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ADDENDUM 2 to NOTE

from: Presidency
to: Permanent Representatives Committee (part 2)/Council

No. Cion prop.: COM(2011) 615 final/2

Subject: Cohesion Policy legislative package
- Presidency compromise on financial instruments

Delegations will find attached a compromise text on the financial instruments parts of the Common Provisions Regulation.

The modifications highlighted in bold are those in comparison to the revised versions (corrigendum) presented by the Commission on 14 March 2012.

TITLE IV
FINANCIAL INSTRUMENTS

Article 2 definitions

For the purposes of this Regulation, the definitions on financial instruments as laid down in the Financial Regulation¹ shall apply to financial instruments supported by the CSF Funds, except where otherwise provided in this Regulation.

Art. 2 new definition:

(x) "escrow account" means a bank account covered by a written agreement between the managing authority (or an intermediate body) and the entity implementing a financial instrument, or in the case of a PPP operation a written agreement between the public body beneficiary and the private partner approved by the managing authority (or an intermediate body), set up specifically to hold funds to be paid out after the eligibility period, exclusively for the purposes foreseen in Article 36(1)(c), Article 36(2), Article 36(2) bis and Article 54/C of this Regulation, or a bank account set up on terms providing equivalent guarantees on the payments out of the fund.

(y) "fund of funds" means a fund set up with the objective to contribute support from programmes to several bodies implementing financial instruments. Where financial instruments are implemented through a fund of funds, the body implementing the fund of funds shall be considered the only beneficiary in the meaning of Article 2(8).

(8) "beneficiary" means a public or private body responsible for initiating or initiating and implementing operations; in the context of State aid, the term 'beneficiary' means the body which receives the aid; in the context of financial instruments, the term 'beneficiary' means the body that implements the financial instrument, **or the fund of funds as applicable;**

¹ In case the triennially revised financial regulation is not adopted before this regulation, the definitions from the draft Financial Regulation shall be imported into this regulation at a later stage.

Financial instruments

1. The CSF Funds may be used to support financial instruments under **one or more** programmes, including when organised through funds of funds, in order to contribute to the achievement of specific objectives set out under a priority [...].

Financial instruments shall be implemented to support investments which are expected to be financially viable and do not give rise to sufficient funding from market sources.

When applying this title, the managing authority, the fund of funds, and the bodies implementing the financial instrument shall comply with applicable Union and national law, in particular on state aid and public procurement.

2. **Support of financial instruments shall be** based on an *ex-ante* assessment which has **established evidence of** market failures or sub-optimal investment situations, **and the estimated level and scope of public** investment needs, **including types of financial instruments to be supported. Such *ex ante* assessment shall include:**

(a) An analysis of market failures, suboptimal investment situations, and investment needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contribute to the strategy and results of the relevant programmes and to be supported through financial instruments. This analysis shall be based on available best practice methodology.

(b) An assessment of the value added of the financial instruments considered to be supported by the CSF Funds, consistency with other forms of public intervention addressing the same market, possible state aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion.

(c) An estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and level of,

preferential remuneration to attract counterpart resources from private investors and/or a description of the mechanisms which will be used to establish the need for, and extent of, such preferential remuneration, such as a competitive or appropriately independent assessment process.

- (d) An assessment of lessons learnt from similar instruments and *ex ante* assessments carried out by the Member State in the past, and how these lessons will be applied going forward.
- (e) The proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 33, financial products to be offered, final recipients targeted, envisaged combination with grant support as appropriate.
- (f) A specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives and results of the relevant priority or measure including indicators for this contribution.
- (g) Provisions allowing for the *ex ante* assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the *ex ante* assessment may no longer accurately represent the market conditions existing at the time of implementation.

2.bis The *ex ante* assessment may be performed in stages. It shall, in any event, be completed before the managing authority decides to make programme contributions to a financial instrument.

The summary findings and conclusions of *ex-ante* assessments in relation to financial instruments shall be published within three months from their date of finalisation.

The *ex-ante* assessment shall be submitted to the monitoring committee for information purposes in accordance with Fund-specific rules.

