms comment	COM reply
97.	LT	<p>We do not support such an explanation. Only the amount which is going to be declared to the Commission, i. e. EUR 9.000, should be considered for the calculation of overlapping of eligible expenditure. Indeed, it is not possible to predict which of the loan (portfolio) will default, however, if risk assessment showed the need for ESIF resources only for 20% of the loan, then 80% should never default or the probability of such default should be close to zero (in case risk assessment was prudent). In such case 80% of portfolio will be “punished” by the Commissions restrictions on the combination possibilities.</p> <p>Also the respective proportionality between the amount of programme contributions allocated for the guarantees and the value of disbursed loans, etc. is stipulated under Art. 8 of Reg. 480/2014 (and especially Art. 8(d).</p> <p>Therefore, only EUR 9.000 and not the entire loan should be taken into account for further calculations.</p> <p>"In case of ESIF programme guarantees, the eligibility rules should be applied to the entire loan (portfolio) supported with the guarantee. "</p>	<p>The solution would be to deliver a commercial loan in a distinct way (through a distinct loan agreement). In this way the commercial loan could be supported by ESIF programme guarantee. See also reply to questions 80 and 95.</p>
98.	LT	<p>In the beginning of this section there should be an indication that 2.2 is only about the combination indifferent operations, not a single package.</p>	<p>Paragraph 2.2 is part of section 2 which refer to combination under two separate operations. For the sake of clarity an insertion in section 2.2 has been made though.</p>
99.	LT	<p>Following such explanation it should also be possible to combine interest rate subsidy with the ESIF loan (partially or fully financed from programme contribution), whereas no more than 100% of the same eligible expenditure rule will never be breached.</p> <p>ESIF Guarantee + ESIF interest rate is possible because interest is the financial cost of the loan. That is the same should be applicable– ESIF loan+ESIF interest.</p>	<p>Combination of EIF programme interest rate subsidy and ESIF programme loan should not be pursued not because its non-compliance with Article 37(9) but because it leads to inefficient use of ESI Funds. See also reply to question 10 and the amended reply to Question 7 of annex II</p>

	Ms	Ms comment	COM reply
		<p>Please ensure consistency of the provisions.</p> <p>"In case of a guaranteed loan an expenditure item is the cost of the investment supported by the guaranteed loan. In case of an interest rate subsidy the expenditure item is the financial cost of the loan. Thus this type of combination does not involve the same expenditure item and as a result the condition under Article 37(9) is not applicable. "</p>	<p>of the guidance note.</p>
100	LT	<p>1. If the SME receives soft ESIF loan and does not have the sufficient collateral – it will not receive the loan, that is in many cases there is no purpose to provide loans.</p> <p>2. We have FIs where ESIF loan is 100 % of the bank's risk (in case of default the bank should return 100%). In our opinion such FIs would be definitely treated as different case and the State could provide ESIF guarantee to ESIF loan.</p> <p>Please consider a relevant revision.</p> <p>"The purpose of a guarantee is to share the financial risk linked to the underlying loan between the lender and the guarantor."</p>	<p>1. One of the objectives of the ex- ante assessment is to develop the financial product which best addresses the identified market failure and suboptimal investment situation. If the market failure is lack of finance and insufficient collateral by SMEs then the ESIF programme loan should be designed in such way as to address these needs, i.e. a loan with low or not collateral.</p> <p>2. The statement by MS about financial intermediary investing at its own risk is no clear. COM would like to underline that in the context of financial instruments ESIF programme contribution is made to the financial instrument and this contribution is invested in final recipients (in the form of loan ,guarantee, equity). Thus, it is ESIF programme support and ESIF programme risk. The purpose and objective</p>

