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Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Council Regulation (EU) No 959/2014 of 8 September 2014 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine** 1
- ★ **Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine** 3
- ★ **Council Implementing Regulation (EU) No 961/2014 of 8 September 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine** 8
- ★ **Commission Implementing Regulation (EU) No 962/2014 of 29 August 2014 entering a name in the register of protected designations of origin and protected geographical indications (Pescabivona (PGI))** 14
- ★ **Commission Implementing Regulation (EU) No 963/2014 of 29 August 2014 entering a name in the register of protected designations of origin and protected geographical indications [Zázrivské vojky (PGI)]** 15
- ★ **Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments** 16
- Commission Implementing Regulation (EU) No 965/2014 of 11 September 2014 establishing the standard import values for determining the entry price of certain fruit and vegetables 45

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

DECISIONS

- ★ **Council Decision 2014/658/CFSP of 8 September 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine** 47
 - ★ **Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine** 54
- 2014/660/EU:
- ★ **Commission Implementing Decision of 11 September 2014 on the model of funding agreement for the contribution of the European Regional Development Fund and the European Agricultural Fund for Rural Development to joint uncapped guarantee and securitisation financial instruments in favour of small and medium-sized enterprises** 58

RECOMMENDATIONS

- 2014/661/EU:
- ★ **Commission Recommendation of 10 September 2014 on the monitoring of the presence of 2 and 3-monochloropropane-1,2-diol (2 and 3-MCPD), 2- and 3-MCPD fatty acid esters and glycidyl fatty acid esters in food ⁽¹⁾** 93
- 2014/662/EU:
- ★ **Commission Recommendation of 10 September 2014 on good practices to prevent and to reduce the presence of opium alkaloids in poppy seeds and poppy seed products ⁽¹⁾** 96

Corrigenda

- ★ **Corrigendum to Council Decision 2014/451/EU of 26 May 2014 on the signing and conclusion of the Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (OJ L 205, 12.7.2014)** 101

⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 959/2014

of 8 September 2014

amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ⁽¹⁾,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

- (1) Council Regulation (EU) No 269/2014 ⁽²⁾ gives effect to certain measures provided for in Decision 2014/145/CFSP and provides for the freezing of funds and economic resources of natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them; legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine; legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefitted from such a transfer; or natural or legal persons, entities or bodies actively supporting, materially or financially, or benefitting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine.
- (2) On 8 September 2014, the Council agreed to expand restrictive measures with a view to targeting individuals or entities conducting transactions with the separatist groups in the Donbass region of Ukraine. The Council adopted Decision 2014/658/CFSP ⁽³⁾ which amends Decision 2014/145/CFSP and provides for amended listing criteria to that end.
- (3) That measure falls within the scope of the Treaty and, therefore, in particular with a view to ensuring its uniform application in all Member States, regulatory action at the level of the Union is necessary in order to implement it.
- (4) Regulation (EU) No 269/2014 should therefore be amended accordingly.
- (5) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

⁽¹⁾ OJ L 78, 17.3.2014, p. 16.

⁽²⁾ Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78, 17.3.2014, p. 6).

⁽³⁾ Council Decision 2014/658/CFSP of 8 September 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (see page 47 of this Official Journal).

HAS ADOPTED THIS REGULATION:

Article 1

The following point is added to Article 3(1) of Regulation (EU) No 269/2014:

- '(e) natural or legal persons, entities or bodies conducting transactions with the separatist groups in the Donbass region of Ukraine.'

Article 2

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 8 September 2014.

For the Council
The President
S. GOZI

COUNCIL REGULATION (EU) No 960/2014**of 8 September 2014****amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine ⁽¹⁾,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

- (1) Council Regulation (EU) No 833/2014 ⁽²⁾ gives effect to certain measures provided for in Council Decision 2014/512/CFSP ⁽³⁾. Those measures comprise restrictions on exports of dual-use goods and technology, restrictions on the provision of related services and on certain services related to the supply of arms and military equipment, restrictions on the sale, supply, transfer or export, directly or indirectly, of certain technologies for the oil industry in Russia in the form of a prior authorisation requirement, and restrictions on access to the capital market for certain financial institutions.
- (2) The Heads of State or Government of the European Union called for preparatory work on further targeted measures to be undertaken so that further steps could be taken without delay.
- (3) In view of the gravity of the situation, the Council considers it appropriate to take further restrictive measures in response to Russia's actions destabilising the situation in Ukraine.
- (4) In this context, it is appropriate to apply additional restrictions on exports of dual-use goods and technology, as laid down in Council Regulation (EC) No 428/2009 ⁽⁴⁾.
- (5) In addition, the provision of services for deep water oil exploration and production, arctic oil exploration and production or shale oil projects should be prohibited.
- (6) In order to put pressure on the Russian Government, it is also appropriate to apply further restrictions on access to the capital market for certain financial institutions, excluding Russia-based institutions with international status established by intergovernmental agreements with Russia as one of the shareholders; restrictions on legal persons, entities or bodies established in Russia in the defence sector, with the exception of those mainly active in the space and nuclear energy industry; and restrictions on legal persons, entities or bodies established in Russia whose main activities relate to the sale or transportation of crude oil or petroleum products. Financial services other than those referred to in Article 5 of Regulation (EU) No 833/2014, such as deposit services, payment services, insurance services, loans from the institutions referred to in Article 5(1) and (2) of that Regulation and derivatives used for hedging purposes in the energy market are not covered by these restrictions. Loans are only to be considered new loans if they are drawn after 12 September 2014.
- (7) These measures fall within the scope of the Treaty and, therefore, in particular with a view to ensuring its uniform application in all Member States, regulatory action at the level of the Union is necessary.
- (8) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

⁽¹⁾ See page 54 of this Official Journal.

⁽²⁾ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

⁽³⁾ Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13).

⁽⁴⁾ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 833/2014 is amended as follows:

(1) In Article 1, points (e) and (f), are replaced by the following:

‘(e) “investment services” means the following services and activities:

- (i) reception and transmission of orders in relation to one or more financial instruments,
- (ii) execution of orders on behalf of clients,
- (iii) dealing on own account,
- (iv) portfolio management,
- (v) investment advice,
- (vi) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis,
- (vii) placing of financial instruments without a firm commitment basis,
- (viii) any service in relation to the admission to trading on a regulated market or trading on a multilateral trading facility;

(f) “transferable securities” means the following classes of securities which are negotiable on the capital market, with the exception of instruments of payment:

- (i) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares,
- (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities,
- (iii) any other securities giving the right to acquire or sell any such transferable securities;’

(2) The following Article is inserted:

Article 2a

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, dual-use goods and technology as included in Annex I to Regulation (EC) No 428/2009, whether or not originating in the Union, to natural or legal persons, entities or bodies in Russia as listed in Annex IV to this Regulation.

2. It shall be prohibited:

- (a) to provide technical assistance, brokering services or other services related to goods and technology set out in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any person, entity or body in Russia, as listed in Annex IV;
- (b) to provide financing or financial assistance related to goods and technology referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of these goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any person, entity or body in Russia, as listed in Annex IV.

3. The prohibitions in paragraphs 1 and 2 shall be without prejudice to the execution of contracts or agreements concluded before 12 September 2014 and to the provision of assistance necessary to the maintenance and safety of existing capabilities within the EU.

4. The prohibitions in paragraphs 1 and 2 shall not apply to the sale, supply, transfer or export of dual use goods and technology intended for the aeronautics and space industry, or the related provision of technical and financial assistance, for non military use and for a non military end user, as well as for maintenance and safety of existing civil nuclear capabilities within the EU, for non military use and for a non military end user.’.

(3) The following Article is inserted:

‘Article 3a

1. It shall be prohibited to provide, directly or indirectly, the following associated services necessary for deep water oil exploration and production, arctic oil exploration and production, or shale oil projects in Russia:

(i) drilling, (ii) well testing, (iii) logging and completion services, (iv) supply of specialised floating vessels.