- 3. Where financial instruments support financing to enterprises, including SMEs, such support shall in particular target the establishment of new enterprises, early stage-capital, i.e., seed capital and start-up capital, expansion capital,¹ or the realisation of new projects, penetration of new markets or new developments by existing enterprises without prejudice to applicable EU State aid rules. Support may include investment in both tangible and intangible assets as well as working capital within the limits of applicable EU State aid rules and with a view to stimulate the private sector as a supplier of funding to enterprises. It may also include the costs of transfer of proprietary rights in enterprises provided that such transfer takes place between independent investors. Financial instruments shall not support undertakings in difficulty within the meaning of Commission Regulation (EC) No. 800/2008.²**
- 4. Where financial instruments support financing to capital projects, the support from the CSF shall not finance projects which have already been physically completed or refinance completed acquisitions unless as part of a reorganisation of a debt portfolio associated to new investment from the CSF.**
- 5. Financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies. Where CSF Funds support is provided by means of financial instruments and combined in a single operation, with other forms of support directly related to financial instruments targeting the same final recipients, including technical assistance, interest rate subsidies and guarantee fee subsidies, the provisions applicable to financial instruments shall apply to all forms of support within that operation. In such cases, applicable EU State aid rules shall be respected and separate records shall be maintained for each form of support.**

¹ OJ, C 194, 18.8.2006, p. 2 point 2.2.

² OJ, L 214, 9.8.2008, p.3. To take account of possible developments over time in the rules quoted the following transitional provision should be added at a later stage: "In the application of Article 32,3 those state aid rules shall be apply, which are in force at the time the investment decision is made."

- 6.** Final recipients supported by financial instruments may also receive grants or other assistance from a programme or from another instrument supported by the budget of the Union **in accordance with applicable EU State aid rules.** In this case, separate records must be maintained for each source of financing.
- 7.** **The combination of support provided through grants and financial instruments as referred to under paragraphs 5 and 6 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. Grants shall not be used to reimburse support received from financial instruments. Financial instruments shall not be used to pre-finance grants. Financial instruments may be combined to cover the same expenditure item provided that there is no double financing and subject to applicable EU State aid rules.**
- 8.** Contributions in kind are not eligible expenditure in respect of financial instruments, except for contributions of land or real estate in respect of investments with the objective of supporting **rural development,** urban development or urban regeneration, where the land or real estate forms part of the investment. Such contributions of land or real estate shall be eligible provided that the conditions in Article 59**(1)** are met.
- 9.** **[Placeholder for VAT]**¹
- 10.** The Commission shall be empowered to adopt delegated acts in accordance with Article 142 laying down **additional specific rules on purchase of land and on combination of technical assistance with financial instruments.**

¹ To be copied at a later stage from the solution to be reached in Art. 59(3)(c) which is part of the MFF/negotiating box.

Implementation of financial instruments

1. In implementing Article 32, managing authorities may provide a financial contribution to the following financial instruments:
 - (a) financial instruments set up at Union level, managed directly or indirectly by the Commission;
 - (b) financial instruments set up at national, regional, transnational or cross-border level, managed by or under the responsibility of the managing authority.

2. Title [VIII] of the Financial Regulation shall apply to financial instruments referred to in paragraph 1(a). Contributions from the CSF Funds to financial instruments under paragraph 1(a) shall be placed in separate accounts and used, in accordance with the objectives of the respective CSF Funds, to support actions and final recipients consistent with the programme or programmes from which such contributions are made.

3. For financial instruments under paragraph 1(b), the managing authority may provide a financial contribution to the following financial instruments:
 - (a) financial instruments complying with the standard terms and conditions laid down by the Commission, by means of implementing acts in accordance with the examination procedure referred to in Article 143(3);
 - (b) already existing or newly created financial instruments which are specifically designed to achieve the intended purpose [...].

[...].

4. When supporting financial instruments referred to in paragraph 1(b) the managing authority may:

- (a) invest in the capital of existing or newly created legal entities, including those financed from other CSF Funds, dedicated to implementing financial instruments consistent with the objectives of the respective CSF Funds, which will undertake **implementation** tasks; the support to such **entities** shall be limited to the amounts necessary to implement new [...] **investments without prejudice to Article 32(3) and** consistent with the objectives of this Regulation; or
- (b) entrust implementation tasks to:
 - (i) **EIB**;
 - (ii) international financial institutions in which a Member State is a shareholder, or financial institutions established in a Member State aiming at the achievement of public interest under the control of a public authority [...];
 - (iii) a body governed by public or private law [...].
- (c) undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. **In this case the managing authority is considered to be the beneficiary in the meaning of Article 2 (8).**

When implementing the financial instrument, the bodies referred to in a) b) and c) shall ensure compliance with applicable EU and national law, including rules covering CSF Funds, state aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud. They shall not be established and shall not maintain business relations with entities incorporated in territories, whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standards and shall transpose such requirements in their contracts with the selected financial intermediaries.