	Ms	Ms comment	COM reply
			of ESIF programme support is not to provide funding to financial intermediaries.
101	LT	<p>1. This question and the explanation <u>should be deleted</u>. Art. 37.7 allows combination of interest rate subsidy with FI, therefore the question is not relevant.</p> <p>According to Art. 37.2 (e) this combination should be analysed and identified in ex ante assessment. Therefore such combination should be assessed on a case by case basis and the Guidelines should not impose any restrictions beyond the provisions of the CPR.</p> <p><i>"Can the interest rate subsidy combined within the financial instrument operation be used in relation to the ESIF programme loan?"</i></p>	The guidance note is not a new legislation. It is COM interpretation. See also reply to question 10, 99 and the amended reply to Question 7 of annex II of the guidance note
102	LT	<p>The other appropriate aim could be to reduce the financial burden of SMEs (the obligation to pay interest each month can be a real burden for the SME, especially for the young one) and promote the development of enterprises. Please make the provision broader.</p> <p>"In order to make the best use of the programme contribution transferred to the financial instrument, interest rate subsidies and guarantee fee subsidies should be used only to improve for the final recipient the conditions of access to the private capital"</p>	If the ESIF programme loan implies a financial burden linked to the payment of interest which cannot be sustained by the SMEs then it proves that in the context of ex-ante assessment and investment strategy the financial product was not designed in an optimal way as to address the market failure and suboptimal investment situations. . See also reply to question 10, 99, 101 and the amended reply to Question 7 of

	Ms	Ms comment	COM reply
			annex II of the guidance note.
103	LT	<p>We propose to add the word “necessarily”.</p> <p>"The financial support through such a grant is not necessarily paid directly to the final recipient. It must however be for the benefit of the final recipient."</p>	The provisions in CPR and CDR referring to Article 37(7) speak about the “payment for the benefit of final recipient” only. See also reply to question 93.
104	LT	<p>Guarantees</p> <p>Restrictions indicated in Annex 1 (Examples), part 2.1. (b) “<i>In case of ESIF programme guarantees, the eligibility rules should be applied to the entire loan (portfolio) supported with the guarantee</i>” are not reasonable in case of individual guaranties. The reasoning behind it given by the COM is that at the moment of committing the guarantee it is not possible to predict which (and if any at all) part of the loan will default and be written off and eventually covered by the ESIF programme guarantee.</p> <p>We do not agree to such statement and reasoning because the guaranteed part of the loan could be calculated <i>pari passu</i> in accordance with the investments made (taking into account that eligible and non-eligible investments can be specified and separated and <u>separate records shall be maintained for each source of funding</u>).</p> <p>A very similar suggestion regarding proportionate distinguishing of different costs was also suggested in the Annex 2 (Q&A), answer to the 10 question: <i>where</i></p>	The ESIF programme guarantee should be committed in relation to a loan for eligible expenditure. In order to avoid that a loan supported by ESIF programme guarantee is financing also non eligible expenditure the financial intermediary should sign two separate loan agreements with the final recipient. See also reply to question 95.

	Ms	Ms comment	COM reply
		<p><i>support from ESIF programme financial instrument and a grant covers the same expenditure item not dividable in sub-items <u>the support from a financial instrument and from a grant should be established proportionally (in percentage).</u></i></p> <p>Correspondingly eligible and non-eligible costs can be separated by applying the proportionality rule.</p> <p>We hereby provide an example regarding street lighting modernization.</p> <p>Example:</p> <p>Street lighting project, which total amount is 150 000 EUR is divided in two parts:</p> <ol style="list-style-type: none"> 1) Street lighting modernisation part of investments (eligible investments) amounting to 87 5000 EUR (55% of the project), and; 2) Expansion of street lighting and investments into new luminaires (non-eligible investments) amounting to 62 500 EUR (45% of the project) <p>1.1. Street lighting project is implemented by public body (municipality) which obtains a commercial loan for the entire project (loan = project expenses).</p>	

	Ms	Ms comment	COM reply
		<p style="text-align: center;">Loan amount = Project expenses 150 000 EUR</p>  <p style="text-align: center;"> Eligible expenses 82 500 EUR (55 % of total Project) Non-eligible expenses 62 500 EUR (45 % of total Project) </p> <p style="text-align: center;"> Guaranteed amount – 82 500 x 80% = 66 000. Pari pasu – 44% of Total Loan </p> <p style="text-align: center;"> Guaranteed part of eligible expenses Risk retained by loan issuing party </p> <p>If the municipality has the financial capacity to implement the project at one time, it is more efficient and optimal to do that (instead of dividing it into two projects). Presuming that guarantee ratio is 80% of borrowed funds attributed to eligible expenses, guaranteed amount will be 66 000 EUR (82 500 EUR x 80%), which is 44% of borrowed funds for the whole project, and it is covered by the ESIF programme guarantee.</p> <p>1.2. Public body chooses to implement Street lighting project via ESCO (Energy Service Company), and requires this company to participate in the project with own funds (equity), which must exceed 20 % of project cost.</p>	

