

MS comments on the guidance note on working capital following EGESIF presentation on 17 December 2014

N°	MS	MS comment	COM reply
1)	CZ	<p><i>"For financial instruments implemented in accordance with Article 38(1)b of the CPR, evidence of compliance with the eligibility conditions will be provided by the <u>application forms, with supporting documents including business plans.</u>"</i></p> <p>Q: Two possible interpretations:</p> <ol style="list-style-type: none"> 1) MAs should ask for the application forms (or copies) from the financial intermediaries and keep them themselves? 2) Is it enough to make sure that such documents are kept at the level of financial intermediaries? <p>We kindly ask for clarification.</p>	<p>There is no requirement that the application forms with supporting documents including business plan are kept at the level of managing authority. In line with Article 9(1)(d) of Regulation (EU) 480/2014 supporting documents should be kept at any of the following levels: managing authority, financial intermediary, body that implements fund of funds. The arrangements for documentation to be kept at different levels should be agreed in the funding agreement.</p>
2)	PL	<p><i>"Regulation (EU) No 1303/2013, Article 37(1), 37(4), Article <u>42(1)b</u> (Common Provisions"</i></p> <p>Q: Why the reference only to this article? It seems that it should be the article 38(1)(b)?</p>	<p>The reference to Article 42(1)(b) is not correct and should be removed.</p> <p>The proposed reference to Article 38(1)(b) cannot be accepted as the note is applicable also to contributions to EU level instruments under Article 38(1)(a).</p>
3)	PI	<p><i>"6. <u>penetration of new markets (such as expansion of product or service range, territorial expansion), "</u></i></p> <p>Q: PI suggests adding "or service"</p>	<p>COM agrees to add "or service"</p>
4)	PL	<p><i>"When the conditions of eligible enterprise and eligible support target are fulfilled, support from a financial instrument for</i></p>	<p>In order to align with the CPR text COM will modify:</p>

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		<p><i>working capital is possible. Such support must comply with the limits set by state aid rules, <u>if applicable</u>, and be with a view to stimulating the private sector as a supplier of funding to enterprises."</i></p> <p>Q: PI suggests adding "if applicable".</p>	<p><i>"..must comply with the limits <u>of applicable state aid rules"</u></i></p>
5)	PL	<p><i>"For financial instruments implemented in accordance with Article 38(1)(b) CPR, evidence of compliance with the eligibility conditions will be provided by the application forms, with supporting documents including business plans. These documents are an explicit part of the audit trail (in accordance with Article 9(1)(e)(vii) of Regulation (EU)480/2014). For EU level instruments implemented in accordance with Article 38(1)(a) CPR, evidence will be provided in the equivalent documentation in accordance with the delegation agreement or funding agreement applicable to the instrument. "</i></p> <p>Q: The same documentation for the evidence of compliance with the eligibility condition should be required regardless of the level of the establishment of financial instrument.</p>	<p>The reference to the application form and the business plan is made explicitly in <i>Article 9(1)(e)(vii) of Regulation (EU)480/2014</i> which is not applicable to financial instruments under Article 38(1)(a). This is why for contributions to EU level FI the paragraph speaks about the equivalent documentation in accordance with the delegation agreement of funding agreement.</p>
6)	LT	<p>Title of the section "Types of enterprise eligible" should be changed to more broad "Types of final recipients". As natural persons engaged in economic activities can be final recipients of the FI legally not being enterprises.</p>	<p>Eligibility of working capital is limited only to enterprises as set out in paragraph 4 of Article 37 CPR.</p>
7)	LT	<p>The requirement of 2 years duration for working capital facility</p>	<p>The CPR does not specify the precise tenor of working capital. The</p>

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		should be removed. The guidelines set forth the provision as well as an exception from this provision at the same time (“notwithstanding the shorter tenors on a revolving basis”), therefore it creates ambiguity. It should be clear that financing of working capital is eligible as long as it is related to the listed eligible targets.	text of the guidance note gives an indication of market practice in the spirit of the ESIF objectives whilst not excluding other justified arrangements.
8)	LT	Is the working capital loan eligible if it is directly related to the eligible target (provided in the CPR and listed in the Guidelines) financed from the final recipient’s own funds?	Such cases are to be examined on case by case basis. Since ESIF focus is on investments it would be more advisable to finance from ESIF programme contribution an investment falling within the eligible target and use final recipient's own resources to cover working capital needs.
9)	LT	Eligible target no 4 - strengthening of the general activities of an enterprise (stabilising and defending the existing market position, strengthening of capacity utilisation) may not have a business plan. Whereas according to par. 3 of the section “Specific points on support for working capital” a business plan is compulsory. The guidelines should make clear if it is possible to finance strengthening of the general business activities outside the business plan (but having a business plan as a supporting document for the evidence of eligible target financed from private funds).	The requirement for a business plan is set out under <i>Article 9(1)(e)(vii) of Regulation (EU)480/2014</i> . More generally, any financial intermediary will only provide debt finance against sufficient supporting documentation of financing needs and viability (no financing of losses)
10)	LT	As the requirement of compulsory co-investment of the private sector comes from state aid requirements and is applied to all FI not only for the working capital, the provisions on the	COM considers that this paragraph is essential. Indeed the compulsory co-investment by an independent private investor is required under the applicable State aid rules. In addition, in relation