The Commission shall be empowered to adopt delegated acts in accordance with Article 142 laying down **additional specific rules on the role, liabilities and responsibility of the entities to which the implementation tasks are entrusted and related selection criteria.** **The Commission shall notify the delegated acts, adopted in accordance with Article 142, simultaneously to the European Parliament and the Council within four months of the adoption of this Regulation.**

5. **Where a financial instrument is implemented under paragraphs (4)(a) and (b), subject to the implementation structure of the financial instrument, the terms and conditions for contributions from programmes to financial instruments shall be set out in funding agreements in accordance with ANNEX X at the following levels:**

(a) where applicable, between the duly mandated representatives of the managing authority and the body that implements the fund of funds, and

(b) between the duly mandated representatives of the managing authority, or where applicable, the body that implements the fund of funds, and the body that implements the financial instrument.

5.bis For financial instruments implemented under paragraph (4)(c), the terms and conditions for contributions from programmes to financial instruments shall be set out in a strategy document in accordance with ANNEX X to be examined by the monitoring committee.

6. The entities referred to in paragraph 4(a) and (b), when implementing financial instruments [...] may further entrust part of the implementation to financial intermediaries provided that these entities ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles 57 and 131(1), (1a) and (3) of the Financial Regulation.¹ Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interests.

7. The entities referred to in paragraph 4(b) to which implementation tasks have been entrusted shall open fiduciary accounts in their name and on behalf of the managing authority, **or set up the financial instrument as a separate block of finance within a financial institution. In case of a separate block of finance, separate accounting shall distinguish programme resources invested in the financial instrument from the other resources available in the financial institution.** The assets held on [...] fiduciary accounts **and such separate blocks of finance** shall be managed in accordance with the principle of sound financial management following appropriate prudential rules and shall have appropriate liquidity.

¹ References to be updated at a later stage according to developments/text reorderings in the triennially revised Financial Regulation.

8. **National public and private contributions, including where relevant in-kind contributions as referred to under Article 32(8) of the CPR, may be provided at the level of the fund of funds, the financial instrument or the level of final recipients.**
9. The Commission shall [...] adopt **implementing** acts in accordance with **the examination procedure laid down in** Article **143(3)** laying down **uniform conditions** regarding the **modalities of the** transfer and management of **programme contributions**, managed by the entities **referred to under Article 33(4).**

Article 34

Management and control of certain financial instruments

1. The [bodies accredited in accordance with Article 64] shall not carry out on-the-spot verifications of operations comprising financial instruments implemented under Article 33(1)(a). They shall receive regular control reports from the bodies entrusted with the implementation of these financial instruments.
2. The bodies responsible for the audit of programmes shall not carry out audits of operations comprising financial instruments implemented under Article 33(1)(a) and of management and control systems relating to these instruments. They shall receive regular control reports from the auditors designated in the agreements setting up of these financial instruments.
3. **The bodies responsible for the audit of programmes shall not carry out audits at the level of final recipients other than in the case of suspected fraud.**
4. **The bodies entrusted with the implementation of financial instruments shall not impose record-keeping requirements on final recipients for records relevant to audits and controls which are kept at the level of such bodies in their ordinary course of business.**

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 142 concerning controls to be performed by managing and audit authorities, arrangements for keeping supporting documents, elements to be evidenced by supporting documents, and management and control and audit arrangements concerning financial instruments implemented by the bodies and institutions mentioned in Article 33(4)(b) taking into account the specificities, objectives and characteristics of financial instruments relative to other forms of support. The Commission shall notify the delegated acts, adopted in accordance with Article 142, simultaneously to the European Parliament and the Council within four months of the adoption of this Regulation.

Article 35

Requests for payment including expenditure for financial instruments

1. As regards financial instruments referred to in Article 33(1)(a) and financial instruments referred to in Article 33(1)(b) implemented in accordance with Article 33(4)(a) and (b), phased applications for interim payments shall be made for programme contributions paid to the financial instrument during the period of eligibility in accordance with the following conditions:
- (a) The amount of the programme contribution paid to the financial instrument included in each application for interim payments submitted during the eligibility period indicated in Article 55(2) shall not exceed 25 per cent of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement, corresponding to expenditure in the meaning of Article 36(1)(a), (b) and (d) expected to be paid during the eligibility period indicated in Article 55(2). Applications for interim payment submitted after the eligibility period indicated in Article 55(2) shall include the total amount of eligible expenditure in the meaning of Article 36.
- (b) Each application for interim payment referred to in paragraph (a) may include up to 25 per cent of the total amount of the national co-financing as referred to in Article 33 (8) expected to be paid to the financial instrument, or at the level of final

recipients for expenditure in the meaning of Article 36 (1) (a), (b) and (d), within the eligibility period indicated in Article 55(2).