	Ms	Ms comment	COM reply
		<p>ESCO decides to contribute 50 000 EUR (33.33% of the project cost) as equity.</p> <div data-bbox="403 367 1523 941" data-label="Diagram"> <p>The diagram illustrates the financing structure of a 150,000 EUR project. It is divided into two main sections: 'Loan part of Project' (100,000 EUR) and 'Equity part of Project' (50,000 EUR). The total project cost is split into 'Eligible expenses' (87,500 EUR, 55% of total) and 'Non-eligible expenses' (62,500 EUR, 45% of total). The loan is further divided into a 'Guaranteed amount' (55,000 EUR, 80% of total loan) and a 'Pari passu' amount (45,000 EUR, 44% of total loan). The equity is split equally between eligible and non-eligible expenses (27,500 EUR each). Risk is retained by the issuing party for non-eligible expenses and by ESCO for eligible expenses.</p> </div> <p>In this example total Project amount is 150 000 EUR out of which 50k is equity and 100k is a commercial loan.</p> <p>In the calculations, equity amount is equally distributed between eligible and non-eligible expenses. Therefore eligible costs are financed via equity and loan: equity 27 500 EUR + loan 55 000 EUR = 82 500 EUR.</p> <p>Presuming that guarantee ratio is 80 percent of borrowed funds attributed to</p>	

	Ms	Ms comment	COM reply
		eligible expenses, guaranteed amount will be 44 000 EUR (55 000 EUR x 80%), which is 44% of borrowed funds. In case of loan default the part of the loan which is covered by ESIF guarantee is calculated pari passu, which in the example is 44 % (44 000 EUR) of the loan amount.	
105	SK	Slovakia would like to make it clear that it fully supports comments 2, 3, 7, 11 and 13 (<i>original numbering of PL letter</i>) made by Poland. These PL comments express very faithfully the position that Slovakia also holds on these matters.	Please see reply to the corresponding questions (question's 78, 79, 83, 87, 89)
106	SK	<p>Further to the matter of combination of a financial instrument and a grant in a single operation:</p> <p>It appears that in order to prevent abuse, such as when financial instrument is used to disguise a much larger grant, allowing for the circumvention of the rules on grants, the Commission is going well beyond both the letter and the spirit of the CPR and trying to forbid any combination of an FI and grants other than interest rate subsidy, guarantee subsidy, or technical assistance. Aside from the fact that, as per PL comment 2, the phrase „<i>for the benefit of final recipient</i>“ clearly does not exclude a direct payment to the recipient, but rather, includes both direct payments and other forms of support, the restrictive approach of the Commission is both excessive and unnecessary. The former can be documented by the reference to the will of the legislator as expressed in the Recital of the CPR, and the latter by demonstrating that it is possible to provide a solution to the problem which does not violate the letter and the spirit of the CPR.</p> <p>The Recital provides two points of reference to the combination of financial instruments with other forms of support: paragraph (38) and paragraph (63). Paragraph (38) clearly refers to a situation where the grant is supplementary to</p>	<p>COM does not share the view of MSs that the intention of the legislator was to allow delivery of traditional grant through a financial instrument and apply FI rules (including on substantiation of expenditure) to grants.</p> <p>COM explains in detail that combination of a grant and FI within formally two separate operations is feasible (see example 2.2 of the note.)</p> <p>COM does not see that recital 38 should be interpreted that in case of combination majority of the project should be provided by FI. It can be well justified to have a project which would require 60% grant and 40 % loan.</p>