2. The prohibitions in paragraph 1 shall be without prejudice to the execution of an obligation arising from a contract or a framework agreement concluded before 12 September 2014 or ancillary contracts necessary for the execution of such contracts.

3. The prohibition in paragraph 1 shall not apply where the services in question are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.’.

(4) In Article 4(1), point (b) is replaced by the following:

‘(b) to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List, including in particular grants, loans and export credit insurance or guarantee, as well as insurance and reinsurance for any sale, supply, transfer or export of such items, or for any provision of related technical assistance, to any natural or legal person, entity or body in Russia or for use in Russia;’.

(5) Article 5 is replaced by the following:

‘Article 5

1. It shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:

(a) a major credit institution, or other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, established in Russia with over 50 % public ownership or control as of 1 August 2014, as listed in Annex III; or

(b) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex III; or

(c) a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (b) of this paragraph or listed in Annex III.

2. It shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 30 days, issued after 12 September 2014 by:

(a) a legal person, entity or body established in Russia predominantly engaged and with major activities in the conception, production, sales or export of military equipment or services, as listed in Annex V, except legal persons, entities or bodies active in the space or the nuclear energy sectors;

(b) a legal person, entity or body established in Russia, which are publicly controlled or with over 50 % public ownership and having estimated total assets of over 1 trillion Russian Roubles and whose estimated revenues originate for at least 50 % from the sale or transportation of crude oil or petroleum products, as listed in Annex VI;

(c) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in point (a) or (b) of this paragraph; or

(d) a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a), (b) or (c) of this paragraph.

3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014 except for loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the Union and Russia or for loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50 % by any entity referred to in Annex III.’.

(5a) Point (a) of Article 11(1) is replaced by the following:

‘(a) entities referred to in points (b) and (c) of Article 5(1) and points (c) and (d) of Article 5(2), or listed in Annexes III, IV, V and VI.’.

(6) Article 12 is replaced by the following:

‘Article 12

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in Articles 2, 2a, 3a, 4 or 5, including by acting as a substitute for the entities referred to in Article 5, or by using the exceptions in Article 5(3) to fund entities referred to in Article 5.’.

(7) Annex I to this Regulation is added as Annex IV.

(8) Annex II to this Regulation is added as Annex V.

(9) Annex III to this Regulation is added as Annex VI.

Article 2

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 8 September 2014.

For the Council
The President
S. GOZI

ANNEX I

'ANNEX IV

List of natural or legal persons, entities or bodies, referred to in Article 2a

JSC Sirius (optoelectronics for civil and military purposes)
OJSC Stankoinstrument (mechanical engineering for civil and military purposes)
OAO JSC Chemcomposite (materials for civil and military purposes)
JSC Kalashnikov (small arms)
JSC Tula Arms Plant (weapons systems)
NPK Technologii Maschinostrojenija (ammunition)
OAO Wysokototschnye Kompleksi (anti-aircraft and anti-tank systems)
OAO Almaz Antey (state-owned enterprise; arms, ammunition, research)
OAO NPO Bazalt (state-owned enterprise, production of machinery for the production of arms and ammunition)'.

ANNEX II

'ANNEX V

List of persons, entities and bodies referred to in Article 5(2)(a)

OPK OBORONPROM
UNITED AIRCRAFT CORPORATION
URALVAGONZAVOD'.

ANNEX III

'ANNEX VI

List of persons, entities and bodies referred to in Article 5(2)(b)

ROSNEFT
TRANSNEFT
GAZPROM NEFT'.

**COUNCIL IMPLEMENTING REGULATION (EU) No 961/2014
of 8 September 2014**

implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ⁽¹⁾, and in particular Article 14(1) thereof,

Whereas:

- (1) On 17 March 2014, the Council adopted Regulation (EU) No 269/2014.
- (2) In view of the gravity of the situation, the Council considers that additional persons and entities should be added to the list of natural and legal persons, entities and bodies subject to restrictive measures as set out in Annex I to Regulation (EU) No 269/2014.
- (3) Annex I to Regulation (EU) No 269/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The persons and entities listed in the Annex to this Regulation shall be added to the list set out in Annex I to Regulation (EU) No 269/2014.

Article 2

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 8 September 2014.

For the Council
The President
S. GOZI

⁽¹⁾ OJ L 78, 17.3.2014, p. 6.