(c) Subsequent applications for interim payment submitted during the eligibility period indicated in Article 55(2) shall only be made:

i. for the second application for interim payment, when at least 60 per cent of the amount included in the first application for interim payments has been spent as eligible expenditure in the meaning of Article 36(1)(a), (b) and (d).

ii. for the third and subsequent applications for interim payment, when at least 85 per cent of the amounts included in the previous applications for interim payments have been spent as eligible expenditure in the meaning of Article 36(1)(a), (b) and (d).

(d) Each application for interim payment, which includes expenditure related to financial instruments, shall separately disclose the total amount of programme contributions paid to the financial instrument and the amounts paid as eligible expenditure in the meaning of Article 36(1)(a), (b) and (d).

At closure, the application for payment of the final balance shall include the total amount of eligible expenditure as referred to in Article 36.

2. As regards financial instruments referred to in Article 33(1)(b) implemented in accordance with Article 33(4)(c) [...], the applications for interim payments, and payment of the final balance shall include the total amount of the payments effected by the managing authority for investments in final recipients as referred to in Articles 36(1)(a) and (b).

3. [...].

4. [...].

3. The Commission shall [...] adopt, by means of **implementing act** in accordance with **the examination procedure laid down in Article 143(3), uniform conditions concerning the model to be used when submitting additional information concerning financial instruments with the applications for payments to the Commission.**

Article 36

Eligible expenditure at closure

1. At closure of a programme, the eligible expenditure of the financial instrument shall be the total amount **of programme contributions** effectively paid or, in the case of guarantees [...], committed, by the financial instrument within the eligibility period indicated in Article 55(2), corresponding to:
- (a) payments to final recipients, **and in the cases referred to under Article 32(5) payments to the benefit of final recipients;**
 - (b) resources committed for guarantee contracts, whether outstanding or already come to maturity, in order to honour possible guarantee calls for losses, calculated according to a prudent *ex ante* risk assessment, covering a multiple amount of underlying new loans or other risk-bearing instruments for new investments in final recipients;
 - (c) capitalised interest rate subsidies or guarantee fee subsidies, due to be paid for a period not exceeding 10 years after the eligibility period laid down in Article 55(2), used in combination with financial instruments, paid into an escrow account specifically set up for that purpose, for effective disbursement after the eligibility period laid down in Article 55(2), but in respect of loans or other risk-bearing instruments disbursed for investments in final recipients within the eligibility period laid down in Article 55(2);
 - (d) reimbursement of management costs incurred or payment of management fees of the financial instrument.

2. In the case of equity-based instruments and micro-credit, capitalised management costs or fees due to be paid for a period not exceeding 7 years after the eligibility period laid down in Article 55(2), in respect of investments in final recipients which occurred within that eligibility period and which cannot be covered by Articles 37 and 38, may be considered as eligible expenditure when paid into an escrow account specifically set up for that purpose.

2.bis In the case of equity-based instruments for enterprises, payments to final recipients and capitalised management costs or fees due to be paid for a period not exceeding 7 years after the eligibility period laid down in Article 55(2), in respect of investments in final recipients having received initial payments within that eligibility period, may be considered as eligible expenditure when paid into an escrow account specifically set up for that purpose. Payments to final recipients shall be in accordance with market standards and market standard contractual arrangements and limited to the minimum necessary to stimulate private sector co-investment, while ensuring continuity of financing for the target enterprises so that both public and private investors can benefit from investments. They shall not exceed 30% of the eligible expenditure of the financial instrument from which ceiling capital resources and gains returned to the financial instrument during the eligibility period shall be deducted. Any amounts which are not used for payments to final recipients in the period set out above shall be used in accordance with Article 39.