	Ms	Ms comment	COM reply
		<p>the financial instrument and is used to turn nearly-viable investment projects into viable ones: <i>„It could be justified where certain parts of an investment do not generate sufficient direct financial returns, to combine financial instruments with grant support, to the extent allowed under the applicable State aid rules, in order for the projects to be economically sustainable. Specific conditions preventing double financing in such a case should be set out.“</i> The justification for the combination is here clearly an economic one and equally clearly it refers to a situation where the financial instrument is the dominant element and the grant is used in a subordinate position to allow the FI to function.</p> <p>On the other hand, paragraph (63) says that <i>„It should be possible to provide support from the ESI Funds in the form of grants, prizes, repayable assistance or financial instruments, or a combination thereof, in order to provide the bodies responsible with a choice of the most appropriate form of support to address identified needs.“</i> Here the justification for the combination is to offer as much flexibility as possible to the Managing Authorities and remove barriers to the appropriate combinations of support.</p> <p>Now, since the intention of the paragraph (38) is to provide space for the grant to support the financial instrument, such a combination implies that the grant would be a subordinate element. A natural way to interpret this statement is that the volume of the grant must not exceed the volume of the financial instrument itself. This in turn implies that the grant cannot make up for more than 50% of any FI-grant combination as envisaged by the regulation. Where a project requires more than half of the assistance to be financed through grants, this clearly means that it is a typical grant-based project, out of which a separate financial instrument investment might be carved up – or in other words, a clear case for two operations, a grant-based one and a separate financial instrument one. Such an approach is not only consistent with the letter and the spirit of the</p>	<p>Irrespective what is the percentage of a grant, the grant support should be delivered under grant rules and FI support should be delivered under FI rules.</p>

	Ms	Ms comment	COM reply
		<p>Regulation, but it would also serve to prevent the possibility of abuse, whereby financial instruments would only serve as thinly disguised grants, in order to circumvent the rules governing grants. If it is the case that a financial instrument-grant combination can only occur in a single operation when the grant element is under 50% of the total support provided, this implies that an attempt to circumvent grant rules would necessitate the Managing Authority to introduce a spurious financial instrument of the volume at least as large as the grant that the MA would wish to disguise. This would represent a substantial waste of scarce resources for the MA. Moreover, this spurious financial instrument would have to be justified economically in the ex ante assessment, using the extensive methodology provided by the Commission to provide such economic justification. If the financial instrument indeed served no purpose other than to let the MA circumvent the rules for grants, then it cannot be expected that the many tests required (establishing the suboptimal investment situation, etc.) could be fulfilled for such an FI, and an attempt to do so over the many pages of the ex ante assessment would be far too transparent to be successful.</p> <p>Hence, it appears that the requirement that the grant element constitutes no more than 50% of the total assistance provided when used in a single operation with the financial instrument not only does not violate the letter and the spirit of the Regulation, but it is sufficient to prevent the sort of abuse that the Commission is worried about. Unlike the solution provided in the draft Guidance note, which violates the clear wording of the Article 37 (7) by pretending that only three types of grants can be combined with financial instruments in a single operation, the approach proposed is both faithful to the full meaning of the Regulation and avoids imposing unnecessary and harmful restrictions on the use of financial instruments – which, after all, are meant to be innovative and flexible, rather than limited and rigid.</p>	

	Ms	Ms comment	COM reply
107	SK	<p>Furthermore, the main reason why the solution proposed by the Commission is likely to be unworkable in practice is the excessive administrative burden that two separate operations would create. This goes directly against the paragraph (63) of the Recital, quoted above, which makes it very clear that the purpose of the combination is to allow the MAs to achieve public policy outcomes in the most flexible and efficient way available. For even if both FIs and grants are implemented by the same body, to expect this body to undertake both the extensive ex ante assessment for financial instruments and all the other related activities <i>and</i> at the same time to follow all the rules regarding grants, in a situation where the grant element constitutes less than 50% of the assistance provided, sets up entirely perverse incentives – for most MAs, it would make far more sense under such circumstances to completely dispense with the financial instruments and provide all of the support in the form of grants. The expected return from the financial instruments might not be of a sufficient size to justify the duplication of effort required for running the combination as two operations, particularly when the MA has little experience with FIs, which is the case for many MAs in all Member States. If the Commission is intending to promote the spread of the use of financial instruments, it makes little sense to introduce unnecessary administrative difficulties into their operation.</p> <p>In fact, while para (43) of the Recital concerns primarily the level at which projects ought to be audited, nevertheless the first sentence of the paragraph is of a more general nature and has to be taken into account when considering whether one or two operations are necessary. This sentence reads: “In the interests of ensuring proportionate control arrangements and of safeguarding the added value of financial instruments, intended final recipients should not be deterred by there being an excessive administrative burden.” For circumstances where the grant element constitutes less than 50% of the project, carrying out two</p>	<p>Please note that a recipient (e.g. SME) receiving a loan acts in a different capacity than a recipient of a grant.</p> <p>In case of FI it is a final recipient with whom financial intermediary signed a loan agreement and who is generally not exposed to audits (see Article 40(3) CPR).</p> <p>In case of a grant the same recipient has a status of beneficiary with whom managing authority signed a grant agreement and who is subject to audits.</p>