ANNEX

List of persons and entities referred to in Article 1

	Name	Identifying information	Reasons	Date of listing
1.	Alexander ZAKHARCHENKO Александр Владимирович Захарченко	Born in 1976 in Donetsk	As of 7 August, he replaced Alexander Borodai as the so-called 'Prime minister' of the so-called 'Donetsk People's Republic'. In taking on and acting in this capacity, Zakharchenko has supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
2.	Vladimir KONONOV/ aka 'Tsar' Владимир Петрович Кононов	Born on 14.10.1974 in Gorsky	As of 14 August, he replaced Igor Strelkov/Girkin, as the so-called 'Defence minister' of the so-called 'Donetsk People's Republic'. He has reportedly commanded a division of separatist fighters in Donetsk since April and has promised to solve the strategic task of repelling Ukraine's military aggression. Konokov has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
3.	Miroslav Vladimirovich RUDENKO Мирослав Владимирович Руденко	21.1.1983 in Debalcevo	Commander of the Donbass People's Militia. He has inter alia stated that they will continue their fighting in the rest of the country. Rudenko has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
4.	Gennadiy Nikolaiovych TSYPKALOV Геннадий Николаевич Цыпкалов.	Born on 6.21.1973	Replaced Marat Bashirov as so-called 'Prime Minister' of the so-called 'Lugansk People's Republic'. Previously active in the militia Army of the Southeast. Tsyplakov has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
5.	Andrey Yurevich PINCHUK Андрей Юрьевич ПИНЧУК		'State security minister' of the so-called 'Donetsk People's Republic'. Associated with Vladimir Antyufeyev, who is responsible for the separatist 'governmental' activities of the so called 'government of the Donetsk People's Republic'. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
6.	Oleg BEREZA Олег БЕРЕЗА		'Internal affairs minister' of the so-called 'Donetsk People's Republic'. Associated with Vladimir Antyufeyev, who is responsible for the separatist 'governmental' activities of the so called 'Government of the Donetsk People's Republic'. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
7.	Andrei Nikolaevich RODKIN Андрей Николаевич Родкин		Moscow Representative of the so called 'Donetsk People's Republic'. In his statements, he has inter alia talked about the militias' readiness to conduct a guerrilla war and their seizure of weapon systems from the Ukrainian armed forces. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
8.	Aleksandr KARAMAN Александр караман		'Deputy Prime Minister for Social Issues' of the so called 'Donetsk People's Republic'. Associated with Vladimir Antyufeyev, who is responsible for the separatist 'governmental' activities of the so called 'Government of the Donetsk People's Republic'. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine. Protégé of Russia's Deputy Prime Minister Dmitry Rogozin.	12.9.2014
9.	Georgiy L'vovich MURADOV Георгий Львович Мурадов	Born on 19.11.1954	So called 'Deputy Prime Minister' of Crimea and Plenipotentiary Representative of Crimea to President Putin. Muradov has played an important role in consolidating Russian institutional control over Crimea since the illegal annexation. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
10.	Mikhail Sergeyevich SHEREMET Михаил Сергеевич Шеремет	Born on 23.5.1971 in Dzhankoy	So called 'First Deputy Prime Minister' of Crimea. Sheremet played a key role in the organization and implementation of the 16 March referendum in Crimea on unification with Russia. At the time of the referendum, Sheremet reportedly commanded the pro-Moscow 'self-defense forces' in Crimea. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
11.	Yuri Leonidovich VOROBIOV Юрий Леонидович Воробьев	Born on 2.2.1948 in Krasnoyarsk	Deputy Speaker of the Federation Council of the Russian Federation On 1 March 2014 Vorobiov publicly supported in the Federation Council the deployment of Russian forces in Ukraine. He subsequently voted in favour of the related decree.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
12.	Vladimir Volfovich ZHIRINOVSKY Владимир Вольфович Жириновски	Born on 10.6.1964 in Eidelshtein, Kazakhstan	Member of the Council of the State Duma; leader of the LDPR party. He actively supported the use of Russian Armed Forces in Ukraine and annexation of Crimea. He has actively called for the split of Ukraine. He signed on behalf of the LDPR party he chairs an agreement with the so-called, 'Donetsk People's Republic'.	12.9.2014
13.	Vladimir Abdualiye- vich VASILYEV Владимир Абдуалиевич Васильев	Born on 11.8.1949 in Klin	Deputy Speaker of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
14.	Viktor Petrovich VODOLATSKY Виктор Петрович Водолацкий	Born on 19.8.1957 in Azov Region.	Chairman ('ataman') of the Union of the Russian and Foreign Cossack Forces, and deputy of the State Duma. He supported the annexation of Crimea and admitted that Russian Cossacks were actively engaged in the Ukrainian conflict on the side of the Moscow-backed separatists. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
15.	Leonid Ivanovich KALASHNIKOV Леонид Иванович Калашников	Born on 6.8.1960 in Stepnoy Dvorets	First deputy Chairman of the Committee on Foreign Affairs of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
16.	Vladimir Stepanovich NIKITIN Владимир Степанович Никитин	Born on 5.4.1948 in Opochka	First Deputy Chairman of the Committee on Relations with CIS Countries, Eurasian Integration and Links with Compatriots of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
17.	Oleg Vladimirovich LEBEDEV Олег Владимирович Лебедев	Born on 21.3.1964 in Orel/Rudny	First Deputy Chairman of the Committee on Relations with CIS Countries, Eurasian Integration and Links with Compatriots of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
18.	Ivan Ivanovich MELNIKOV Иван Иванович Мельников	Born on 7.8.1950 in Bogoroditsk	First Deputy Speaker, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
19.	Igor Vladimirovich LEBEDEV Игорь Владимирович Лебедев	Born on 27.9.1972 in Moscow	Deputy Speaker, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
20.	Nikolai Vladimirovich LEVICHEV Николай Владимирович Левичев	Born on 28.5.1953 in Pushkin	Deputy Speaker, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
21.	Svetlana Sergeevna ZHUROVA Светлана Сергеевна Журова	Born on 7.1.1972 in Pavlov-on-the-Neva	First Deputy Chairman of the Committee on Foreign Affairs, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
22.	Aleksey Vasilevich NAUMETS Алексей Васильевич Наумец	Born on 11.2.1968	Major-general of the Russian Army. He is the commander of the 76th airborne division which has been involved in the Russian military presence on the territory of Ukraine, notably during the illegal annexation of Crimea.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
23.	Sergey Viktorovich CHEMEZOV Сергей Викторович Чемезов	Born on 20.8.1952 in Cheremkhovo	<p>Sergei Chemezov is one of President Putin's known close associate, both were KGB officers posted in Dresden and he is a member of the Supreme Council of 'United Russia'. He is benefiting from his links with the Russian President by being promoted to senior positions in State-controlled firms. He chairs the Rostec conglomerate, the leading Russian state-controlled defence and industrial manufacturing corporation. Further to a decision of the Russian government, Technopromexport, a subsidiary of Rostec, is planning to build energy plants in Crimea thereby supporting its integration into the Russian Federation.</p> <p>Furthermore, Rosoboronexport, a subsidiary of Rostec, has supported the integration of Crimean defence companies into Russia's defence industry, thereby consolidating the illegal annexation of Crimea into the Russian Federation.</p>	12.9.2014
24.	Alexander Mikhailovich BABAKOV Александр Михайлович Бабаков	Born on 8.2.1963 in Chisinau	<p>State Duma Deputy, Chair of the State Duma Commission on Legislative Provisions for Development of the Military-Industrial Complex of the Russian Federation. He is a prominent member of 'United Russia' and a businessman with heavy investments in Ukraine and in Crimea.</p> <p>On the 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects — the Republic of Crimea and the city of federal status of Sevastopol'.</p>	12.9.2014

COMMISSION IMPLEMENTING REGULATION (EU) No 962/2014**of 29 August 2014****entering a name in the register of protected designations of origin and protected geographical indications (Pescabivona (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Pescabivona' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Pescabivona' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Pescabivona' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. Fruit, vegetables and cereals fresh or processed, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 29 August 2014.

For the Commission,
On behalf of the President,
Tonio BORG
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 103, 8.4.2014, p. 13.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) No 963/2014**of 29 August 2014****entering a name in the register of protected designations of origin and protected geographical indications [Zázrivské vojky (PGI)]**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Slovakia's application to register the name 'Zázrivské vojky' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Zázrivské vojky' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Zázrivské vojky' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.3. Cheeses, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 29 August 2014.

For the Commission,
On behalf of the President,
Tonio BORG
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 109, 11.4.2014, p. 27.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) No 964/2014**of 11 September 2014****laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) To facilitate the use of financial instruments set up at national, regional, transnational or cross-border level and managed by or under the responsibility of the managing authority in accordance with Article 38(3)(a) of Regulation (EU) No 1303/2013, rules on standard terms and conditions for certain financial instruments should be established. Those standard terms and conditions would make those instruments ready to use — the so-called off-the-shelf financial instruments.
- (2) To facilitate the use of financial instruments, the standard terms and conditions need to ensure compliance with state aid rules and facilitate the delivery of Union financial support of final recipients through a combination of financial instruments and grants.
- (3) The standard terms and conditions should not allow a finance provider, such as a public or private investor or a lender, a manager of the financial instrument, or a final recipient to receive any state aid which is incompatible with the internal market. The standard terms and conditions should take into account the relevant *de minimis* Regulations such as Commission Regulation (EU) No 1407/2013 ⁽²⁾ and Commission Regulation (EU) No 1408/2013 ⁽³⁾, Commission Regulation (EU) No 651/2014 ⁽⁴⁾, Commission Regulation (EU) No 702/2014 ⁽⁵⁾, the Guidelines on State aid to promote risk finance investments ⁽⁶⁾ and the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 ⁽⁷⁾.
- (4) Given that the State aid rules do not apply to agricultural activities supported under the European Agricultural Fund for Rural Development, compliance with the standard terms and conditions should be voluntary. For other activities receiving support from the European Agricultural Fund for Rural Development, general State aid rules apply and therefore, the standard terms and conditions should be mandatory.
- (5) It is possible that undertakings in the fisheries sector, particularly small and medium-sized enterprises (SMEs), may benefit from financial instruments financed by a European Structural and Investment Fund. When such a benefit is funded by another European Structural and Investment Fund than the European Maritime and Fisheries Fund, the total amount of the aid granted through the financial instruments to all undertakings in the fisheries and aquaculture sector over three years should be below a cap of the annual fishery, aquaculture and processing

⁽¹⁾ OJ L 347, 20.12.2013, p. 320.

⁽²⁾ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

⁽³⁾ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9).

⁽⁴⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽⁵⁾ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

⁽⁶⁾ Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

⁽⁷⁾ Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (OJ C 204, 1.7.2014, p. 1).

turnover by Member State specified in Commission Regulation (EU) No 717/2014 ⁽¹⁾. In addition Regulation (EU) No 702/2014 and the Guidelines for the examination of State aid to fisheries and aquaculture ⁽²⁾ should to be taken into account.