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		investments of private sector should be removed (state aid requirements being applied anyway).	to ESIF support to working capital Article 37(4) explicitly links the stimulation of private sector funding to enterprises with the support to working capital.
11)	HU	<p><i>Involvement of private co-investor for different types of FIs</i></p> <p><i>a) in guarantee funds the requirement of private co-investor is automatically ensured because at least 20% of the bank's and guarantee institution's risk is not covered by the ESIF programme¹, furthermore the financial intermediary has to originate loans or to provide guarantees with its own resources.</i></p> <p><i>b) in equity funds in most cases private participation must be ensured (as the State aid framework on risk finance requires private participation),</i></p> <p><i>c) in loan funds private participation would take place at the level of the loan fund itself.</i></p> <p>Q: The expected level/form of the private participation is unclear based on this text. Under point c) it is expected at the level of the loan fund, while according to the definition of leverage in the glossary and according to another statement of the present note (highlighted above</p>	There will be a separate guidance fiche on leverage. Nevertheless, it is worth explaining that in the case of a loan fund usually the private participation takes place at the level of a financial intermediary where ESIF programme contribution and the contribution by a financial intermediary are pooled together and jointly provided to the final recipient. The contribution at the level of investments in final recipients would usually take place in equity instruments where on deal by deal basis the co-investment by the private investor is made together with ESIF programme investment.

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

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		<p>in blue), only the private participation is expected but its level/form is not defined (could be done also at the level of the final recipient). This needs further clarification either here or in another document. (COM informed the delegations at the 17 December EGESIF meeting that this point will be elaborated on in the guidance note on leverage due in Q2 2015. This is acceptable; maybe a footnote or cross-reference indicating that further details are presented in the leverage guidance would be useful and serve clarity.)</p>	
12)	EL	<p><i>"For financial instruments implemented in accordance with Article 38(1)(b) CPR, evidence of compliance with the eligibility conditions will be provided by the application forms, <u>with supporting documents including business plans.</u>"</i></p> <p>Q: This doesn't seem to be absolutely in line with point 4) above. Moreover, for "activities aimed at stabilising and defending the existing market position, strengthening of capacity utilisation" there is no essential necessity to draw a business plan.</p> <p>Q: The market practice in Greece prescribes that no supporting documents are requested by the Greek banks before approving working capital facilities. Such documents, evidencing the utilisation of ERDF financing for eligible expenditure must be submitted by the beneficiary SME. We propose to delink the financing of working capital from supporting documents, including business plan, or else apply the provisions also for EU level FIs.</p>	<p>See COM reply to question 9 above.</p> <p>The reference to the application form and the business plan is made explicitly in <i>Article 9(1)(e)(vii) of Regulation (EU)480/2014</i> which is not applicable to financial instruments under Article 38(1)(a). This is why for contributions to EU level FI the paragraph speaks about the equivalent documentation in accordance with the delegation agreement of funding agreement.</p>
13)	EL	<p><i>"Categories of expenditure for which the working capital could be used <u>can</u> include, amongst others, the funds required to pay</i></p>	<p>COM agrees to replace "can" by "may"</p>

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		<p><i>for raw materials and other manufacturing inputs, labour; inventories and overheads, funding to finance trade receivables and non-consumer sales receivables."</i></p> <p>Q: The example focuses on variable costs. Other types of expenditure such as fixed costs i.e. rent, utilities, etc, might also be part of a business plan aiming at expansion, strengthening, etc.</p> <p>We propose replacing the word "can" with "may", so as to allow for other expenditure categories where appropriate.</p>	
14)	EL	<p><i>"The support to enterprises to finance working capital facilities would be expected generally to have a term of at least two years (notwithstanding shorter tenors on a revolving basis)."</i></p> <p>Q: We propose the time period to be free and flexible according to the real needs of each enterprise.</p>	See COM reply to question 7 above.
15)	EL	<p><i>"Nevertheless, the amount and proportion of working capital should be justified in business and economic terms."</i></p> <p>Q: Proportion on what base?</p> <p>We propose to remove this sentence. Moreover, it is noted that, <u>the risk sharing principle</u>, applied to all FIs, should be considered as adequate to cover considerations on the amount of working capital</p>	COM considers that this paragraph is essential. The amount and proportion of working capital differs depending on business sector and specific business case.