	Ms	Ms comment	COM reply
		separate procedures indeed represents excessive administrative burden.	
108	SK	<p>In the light of the previous two comments, we suggest that the following paragraphs are inserted in the Guidance at an appropriate place:</p> <p><i>“It needs to be emphasised that the purpose of combining a financial instrument with a grant in a single operation is not to allow Managing Authorities to circumvent the rules governing grants by disguising them with spurious financial instruments. As suggested by the Paragraph (38) of the Recital of the CPR, the economic justification of the combination is to turn nearly-viable projects into viable ones. Since projects where the grant element overwhelms the financial instrument are clearly not close to being viable, the Commission takes the view that it is only possible to combine financial instruments with grants in a single operation when the grant element constitutes less than 50% of the operation.</i></p> <p><i>Moreover, recall that the necessity for the use of the financial instruments needs to be clearly demonstrated in the ex ante assessment, for which the Commission provided a recommended methodology. If financial instruments are to be combined with grants in a single operation, and the condition of at most 50% grant intensity is to be fulfilled, the ex ante assessment must clearly show that the financial instrument would actually serve its purpose, rather than simply providing an excuse for the circumvention of the rules on grants.”</i></p>	<p>Please see COM previous replies.</p> <p>COM does not share the view of MS that recital 38 is to be understood that combination should be allowed only in relation to “nearly viable projects” and does not share the view that in case of combinations minimum 50 % of project should be delivered through FI.</p>
109	SK	In the light of the preceding comments, we also suggest that the answer to the question 2. in the Annex II Questions and Answers of the Guidance be deleted. It is to be noted that the Article 37 (8), to which the answer refers, makes no	The guidance and the replies to the questions included in the note represent the interpretation

	Ms	Ms comment	COM reply
		reference at all about any sort of investment, and instead clearly simply extends the scope of possible support for final recipients. There is absolutely no relation between this article and the question of a combination of a loan and a grant, and unless the Commission can demonstrate that investment is intended by this article, the answer goes beyond the legal provisions of the CPR and cannot be included in the Guidance.	of the Commission.
110	SK	<p>Regarding the Commission's response to question 10, submitted by Slovakia in the first round of comments: We suggest that the Guidance is amended in the light of this response as follows:</p> <p><i>“In order to make the best use of the programme contribution transferred to the financial instrument, interest rate subsidies and guarantee fee subsidies should be used only to improve for the final recipient the conditions of access to the private capital co-invested at the level of the relevant financial instrument (i.e. they should not be used to improve conditions of the support already received from ESIF or from national public co-financing through the financial instrument).</i></p> <p><i>Interest rate subsidy combined with a loan within financial instrument operation should be distinguished from a loan with lower (or even with no) interest rate designed and offered through a financial instrument. In the latter case financial instrument based on the ex-ante assessment and the market analysis offers an ESIF programme loan with 0% interest rate. The eligible expenditure declared for COM reimbursement is the amount of the loan.</i>”</p>	See reply to Q 74 by SK
111	SK	Regarding the response to question 11: This response states that: “ <i>Article 2(11) CPR explicitly refers to the definition of financial instruments in Financial</i>	See reply to question 75 by SK