- (6) The standard terms and conditions should also include a minimum set of governance requirements to ensure proper management of the financial instruments in order to provide for more detailed rules than those included in the Regulation (EU) No 1303/2013.
- (7) In order to support SMEs growth in a difficult funding environment, a portfolio risk sharing loan ('RS loan') is an appropriate financial instrument. The RS loan provides new loans to SMEs with easier access to finance by providing financial intermediaries with funding contribution and credit risk sharing and thereby offering SMEs with more funds at preferential conditions in terms of interest rate reduction and/or collateral reduction.
- (8) Financing through the RS loan may be a particularly effective way of supporting SMEs in a context of limited availability of funding or relatively little risk appetite of the financial intermediaries for certain sectors or type of SMEs. In this context, the standard terms and conditions are an effective way to address such market failure.
- (9) In order to provide an incentive to financial intermediaries to increase lending to SMEs covered by Union funded guarantees, a capped portfolio guarantee is an appropriate financial instrument.
- (10) The capped portfolio guarantee should address the existing gap in the debt market for SMEs supporting new loans by providing credit risk protection (in the form of a first loss portfolio capped guarantee) with the aim to reduce the particular difficulties that SMEs face in accessing finance because of the lack of sufficient collateral in combination with the relatively high credit risk they represent. In order to achieve the expected impact, the Union contribution to the capped portfolio guarantee should, however, not replace equivalent guarantees received by the respective financial institutions for the same purpose under existing Union, national and regional financial instruments. In this context, the standard terms and conditions are an effective way to address such market failure.
- (11) In order to incentivize the energy saving potential arising from the renovation of residential buildings, a renovation loan is an appropriate financial instrument.
- (12) The renovation loan should target long term subsidised loan conditions and upfront technical support and funding of residential building owners to prepare and implement building renovation projects. It also assumes a financing market in which banking intermediaries are essentially the only source of funding, but where this funding is either too little (due to the risk appetite of the intermediary), too short term, too costly or otherwise inappropriate for the long term payback nature of the projects being financed. This, together with an inefficient system of identifying and procuring the works on behalf of multiple apartment owners without excluding the possibility to support individuals, constitutes a market failure. In this context, the standard terms and conditions are an effective way to address such market failure.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Coordination Committee for the European Structural and Investment Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

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

- (a) a portfolio risk sharing loan (RS Loan);
- (b) a capped portfolio guarantee;
- (c) a renovation loan.

⁽¹⁾ Commission Regulation (EU) No 717/2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

⁽²⁾ Guidelines for the examination of State aid to fisheries and aquaculture (OJ C 84, 3.4.2008, p. 10).

*Article 2***Additional terms and conditions**

Managing authorities may include other terms and conditions in addition to those to be included in the funding agreement in accordance with the terms and conditions for the selected financial instrument set out in this Regulation.

*Article 3***Compliance with State aid rules under the standard terms and conditions**

1. In case of financial instruments combined with grants for technical support to final recipients benefiting from one of the instruments, such grants shall not exceed 5 % of the ESI Funds contribution to the instrument and be subject to the conclusions of the *ex-ante* assessment justifying such grants referred to in Article 37 of Regulation (EU) No 1303/2013.

2. The body implementing the financial instrument (hereinafter 'the financial intermediary') shall manage the grant for technical support. The technical support shall not cover the activities which are covered by management cost and fees received to manage the financial instrument. The expenditure covered by the technical support may not constitute part of the investment to be financed by the loan under the relevant financial instrument.

*Article 4***Governance under the standard terms and conditions**

1. The managing authority or, if applicable, the fund of funds manager shall be represented in the supervisory committee or a similar type of governance structure of the financial instrument.

2. The managing authority shall not participate directly in individual investment decisions. In the case of a fund of funds, the managing authority shall exercise only its supervisory role at the level of the fund of funds without interfering in individual decisions by the fund of funds.

3. The financial instrument shall have a governance structure that allows for decisions concerning credit and risk diversification to be made transparently in line with relevant market practice.

4. The fund of funds manager and the financial intermediary shall have a governance structure that ensures impartiality and independence of the fund of funds manager or of the financial intermediary.

*Article 5***Funding agreement under the standard terms and conditions**

1. The managing authority shall conclude in writing a funding agreement for contributions from programmes to financial instrument, which shall contain the terms and conditions in accordance with Annex I.

2. The funding agreement shall contain as annexes:

- (a) the *ex-ante* assessment required under Article 37 of Regulation (EU) No 1303/2013 justifying the financial instrument;
- (b) the business plan of the financial instrument including the investment strategy and a description of the investment, guarantee or lending policy;
- (c) the description of the instrument which must be aligned with the detailed standard terms and conditions of the instrument and which must fix the financial parameters of the financial instruments;
- (d) the monitoring and reporting templates.

*Article 6***RS Loan**

1. The RS Loan shall take the form of a loan fund to be set up by a financial intermediary with contribution from the programme and contribution of at least 25 % of the loan fund from the financial intermediary. The loan fund shall finance a portfolio of newly originated loans, to the exclusion of the refinancing of existing loans.
2. The RS Loan shall comply with the terms and conditions set out in Annex II.

*Article 7***Capped Portfolio Guarantee**

1. The Capped Portfolio Guarantee shall provide credit risk coverage on a loan by loan basis up to a guarantee rate of maximum 80 %, for the creation of a portfolio of new loans to the small and medium-sized enterprises up to a maximum loss amount fixed by the guarantee cap rate which shall not exceed 25 % of the risk exposure at portfolio level.
2. The Capped Portfolio Guarantee shall comply with the terms and conditions set out in Annex III.

*Article 8***Renovation Loan**

1. The Renovation Loan shall take the form of a loan fund to be set up by a financial intermediary with contribution from the programme and contribution of at least 15 % of the loan fund from the financial intermediary. The loan fund shall finance a portfolio of newly originated loans, to the exclusion of the refinancing of existing loans.
2. Final recipients may be natural or legal persons or independent professionals, owning premises as well as administrators or other legal bodies acting on behalf and for the benefit of owners, implementing energy efficiency or renewable energies measures that are eligible under Regulation (EU) No 1303/2013 and programme support.
3. The Renovation Loan shall comply with the terms and conditions set out in Annex IV.

Article 9

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

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

Done at Brussels, 11 September 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Annotated table of content of a funding agreement between a managing authority and a financial intermediary

Table of content:

- (1) Preamble
- (2) Definitions
- (3) Scope and objective
- (4) Policy objectives and *ex-ante* assessment
- (5) Final recipients
- (6) Financial advantage and State aid
- (7) Investment, guarantee or lending policy
- (8) Activities and operations
- (9) Target results
- (10) Role and liability of the financial intermediary: risk and revenue sharing
- (11) Management and audit of the financial instrument
- (12) Programme contribution
- (13) Payments
- (14) Account management
- (15) Administrative costs
- (16) Duration and eligibility of expenditure at closure
- (17) Re-utilisation of resources paid by the managing authority (including interest yielded)
- (18) Capitalisation of interest rate subsidies, guarantee fee subsidies (if applicable)
- (19) Governance of the financial instrument
- (20) Conflicts of interest
- (21) Reporting and Monitoring
- (22) Evaluation
- (23) Visibility and transparency
- (24) Exclusivity
- (25) Settlement of disputes
- (26) Confidentiality
- (27) Amendment of the agreement and transfer of rights and obligations

1. PREAMBLE

Name of the Country/Region

Identification of the Management Authority

Common Code for Identification (CCI) No of programme

Title of the related programme

Relevant section of the programme referring to the financial instrument

Name of the ESIF

Identification of the priority axis

Regions where the financial instrument shall be implemented (NUTS level or other)

Amount allocated to the financial instrument by the managing authority

Amount from ESIF

Amount from national public (programme public contribution)

Amount from national private (programme private contribution)

Amount from national public and private outside programme contribution

Expected starting date of the financial instrument

Completion date of the financial instrument

Contact information for communications between the parties

Purpose of the agreement

2. DEFINITIONS

3. SCOPE AND OBJECTIVE

The description of the financial instrument, including its investment strategy or policy, the type of support to be provided.