3. The eligible expenditure **disclosed** in accordance with paragraphs 1 and 2 shall not exceed the sum of the:
- (i) total amount of the support from the CSF Funds paid **for the purposes of paragraphs 1 and 2**; and
 - (ii) corresponding national co-financing.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 142 concerning the establishment of a system of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies. **The Commission shall notify the delegated acts, adopted in accordance with Article 142, simultaneously to the European Parliament and the Council within four months of the adoption of this Regulation.**

5. Management cost and fees as referred to in paragraph (d) may be charged by the body implementing the fund of funds or bodies implementing financial instruments pursuant to Articles 33(4)(a) and (b) and shall not exceed the thresholds defined in the implementing act referred to in this paragraph. Whereas management costs shall comprise direct or indirect cost items reimbursed against evidence of expenditure, management fees shall refer to an agreed price for services rendered established via a competitive market process. Management costs and fees shall be based on a performance based calculation methodology.

Management costs and fees may comprise arrangement fees. Where arrangement fees, or any part thereof, are charged to final recipients, they shall not be declared as eligible expenditure.

Management costs and fees, including those incurred for preparatory work in relation to the financial instrument before the signature of the relevant funding agreement, are eligible as from the date of signature of the relevant funding agreement.

The Commission shall adopt implementing acts in accordance with the examination procedure laid down in Article 143(3) laying down the methodology for calculating management costs and fees.

Article 37

Interest and other gains generated by support from the CSF Funds to financial instruments

1. Support from the CSF Funds paid to financial instruments shall be placed in interest-bearing accounts domiciled within financial institutions in Member States or invested on a temporary basis according to the principles of sound financial management.
2. Interest and other gains attributable to support from the CSF Funds paid to financial instruments shall be used for the same purposes, **including the reimbursement of management costs incurred or payment of management fees of the financial instrument in accordance with Article 36(1)(d)**, as the initial support from the CSF Funds **either** within

the same financial instrument, **or following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the aims of the programme or programmes, until the end of the eligibility period.**

3. The managing authority shall ensure that adequate records of the use of interest and other gains are maintained.

Article 38

**Re-use of resources attributable to the support from the CSF Funds until
the end of the eligibility period**

1. [...] Resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts, **including capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by investments,** which are attributable to the support from the CSF Funds, shall be re-used for **the following purposes, up to the amounts necessary and in the order agreed in the relevant funding agreements:**
2. [...]:
 - (a) further investments through the same or other financial instruments, in accordance with the aims of the programme or programmes;
 - (b) **where applicable,** preferential remuneration of **private** investors, **or public investors** operating under the market economy principle, who provide counterpart resources to the support from the CSF Funds to the financial instrument or who co-invest at the level of final recipients;
 - (c) **where applicable,** reimbursement of management costs incurred and payment of management fees of the financial instrument;

The need for preferential remuneration pursuant to paragraph (b) shall be established in the *ex ante* assessment. The preferential remuneration shall not exceed what is necessary to create the incentives for attracting private counterpart resources and shall not overcompensate private investors, or public investors operating under the market economy principle. The alignment of interest shall be ensured through an appropriate sharing of risk and profit and must be carried out on a normal commercial basis and be compatible with EU State aid rules.

- 2.** The managing authority shall ensure that adequate records of the use of the resources and gains referred to in paragraphs 1 and 2 are maintained.

Article 39

Use of [...] resources after the end of the eligibility period

Member States shall adopt the necessary measures to ensure that [...] resources **paid back to financial instruments, including capital repayments** and gains and other earnings or yields **generated during a period of at least 8 years after the end of the eligibility period, which are** attributable to the support from the CSF Funds to financial instruments **pursuant to Article 32**, are used in accordance with the aims of the programme **or programmes, either within the same financial instrument or, following the exit of these resources from the financial instrument, in other financial instruments in both cases provided that an assessment of market conditions demonstrates a continuing need for such investment or in other forms of support.**

Article 40

Report on Implementation of Financial Instruments

1. The managing authority shall send to the Commission a specific report covering the operations comprising financial instruments as an annex to the annual implementation report.

2. The report referred to in paragraph 1 shall include, for each financial instrument, the following information:
- (a) identification of the programme and of the priority from which support from the CSF Funds is provided;
 - (b) description of the financial instrument and implementation arrangements;
 - (c) identification of the bodies to whom implementation tasks have been entrusted;
 - (d) total amount of [...] programme **contributions by** priority or measure to the financial instrument included in requests for payment submitted to the Commission;
 - (e) total amount of support paid or committed in guarantee contracts by the financial instrument to the final recipients by programme and priority or measure included in requests for payment submitted to the Commission;
 - (f) revenues of, and repayments to, the financial instrument;
 - (g) **progress in achieving the expected leverage** effect of investments made by the financial instrument and value of investments and participations;
 - (h) contribution of the financial instrument to the achievement of the indicators of the [...] priority **or measure** concerned.