	Ms	Ms comment	COM reply
		<p><i>Regulation. The definition of financial instruments in Financial Regulation refers neither to the capital rebate nor to any other type of grant.”</i></p> <p>However, what question 11 pointed out was that “<i>nowhere in the CPR it is said that the financial instruments only cover 'loans' in the technical sense of this Article of the Financial Regulation</i>“ (emphasis added). The response provided does not touch upon this statement, which is straightforwardly true. In particular, the phrase ‘financial instruments’ as defined in the Financial Regulation, Article 2(p) “means Union measures of financial support provided on a complementary basis from the budget in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants“ (emphasis added). In other words, while all loans are financial instruments, it does not follow that all financial instruments are loans.</p> <p>The Guidance as provided appears to disallow the kind of financial instrument described in earlier comments by Slovakia, namely those where clients are motivated towards good payment discipline by cancelling the last instalment of a bridging credit if all the previous repayments are made on schedule. This is standard practice, well-known in finance, falling under the rubric of a combination of quasi-equity investment with a grant. As the Financial Regulation, Article 2(n) states, quasi-equity is “<i>a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity</i>” (emphasis added). In other words, a debt instrument which includes a conditional grant in case of good payment discipline is by no means excluded by the</p>	

	Ms	Ms comment	COM reply
		<p>definition of 'loan' in the Financial Regulation. (Furthermore, given that the grant is conditional, it is certainly not the case that "<i>the expenditure declared to the Commission would exceed the amount of the underlying investment</i>" – this is impossible by definition.)</p> <p>In the light of this, we propose that the Guidance is amended as follows:</p> <p><i>"A financial instrument providing support in the form of a loan cannot include a capital rebate in its design. This would be non-compliant with the definition of a loan referred to in Article 2 (k) of the Financial Regulation as an agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time. Since the borrower is obliged to repay the borrowed amount of money, there is no scope to embed capital rebates within a loan.</i></p> <p><i>However, it is possible to design a financial instrument structured as debt, which would fulfil the definition of quasi-equity in Article 2(n) of the Financial Regulation and to which a grant element would be directly related as required by Article 37(7) CPR (e. g. when the last instalment of the repayment schedule is provided as a grant conditional on the good payment discipline)."</i></p> <p>We also suggest that the following paragraph, starting with "<i>It should be underlined...</i>", ought to be deleted. There is no reimbursement of support from a financial instrument, only a combination of a financial instrument and a grant.</p>	
112	SK	It should be further pointed out that the type of combination just described, using	The forms of support which can be used in

	Ms	Ms comment	COM reply
		<p>a quasi-equity financial instrument, is particularly needed for the development of social enterprises, which the Commission makes great efforts to support. 'Quasi-equity' is also known as 'hybrid capital' and in the context of social enterprises, the following types of hybrid capital have been identified as especially relevant:</p> <p><i>“A recoverable grant is a loan that must be paid back only if the project reaches certain previously defined milestones. If the milestones are not reached, the recoverable grant is converted into a grant. This mechanism can be used if success of the project enables the social enterprise to repay the loan to the social investor.</i></p> <p><i>A forgivable loan is a loan which is converted into a grant in the case of success. If the social enterprise reaches the goals agreed on beforehand by the investor and investee, the loan does not have to be repaid.</i></p> <p><i>A convertible grant is another financing instrument with hybrid capital character. The social investor provides the enterprise with a grant that is converted into equity in the case of success.</i></p> <p><i>Revenue share agreements are financing instruments with which the investor finances a project and receives a share of future revenues. This risk sharing model can be used for the repayment of the financing and gives the social enterprise financial flexibility.”</i> (Social Investment Task Force: <i>Social Investment Manual: An Introduction for Social Entrepreneurs</i>, http://www.weforum.org/pdf/schwabfound/SocialInvestmentManual.pdf)</p> <p>It is to be noted this exact same typology of hybrid capital was also included in the article 3.3.1.1 of the Opinion of the European Economic and Social</p>	<p>relation to CPR are indicated in Article 66 CPR.</p> <p>Please note that some of the examples brought by MSs are covered by the concept of repayable assistance. The distinction between repayable assistance and financial instruments is explained in the guidance note on repayable assistance discussed in EGESIF with MSs.</p> <p>As referred to in this note any support whose repayment is conditional on certain result falls in the scope of repayable assistance and not in the scope of FIs.</p>