4. POLICY OBJECTIVES AND EX-ANTE ASSESSMENT

The criteria for eligibility for financial intermediaries if applicable as well as additional operational requirements transposing the policy objectives of the instrument, financial products to be offered, final recipients targeted, and envisaged combination with grants.

5. FINAL RECIPIENTS

Identification and eligibility of the final recipients (target group) of the financial instrument.

6. FINANCIAL ADVANTAGE AND STATE AID

Evaluation of the financial advantage by the programme public contribution and alignment with the State aid rules.

7. INVESTMENT, GUARANTEE OR LENDING POLICY

Provisions regarding investment, guarantee or lending policy especially regarding portfolio diversification (risk, sector, geographical zones, size) and existing portfolio of the financial intermediary.

8. ACTIVITIES AND OPERATIONS

Business plan or equivalent documents for the financial instrument to be implemented, including the expected leverage effect referred to in Article 37(2)(c) of Regulation (EU) No 1303/2013.

Definition of eligible activities

A clear definition of the activities assigned and the limits thereof, concerning in particular the modification of activities and the portfolio management (losses and default and recovery process).

9. TARGET RESULTS

Definition of the activities, results and impact indicators associated with base line measurements and expected targets.

The target results the financial instrument is expected to achieve as contribution to the specific objectives and results of the relevant priority or measure. List of indicators in accordance with the operational programme and Article 46 of Regulation (EU) No 1303/2013.

10. ROLE AND LIABILITY OF THE FINANCIAL INTERMEDIARY: RISK AND REVENUE SHARING

Identifications and Provisions on the liability of the financial intermediary and of other entities involved in the implementation of the financial instrument.

Explanation of risk valuation and risk and profit sharing of the different parties.

Provisions in line with Article 6 of Commission Delegated Regulation (EU) No 480/2014 ⁽¹⁾ concerning role, liabilities and responsibility of bodies implementing financial instruments.

11. MANAGEMENT AND AUDIT OF THE FINANCIAL INSTRUMENT

Relevant provisions in line with Article 9 of Delegated Regulation (EU) No 480/2014 concerning management and control of financial instruments.

Provisions on the audit requirements, such as minimum requirements for documentation to be kept at the level of the financial intermediary (and at the level of the fund of funds), and requirements in relation to the maintenance of separate records for the different forms of support in compliance with Article 37(7) and (8) of Regulation (EU) No 1303/2013 (where applicable), including provisions and requirements regarding access to documents by audit authorities of the Member State, Commission auditors and the European Court of Auditors in order to ensure a clear audit trail in accordance with Article 40 of Regulation (EU) No 1303/2013.

Provisions in order for the audit authority to comply with guidance in relation with audit methodology, check list and availability of documents.

12. PROGRAMME CONTRIBUTION

Provisions in line with Article 38(10) of Regulation (EU) No 1303/2013 concerning the modalities of transfer and management of programme contributions.

Where appropriate, provisions on a framework of conditions for the contributions from the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural development and the Future Maritime and Fisheries Fund.

13. PAYMENTS

Requirements and procedures for managing payments in tranches, respecting the ceilings of Article 41 of Regulation (EU) No 1303/2013 and for the forecast of deal flows.

Conditions for a possible withdrawal of the programme public contribution to the financial instrument.

⁽¹⁾ Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ L 138, 13.5.2014, p. 5).

Rules concerning which supporting documents are required to justify the payments from the managing authority to the financial intermediary.

Conditions under which payments from the managing authority to the financial intermediary must be suspended or interrupted.

14. ACCOUNT MANAGEMENT

Details of the accounts, including if applicable requirements for fiduciary/separate accounting as set out in Article 38(6) of Regulation (EU) No 1303/2013.

Provisions explaining how the account of the financial instrument is managed. Including conditions governing the use of bank accounts: counterparty risks (if applicable), acceptable treasury operations, responsibilities of parties concerned, remedial actions in the event of excessive balances on fiduciary accounts, record keeping and reporting.

15. ADMINISTRATIVE COSTS

Provisions on the remuneration of the financial intermediary on the calculation and payment of management costs and fees to the financial intermediary and in accordance with Articles 12 and 13 of Delegated Regulation (EU) No 480/2014.

The provision must include the maximum rate applicable and the reference amounts for the calculation.

16. DURATION AND ELIGIBILITY OF EXPENDITURE AT CLOSURE

The date for the entry into force of the agreement.

The dates defining the implementing period of the financial instrument and the eligibility period.

Provisions on the possibility of extension, and termination of the programme public contribution to the financial intermediary for the financial instrument, including the conditions for early termination or withdrawal of programme contributions, exit strategies and the winding-up of financial instruments (including the fund of funds where applicable).

Provisions regarding the eligible expenditure at closure of the programme in accordance with Article 42 of Regulation (EU) No 1303/2013.

17. RE-UTILISATION OF RESOURCES PAID BY THE MANAGING AUTHORITY (INCLUDING INTEREST YIELDED)

Provisions on the re-utilisation of resources paid by the managing authority.

Requirements and procedures for managing interest and other gains attributable to support from ESIF in accordance with Article 43 of Regulation (EU) No 1303/2013.

Provisions regarding the re-use of resources attributable to the support of the ESI Funds until the end of the eligibility period in compliance with Article 44 of Regulation (EU) No 1303/2013.

Provisions regarding the use of resources attributable to the support of the ESI Funds following the end of the eligibility period in compliance with Article 45 of Regulation (EU) No 1303/2013.

18. CAPITALISATION OF INTEREST RATE SUBSIDIES, GUARANTEE FEE SUBSIDIES (IF APPLICABLE)

Provisions in line with Article 11 of the Delegated Regulation (EU) No 480/2014 referred to in Article 42(1) of Regulation (EU) No 1303/2013 concerning capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies.

19. GOVERNANCE OF THE FINANCIAL INSTRUMENT

Provisions describing an appropriate governance structure of the financial instrument to ensure that decisions concerning loans/guarantees/investments, divestments and risk diversification are implemented in accordance with the applicable legal requirements and market standards.

Provisions on the investment board of the financial instrument (role, independence, criteria).

20. CONFLICTS OF INTEREST

Clear procedures need to be established to deal with conflicts of interest.

21. REPORTING AND MONITORING

Provisions for monitoring of the implementation of investments and of deal flows including reporting by the financial intermediary to the fund of funds and/or the managing authority to ensure compliance with Article 46 of Regulation (EU) No 1303/2013 and State aid rules.

Rules on reporting to the managing authority on how the tasks are performed, reporting on results and irregularities and corrective measures taken.

22. EVALUATION

Conditions and arrangements for the evaluation of the financial instrument.

23. VISIBILITY AND TRANSPARENCY

Provisions on visibility of the funding provided by the union in line with the Annex XII to Regulation (EU) No 1303/2013.

Provisions guaranteeing access to information for final recipients.

24. EXCLUSIVITY

Provisions establishing under which conditions the fund of funds manager or the financial intermediary is allowed to start a new investment vehicle.

25. SETTLEMENT OF DISPUTES

Provisions on the settlement of disputes.

26. CONFIDENTIALITY

Provisions defining what elements of the financial instrument are covered by confidentiality clauses. Otherwise all other information is considered public.

Confidentiality obligations entered into as part of this agreement shall not prevent proper reporting to the investors, including those providing public funds.

27. AMENDMENT OF THE AGREEMENT AND TRANSFER OF RIGHTS AND OBLIGATIONS

Provisions defining the scope and conditions for possible amendment and termination of the agreement.

Provisions forbidding the financial intermediary to transfer any right or obligation without the prior authorisation of the managing authority.

ANNEX A: the *ex-ante* assessment required under Article 37 of Regulation (EU) No 1303/2013 justifying the financial instrument.

ANNEX B: the business plan of the financial instrument including the investment strategy and a description of the investment, guarantee or lending policy.