The information in g) and h) may be included only in the annex to the annual implementation reports submitted in 2017 and 2019 as well as in the final report. The monitoring obligations as set out in a)-h) shall not be applied at the level of final recipients.

3. The Commission shall adopt, by means of implementing act, in accordance with the examination procedure referred to in Article 143(3), the uniform conditions concerning the monitoring and provision of monitoring information to the Commission, including in respect of financial instruments referred to in Article 33(1)(a).
4. **Each year, starting in 2016, the Commission shall within 6 months of the receipt of the annual implementation reports provide a summary of the data on the progress made in financing and implementing the financial instruments, sent by the managing authorities in accordance with this Article.**

ANNEX X (CPR)
IMPLEMENTATION OF FINANCIAL INSTRUMENTS:
FUNDING AGREEMENTS

1. **When a financial instrument is implemented under paragraphs 4(a) and 4(b) of Article 33 of this Regulation, the funding agreement shall include the terms and conditions for making contributions from the operational programme to the financial instrument and shall include at least the following elements:**
- (a) **the investment strategy or policy including implementation arrangements, financial products to be offered, final recipients targeted, and envisaged combination with grant support (as appropriate);**
 - (b) **a business plan or equivalent documents for the financial instrument to be implemented, including the expected leverage effect referred to in Article 32(2);**
 - (c) **the target results the financial instrument concerned is expected to achieve to contribute to the specific objectives and results of the relevant priority or measure;**
 - (d) **provisions for monitoring of the implementation of investments and of deal flows including reporting by the financial instrument to the fund of funds and/or the managing authority to ensure compliance with Article 40;**
 - (e) **audit requirements, such as minimum requirements for documentation to be kept at the level of the financial instrument (and at the level of the fund of funds where appropriate), and requirements in relation to the maintenance of separate records for the different forms of support in compliance with Article 32(5) and (6) (where applicable), including provisions and requirements regarding access to documents by national audit authorities, Commission auditors and the European Court of Auditors in order to ensure a clear audit trail in accordance with Article 34;**
 - (f) **requirements and procedures for managing the phased contribution provided by the operational programme in accordance with Article 35 and for the forecast of deal flows, including requirements for fiduciary/separate accounting as set out in Article 33(8);**

- (g) requirements and procedures for managing interest and other gains generated within the meaning of Article 37, including acceptable treasury operations/investments, and the responsibilities and liabilities of the parties concerned;
- (h) provisions regarding the calculation and payment of management costs incurred or the management fees of the financial instrument;
- (i) provisions regarding the re-utilisation of resources attributable to the support of the CSF Funds until the end of the eligibility period in compliance with Article 38;
- (j) provisions regarding the use of resources attributable to the support of the CSF Funds following the end of the eligibility period in compliance with Article 39 and an exit policy for the contribution from the CSF Funds out of the financial instrument;
- (k) conditions for a possible withdrawal or partial withdrawal of programme contributions from programmes to financial instruments, including the fund of funds where applicable;
- (l) provisions to ensure that bodies implementing financial instruments manage financial instruments with independence and in accordance with the relevant professional standards, act in the exclusive interest of the parties providing contributions to the financial instrument;
- (m) provisions for the winding-up of the financial instrument.

In addition, where financial instruments are organised through a fund of funds, the funding agreement between the managing authority and the body that implements the fund of funds must also make provisions for the appraisal and selection of bodies implementing the financial instruments, including calls for expression of interest or public procurement procedures.

2. Strategy documents referred to under Article 33(4) for financial instruments implemented under Article 33(4)(c) shall include at least the following elements:

- (a) the investment strategy or policy of the financial instrument, general terms and conditions of envisaged debt products, target recipients and actions to be supported;
 - (b) a business plan or equivalent documents for the financial instrument to be implemented, including the expected leverage effect referred to in Article 32(2);
 - (c) the use and re-use of resources attributable to the support of the CSF Funds in accordance with Articles 37, 38 and 39 of the CPR;
 - (d) monitoring and reporting of the implementation of the financial instrument to ensure compliance with Article 40;
 - (e) audit requirements, such as minimum requirements for documentation to be kept by the managing authority in order to ensure a clear audit trail (including requirements to access documents by national audit authorities, Commission auditors or European Court of Auditors).
-