	Ms	Ms comment	COM reply
		<p>Committee on Social entrepreneurship and social enterprise (INT/589 Social entrepreneurship and social enterprise, Brussels, 26 October 2011, http://toad.eesc.europa.eu/viewdoc.aspx?doc=ces/int/int589/en/ces1584-2011_ac_en.doc). The same document noted in the article 1.5 that (emphasis added):</p> <p><i>“Better access to capital and tailored finance instruments are priorities for social enterprises. The Commission should collect and share existing good practice and innovation initiatives in the Member States, such as hybrid capital and forms of interplay between public and private capital and ensure that the current EU regulatory framework does not hinder the development of new instruments.”</i></p> <p>It seems reasonable to point out that a quasi-equity investment which includes a capital rebate as a bonus for good payment discipline (falling into the category of a 'forgivable loan') is precisely such a new instrument which would be supportive of social enterprise, and that requiring such an instrument to be constituted in two operations would not only violate the letter and spirit of Article 37 (7) of the CPR, but due to the excessive administrative burdens would represent precisely a hindrance which the Commission is asked to avoid in the quote above. We also request that DG EMPLOI is consulted on this point before the Guidance is finalised.</p>	
113	FR	Je vous informe que la France soutient les commentaires écrits de la délégation polonaise, rappelés en pièce jointe, relatifs à la note d'orientation sur la combinaison Instruments financiers / autres formes de soutiens.	Please see reply to PL comments

	Ms	Ms comment	COM reply
114	PT	<p>Chapter - 3.1.2 Combination of support at the level of the final recipient (page 4)</p> <p>The EC regulation includes the possibility for the combination of a grant with FI to support the same investment at the final recipient, provided that the sum of all the combined support forms does not exceed the total amount of the expenditure concerned and comply with the legislation on state aid (paragraph 8 and 9 of article 37 of Regulation (EC) n° 1303/2013).</p> <p>This question was clearly identified by the EC on 17 June 2015 Meeting EGESIF as slide below:</p> <div data-bbox="544 624 1299 1043" style="border: 1px solid red; padding: 10px; margin: 10px auto; width: fit-content;"> <p style="text-align: center; font-size: small;">Commission</p> <p style="text-align: center;">Scope of the revisions</p> <p>5. An example on combined support delivered through a single body was added</p> <ul style="list-style-type: none"> • Inspired by questions from MSs on energy efficiency schemes • It is possible that one organisation (e.g. Environmental fund) delivers both grant support and FI support to the same final recipient for the same expenditure item. • Formally two operations under two set of rules are implemented </div> <p>However, in our opinion, the guidelines as well as the examples presented in Annex I and the Q&A of Annex II (eg. Issue # 2), are unclear on this subject, namely if the same investment (same expenditure item) could be, at the final recipient, subject to a combined support through grants and financial instruments (e.g. the possibility for funding through a Financial instrument, such as guaranteed loan, the national private co-funding of a state aid scheme - grant). So we suggest that this matter be clarified in the Guideline Notes in order to eliminate any question or doubt on</p>	<p>The concept of the same expenditure item (e.g. Article 37(9)) should be distinguished from the concept of eligible expenditure (e.g. Article 37(8)).</p> <p>While grant and FI may provide support to the same expenditure item (e.g. equipment) they should not lead to support to the same eligible expenditure and should not result in double declaration of the same expenditure.</p> <p>This also means that programme support provided through financial instruments should not be used to provide national co-financing of grants. This would be the way of circumventing the requirement for national co-financing under the ESIF programme.</p> <p>Please see reply to question 10 of the note and inserted clarifications in the reply to question 2 of the note.</p>

	Ms	Ms comment	COM reply
		this matter.	
115	HU	<p>Please find below a single question about the Guidance Note on the Combination of support – it would be useful for our authorities get a response directly from the Commission, should a Q+A document be prepared later on.</p> <p><u>Chapter 3.1.1., Combination of financial support within a financial instrument operation:</u> <i>Is it possible to provide the interest rate subsidy, guarantee fee subsidy in this case from the FI priority axis (with increased EU co-financing rate)?</i></p>	<p>Yes. As provided in section 3.1.1 in case of combination within FI operation the technical support, interest rate subsidies and guarantee fee subsidies follow the provisions applicable to financial instrument including on co-financing rate.</p>
116	CZ	<p>As regards distinct eligible expenditure: for instance, if a project consists of new boiler installation, is it possible to finance 40 % of the expenditure on boiler through a grant (or repayable assistance) and the other 60 % through a soft loan financial instrument? Of course, within two distinct operations.</p>	<p>Yes, it is possible under the condition that these fall formally into two different operations where 40% of the expenditure is declared under a grant operation and 60% is declared under FI operation.</p>