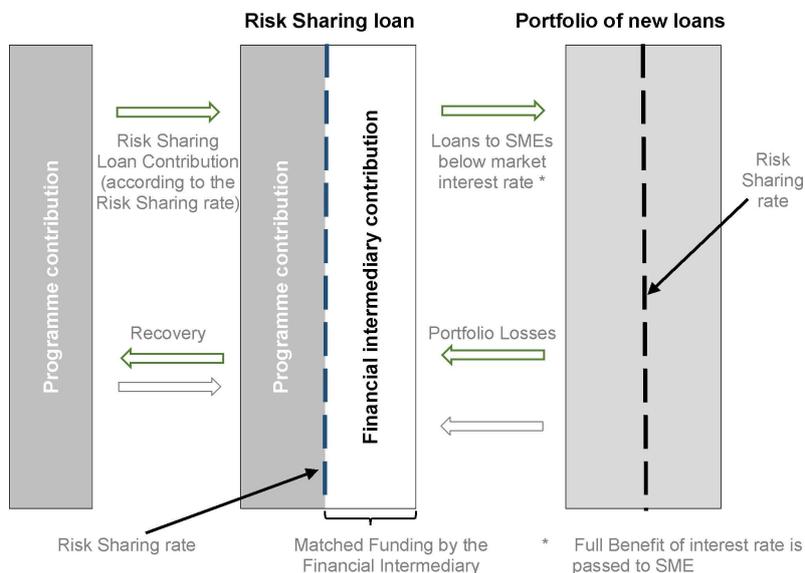
ANNEX C: the description of the instrument which must be aligned with the detailed standard terms and conditions of the instrument and which must fix the financial parameters of the financial instruments.

ANNEX D: the monitoring and reporting templates.

ANNEX II

Loan for SMEs based on a portfolio Risk Sharing loan model (RS loan)

Schematic representation of the RS loan principle



<p>Structure of the financial instrument</p>	<p>The Risk Sharing loan (RS loan or financial instrument) shall take the form of a loan fund to be set up by a financial intermediary with contributions from the programme and the financial intermediary to finance a portfolio of newly originated loans, to the exclusion of the refinancing of existing loans.</p> <p>The Risk Sharing loan shall be made available in the framework of an operation which is part of the priority axis defined in the programme co-funded by the relevant ESIF and defined in the context of the <i>ex-ante</i> assessment required in Article 37 of Regulation (EU) No 1303/2013.</p>
<p>Aim of the instrument</p>	<p>The aim of the instrument shall be to:</p> <ol style="list-style-type: none"> combine resources from the ESIF programme and the financial intermediary to support financing to SMEs as referred in Article 37(4) of Regulation (EU) No 1303/2013, and provide SMEs with easier access to finance by providing financial intermediary with a funding contribution and credit risk sharing and thereby offering SMEs more funds at preferential conditions in terms of interest rate reduction and if relevant collateral reduction. <p>The contribution from the ESIF programme to the financial intermediary shall not crowd out financing available from other private investors or public investors.</p> <p>The ESIF programme shall provide funding to the financial intermediary in order to build up a portfolio of newly generated loans to SMEs, and in parallel, participate in the losses/defaults and recoveries on the SME loans in this portfolio on a loan by loan basis and in the same proportion as the programme contribution in the instrument.</p> <p>In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary.</p> <p>In addition to the ESIF programme contribution, the fund of funds may provide its own resources which are combined with the financial intermediary resources. The fund of funds shall in this case take the pro-rata part of the risk sharing between the different contributions in the portfolio of loans. State aid rules have to be respected if the resources provided by the fund of funds are State resources.</p>

State aid implication

The RS Loan shall be designed as a State aid free instrument, i.e. market-conform remuneration for the financial intermediary, full pass-on of financial advantage by the financial intermediary to the final recipients, and the financing provided to the final recipients are under the applicable *de minimis* Regulation.

(a) *Aid at the level of the financial intermediary and the fund of funds is excluded when:*

1. the financial intermediary and the managing authority or fund of funds bear at any time the losses and benefits in proportion to their contributions (pro-rata) and there is an economically significant participation of the financial intermediary in the Risk Sharing loan, and
2. The remuneration (i.e. management costs and/or fees) of the financial intermediary and the fund of funds reflects the current market remuneration in comparable situations, which is the case when the latter has been selected through an open, transparent, non-discriminatory and objective selection procedure or if the remuneration is aligned with the Articles 12 and 13 of Delegated Regulation (EU) No 480/2014 and no other advantages are granted by the State. Where the fund of fund only transfers the ESIF contribution to the financial intermediary, and has a public interest mission, and has no commercial activity when implementing the measure, and is not co-investing with its own resources — therefore it is not considered a beneficiary of aid, — it is enough that the fund of fund is not overcompensated, and
3. The financial advantage of the programme public contribution to the instrument shall be fully passed on to the final recipients in the form of an interest rate reduction. When selecting the financial intermediary, the managing authority shall, in line with the Article 7(2) of Delegated Regulation (EU) No 480/2014, assess the pricing policy and the methodology to pass on the financial advantage to the final recipients.

Where the financial intermediary does not pass on all the financial advantage to the final recipients, the undisbursed public contribution shall be transferred back to the managing authority.

(b) *At the level of the SMEs:*

At the SMEs' level, the loan shall comply with the *de minimis* rules.

For each loan inserted in the portfolio, the financial intermediary shall calculate the GGE by using the following calculation methodology:

Calculation of the GGE = Nominal amount of the loan (EUR) × (Cost of funding (standard practice) + Cost of risk (standard practice) – Any fees charged by the managing authority on the programme contribution to the financial intermediary) × Weighted average life of the loan (Years) × Risk sharing rate.

When the GGE is calculated with the above mentioned formula, for the purpose of the Risk Sharing loan, the requirement as foreseen in Article 4 of the *de minimis* Regulation ⁽¹⁾ is considered to be met. There is no minimum collateral requirement.

A verification mechanism shall ensure that the GGE calculated with the above mentioned formula is not below than the GGE calculated following the Article 4(3)(c) of the *de minimis* Regulation.

The total amount of aid calculated with the GGE cannot be above EUR 200 000 over a 3 years fiscal period taking into account the cumulation rule for final recipients in the *de minimis* Regulation.

Technical support grant or another grant provided to the final recipient shall be cumulated with the calculated GGE.

Regarding SMEs in the fisheries and aquaculture sector, the aid shall comply with the relevant rules of the fisheries *de minimis* Regulation.

For activities supported by the EAFRD, general rules apply.

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

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

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

(b) *Origination of a portfolio of new loans:*

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

Eligible loans for SMEs (according to pre-defined eligibility criteria on a loan-by-loan and portfolio level) shall be automatically included in the Portfolio, by way of submitting inclusion notices at least on a quarterly basis.

The financial intermediary shall implement a consistent lending policy, especially regarding portfolio diversification, enabling a sound credit portfolio management and risk diversification, while complying with the applicable industry standards and while remaining aligned with the managing authority's financial interests and policy objectives.

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

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

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

When revolving within the same financial instrument, as a matter of principle, the amounts that are attributable to the support of the ESIF and that are reimbursed and/or recovered by the financial intermediary from loans to final recipients within the time framework for investments shall be made available for new use within the same financial instrument. This revolving approach as referred at Articles 44 and 45 of Regulation (EU) No 1303/2013 shall be included in the funding agreement.

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

(d) *Loss recoveries:*

The financial intermediary shall take recovery actions in relation to each defaulted SME loan financed by the financial instrument in accordance with its internal guidelines and procedures.

Amounts recovered (net of recovery and foreclosure costs, if any) by the financial intermediary shall be allocated pro-rata to the risk-sharing between the financial intermediary and the managing authority or the fund of funds.

(e) *Others:*

Interest and other gains generated by support from the ESI Funds to financial instrument shall be used as referred in Article 43 of Regulation (EU) No 1303/2013.