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		justified for each business plan.	
16)	EL	<p>"in loan funds private participation would take place at the level of the loan fund itself."</p> <p>Q: Please add "in most cases"</p>	COM will revise and introduce "generally". However, COM recalls that private contribution of the final recipient is not considered as contribution from independent private investor.
17)	DE	<p>Derartige Ausführungen werden nicht als sinnvoll erachtet. Mehr als die Hälfte des Papiers sind Hinweise, was in den verschiedenen Artikeln der Allgemeinen ESIF-Verordnung bzw. in der Delegierten Verordnung 480/2014 geregelt ist.</p> <p>In den letzten Absätzen des Papiers (ab dem 5. Absatz des Punktes "Specific points on support for working capital") werden jedoch Bestimmungen genannt, welche u. E. zu einschränkend sind, zumal diese über die Regelungen der Verordnungen zu den ESI sowie im Bereich des Beihilfenrechts hinausgehen.</p> <ol style="list-style-type: none"> 1. Begrenzung der Finanzierungen auf Laufzeiten mit mindestens 2 Jahren <p>Diese Einschränkung wird nicht als sinnvoll erachtet, da auch fristenkongruente und damit ggf. kurzfristigere Finanzierungen möglich bleiben sollten (bspw. im Rahmen von Auftragsvorfinanzierungen mit einem Auftragszeitraum von weniger als zwei Jahren)</p> <ol style="list-style-type: none"> 2. Die betriebswirtschaftliche und ökonomische Begründung einer derartigen Finanzierung ergibt sich u. E. aus dem Instrument heraus. Ohne eine derartige Begründung ist eine Inanspruchnahme dieser Instrumenten, die mit einer 	<ol style="list-style-type: none"> 1. See COM reply to question 7 2. The guidance fiche requires that the amount and proportion of working capital should be justified in business and economic terms. Such justification relates to the particular investment and will be given in the business plan and application submitted by the final recipient. <p>The justification for support from FI in the meaning of market failure is done in ex-ante assessment and at the global level.</p> <ol style="list-style-type: none"> 3. Paragraph 4 of article 37 says that support may "include working capital within the limits of state aid and with the view to stimulating the private sector as a supplier of funding to enterprises". The guidance fiche is clear that support of working capital should (not must) be linked to co-investment by private investor. 4. The requirements linked to the working capital are the same as requirements for tangible and intangible assets (Article 37(4))

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		<p>unbedingten und verzinslichen Rückzahlungsverpflichtung verbunden sind, im Gegensatz zu Zuschüssen aus Sicht der Zielunternehmen nicht sinnvoll.</p> <p>3. Bei Darlehensfonds wird nicht in allen Fondskonstruktionen auf der Ebene des Fonds ein privater Anteil erbracht. Es sollte unbedingt vermieden werden, dass die unter dem Punkt c im Abschnitt „Involvement of private co-investor for different types of Fis“ benannte Regelung dazu führt, dass Arbeitskapital nur aus Darlehensfonds finanziert werden können, welche einen Anteil privaten Kapitals auf Fondsebene aufweisen.</p> <p>Es sollte zudem möglich sein, eine 100%-Finanzierung von Arbeitskapital zu gewähren, wenn die beihilferechtlichen Regelungen eingehalten werden (bspw. De-minimis-Regel oder Art. 22 AGVO). Andernfalls würden sich Finanzierungsschwierigkeiten von insbesondere Unternehmensneugründungen nicht beheben lassen.</p> <p>4. Grundsätzlich werden in Art. 37 Abs. 4 keine spezifischen Regelungen für die Finanzierung von Arbeitskapital getroffen. Dies erscheint sehr sinnvoll, da sich häufig ein Finanzbedarf für Arbeitskapital und für Investition in einem Vorhaben zusammen ergeben. Sofern für einzelne Finanzierungsgegenstände besondere Bestimmungen getroffen werden, ergeben sich Schwierigkeiten der vertraglichen Vereinbarungen mit dem Zielunternehmen. Im schlimmsten Fall müssten zwei Verträge mit unterschiedlichen Bestimmungen für die Finanzierung ein und desselben Vorhabens erstellt werden. Dies sollte unbedingt</p>	

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		vermieden werden. Andernfalls ergibt sich eine wirtschaftliche Hemmschwelle der Darlehensgewährung insbesondere bei kleinen Vorhabensvolumina.	