Pricing policy	<p>When proposing its pricing, the financial intermediary shall present a pricing policy and the methodology to ensure the full pass on of the financial advantage of the programme public contribution to the eligible SMEs. The pricing policy and the methodology shall include the following elements:</p> <ol style="list-style-type: none"> (1) the interest rate on the financial intermediary participation is set at market basis (i.e. according to the financial intermediary own policy), (2) the overall interest rate, to be charged on loans to the eligible SMEs included in the portfolio, must be reduced proportionally to the allocation provided by the public contribution of the programme. This reduction shall take into account the fees that the managing authority might charge on the programme contribution. (3) The GGE calculation as presented in the State aid section shall be applied on each loan included in the Portfolio. (4) The pricing policy and the methodology shall remain constant during the eligibility period.
Programme contribution to financial instrument: amount and rate (product details)	<p>The actual risk sharing rate, programme public contribution and interest rate on loans shall be based on the <i>ex-ante</i> assessment findings and shall be such as to ensure that the benefit to the final recipients complies with the <i>de minimis</i> rule.</p> <p>The size of the target portfolio Risk Sharing loan shall be confirmed within the <i>ex-ante</i> assessment justifying the support to the financial instrument (Article 37 of Regulation (EU) No 1303/2013) and take into account the revolving approach of the instrument (if applicable). The composition of the targeted portfolio of loans shall be defined in a way to ensure diversification of risk.</p> <p>The RS loan allocation and the risk-sharing rate must be set in order to fill the gap evaluated within the <i>ex-ante</i> assessment, but in any case must comply with the conditions laid down in this term sheet.</p> <p>The risk sharing rate agreed with the financial intermediary shall define for each eligible loan included in the portfolio, the portion of the eligible loan principal amount financed by the programme.</p> <p>The risk-sharing rate agreed with the financial intermediary determines the exposure of the losses which are to be covered by the financial intermediary and by the programme contribution accordingly.</p>
Programme contribution to financial instrument (activities)	<p>The portfolio funded by the RS loan instrument shall include only newly originated loans provided to SMEs, to the exclusion of the refinancing of existing loans. The eligibility criteria for inclusion in the portfolio are determined pursuant to Union law (e.g. Regulation (EU) No 1303/2013 and Fund-specific rules), programme, national eligibility rules, and with the financial intermediary with the aim of reaching a large number of final recipients and achieving sufficient portfolio diversification. The financial intermediary shall have a reasonable estimation of the portfolio risk profile. These criteria shall reflect market conditions and practices in the relevant Member State or region.</p>
Managing Authority's liability	<p>The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Delegated Regulation (EU) No 480/2014.</p> <p>The losses covered are principal amounts due, payable and outstanding and standard interest (but excluding late payment fees and any other costs and expenses).</p>
Duration	<p>The lending period of the financial instrument shall be set in order to ensure that the programme contribution as referred in Article 42 of Regulation (EU) No 1303/2013 is used for loans disbursed to final recipients no later than the 31 December 2023.</p> <p>The typical duration to create the portfolio of loans is recommended to be up to 4 years from the date of signature of the funding agreement (between the managing authority or fund of funds and the financial intermediary).</p>

Lending and risk-sharing at financial intermediary level (alignment of interest)	<p>Alignment of interest between the managing authority and the financial intermediary shall be achieved through:</p> <ul style="list-style-type: none"> — Performance fees as provided by Articles 12 and 13 of the Delegated Regulation (EU) No 480/2014. — In addition to the programme contribution, the financial intermediary shall contribute under local market conditions to the financing of at least 25 % of the total financing commitment for lending to SMEs within the RS loan instrument. — The losses and recoveries shall impact pro-rata the financial intermediary and the managing authority within their respective liability according to the risk-sharing rate. <p>The expected risk-sharing rate shall be determined based on the <i>ex-ante</i> assessment findings justifying the support to the financial instrument.</p>
Eligible Financial Intermediaries	<p>Public and private bodies established in a Member State which shall be legally authorised to provide loans to enterprises operating in the jurisdiction of the programme which contributes to the financial instrument. Such bodies are financial institutions, and, as appropriate, microfinance institutions or any other institution authorised to provide loans.</p>
Final recipients eligibility	<p>The final recipients shall be eligible under EU and national law, the relevant programme and funding agreement. The following eligibility criteria shall be met at the date of the signature of the loan:</p> <ul style="list-style-type: none"> (a) shall be a micro, small and medium enterprise (SMEs (including individual entrepreneurs/self-employed persons) as defined in Commission Recommendation 2003/361/EC ⁽²⁾ ⁽³⁾). (b) shall not be a SME active in the sectors defined in point (d) – (f) of Article 1 of the <i>de minimis</i> Regulation. (c) shall not be part of on one or more restricted sectors ⁽⁴⁾. (d) shall not be a firm in difficulty as defined by State aid rules. (e) shall not be delinquent or in default in respect of any other loan or lease either granted by the financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy. <p>In addition, at the time of the investment and during the reimbursement of the loan, final recipients shall have a registered place of business in a Member State and the economic activity for which the loan was disbursed shall be located in the relevant Member State and Region/Jurisdiction of the ESIF programme.</p>
Characteristics of the product for the final recipients	<p>The financial intermediary shall deliver to final recipients the loans that contribute to the objective of the programme and that are co-financed by the programme under the RS loan instrument. Their terms shall be grounded on the <i>ex-ante</i> assessment referred to in Article 37 of Regulation (EU) No 1303/2013.</p> <p>The loans shall be used exclusively for the following permitted purposes:</p> <ul style="list-style-type: none"> (a) investments in tangible and intangible assets, including transfer of proprietary rights in enterprises provided that such transfer takes place between independent investors. (b) working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the SME and the amount of the financing). <p>The following eligibility criteria shall be met at all times by the loans included in the portfolio:</p> <ul style="list-style-type: none"> (c) Loans shall be newly originated, to the exclusion of the refinancing of existing loans. (d) The principal amount of a loan included in the RS loan portfolio (i) shall be up to EUR 1 000 000 based on the <i>ex-ante</i> assessment and (ii) shall be provided under such conditions that would not cause the GGE with respect to each final recipient to exceed EUR 200 000 (or EUR 100 000 in the road freight transport and EUR 30 000 in the fishery and aquaculture sectors) over any period of three fiscal years; eligible SMEs could potentially apply more than once for loans allocated in the context of this financial instrument provided that the above-mentioned GGE limit is fully respected.

	<p>(e) Loans shall provide financing for one or more of the permitted purposes in EUR and/or national currency in the relevant jurisdiction and, as the case may be, in any other currency.</p> <p>(f) Loans shall not be in the form of mezzanine loans, subordinated debt or quasi equity.</p> <p>(g) Loans shall not be in the form of revolving credit lines.</p> <p>(h) Loans shall have a repayment schedule, including regular amortising and/or bullet payments.</p> <p>(i) Loans shall not finance pure financial activities or real estate development when undertaken as a financial investment activity and shall not finance the provision of consumer finance.</p> <p>(j) Loans shall have a minimum maturity of 12 months including the relevant grace period (if any) and a maximum maturity of up to 120 months.</p>
<p>Reporting and targeted results</p>	<p>Financial intermediaries shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope.</p> <p>The report shall include all the relevant elements for the managing authority to fulfil the conditions of Article 46 of Regulation (EU) No 1303/2013.</p> <p>Member States shall also fulfil their reporting obligations pursuant to the <i>de minimis</i> Regulation.</p> <p>Indicators must be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and on the expected results of the <i>ex-ante</i> assessment. They shall be measured and reported at least quarterly for the RS loan instrument and aligned as a minimum with the regulation requirements. In addition to the common indicators of the priority axis of the ESIF programme (employment increase, number of SMEs, ...) other indicators are:</p> <p>Numbers of loans/projects financed</p> <p>Amounts of loans financed</p> <p>Defaults (numbers and amounts)</p> <p>Resources repaid and gains</p>
<p>Evaluation of the economic benefit of the programme contribution</p>	<p>The financial intermediary shall reduce the overall effective interest rate (and collateral policy where appropriate) charged to the final recipients under each eligible loan included in the portfolio reflecting the favourable funding and risk sharing conditions of the RS loan.</p> <p>The entire financial advantage of the programme public contribution to the instrument shall be transferred to the final recipients in the form of an interest rate reduction. The financial intermediary shall monitor and report on the GGE for final recipients as referred in the State aid section. This principle shall be reflected in the funding agreement between the managing authority or fund of funds and the financial intermediary.</p>

(¹) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

(²) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

(³) Enterprise with less than 250 employees and having a turnover of less than EUR 50 million or total assets less than EUR 43 million; also not belonging to a group exceeding such thresholds. According to the Commission Recommendation, 'an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form'.

(⁴) The following economic sectors are together referred to as the 'restricted sectors'.

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

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

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

(d) Casinos. Casinos and equivalent enterprises.

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

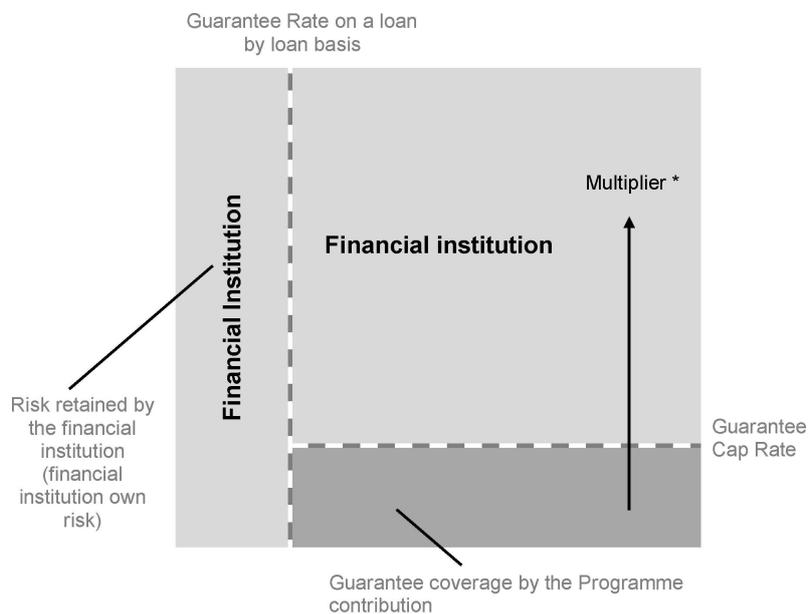
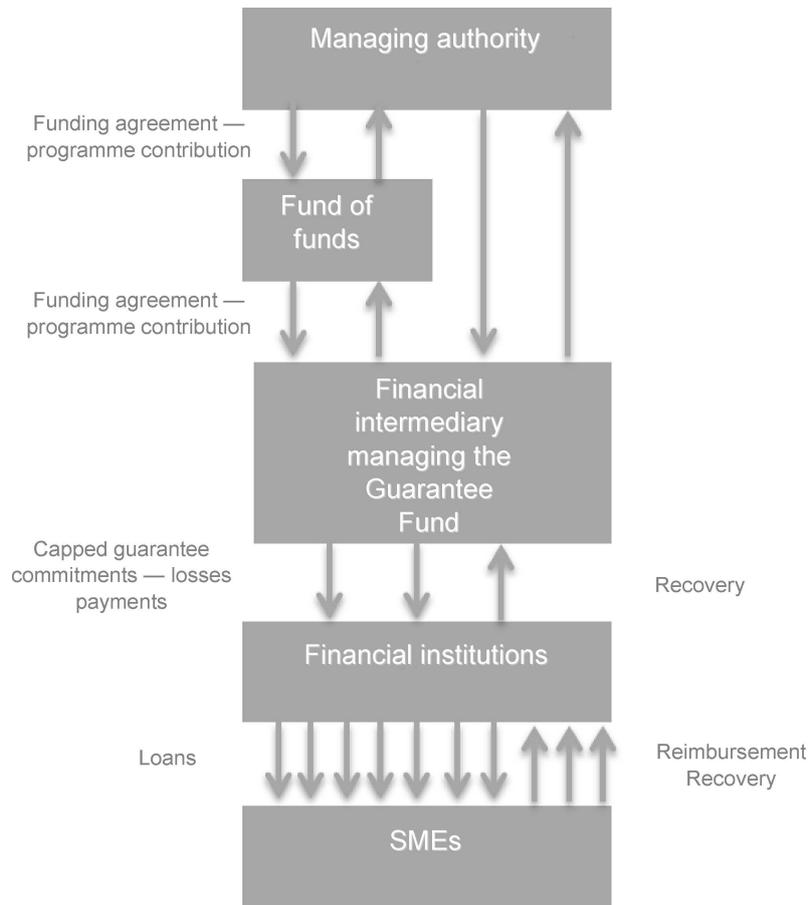
(f) Life science sector restrictions. When providing support to the financing of the research, development or technical applications relating to: (i) human cloning for research or therapeutic purposes; or (ii) Genetically Modified Organisms (GMOs).

ANNEX III

Capped Portfolio Guarantee for SME's (Capped Guarantee)

Schematic representation of the Capped Guarantee

Relation between stakeholders and Capped Guarantee portfolio coverage



* Multiplier = (1/Guarantee Rate) × (1/Guarantee Cap Rate)

Structure of the financial instrument	<p>The Capped Portfolio Guarantee shall provide credit risk coverage on a loan by loan basis, for the creation of a portfolio of new loans to SMEs up to a maximum loss amount (cap).</p> <p>The Capped Portfolio Guarantee shall be made available by the managing authority, in the framework of the operation which is part of the priority axis defined in the programme co-funded by the European Structural and Investment Funds (ESIF) and defined in the context of the <i>ex-ante</i> assessment required in Article 37 of Regulation (EU) No 1303/2013.</p>
Aim of the instrument	<p>The aim of the instrument shall be to:</p> <ol style="list-style-type: none"> (1) Provide better access to finance to targeted SMEs, addressing concrete and well identified market gaps. (2) Leverage of the ESIFs to support financing for SMEs as referred in Article 37(4) of Regulation (EU) No 1303/2013. <p>The ESIF programme contribution from the managing authority takes the form of a guarantee fund managed by a financial intermediary. This contribution shall not crowd out guarantees available from other public or private investors.</p> <p>The guarantee fund managed by the financial intermediary shall commit to provide funds from the ESIF programme to the financial institutions building up portfolios of new loans in case of default of the final recipients.</p> <p>In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary.</p> <p>The Capped Guarantee Instrument shall be implemented to cover a portfolio of new loans build up by one or more financial institutions.</p> <p>The financial institutions building up portfolios of new loans shall count on a partial guarantee covering losses up to a capped amount when providing loans to eligible SMEs.</p> <p>The financial advantage of the guarantee must be passed on to the final recipients (e.g. as a reduction of the interest rate of the loans or/and collateral reduction but always with a full financial advantage of the programme public contribution passed on to the final recipients).</p>
State aid implication	<p>The Capped Portfolio Guarantee shall be designed as a State aid free instrument, i.e. market conform at the level of the financial intermediary managing the guarantee fund and financial institutions building up portfolios of new loans and aid to the final recipients under the applicable <i>de minimis</i> Regulation.</p> <p>(a) <i>At the level of the fund of funds, the financial intermediary managing the guarantee fund, the financial institutions building up portfolios of new loans the aid is excluded when:</i></p> <ol style="list-style-type: none"> (1) The remuneration (i.e. management costs and/or fees) of the financial intermediary and the fund of funds reflects the current market remuneration in comparable situations, which is the case when the latter has been selected in an open, transparent, objective and non-discriminatory selection procedure or if the remuneration is aligned with the Articles 12 and 13 of Delegated Regulation (EU) No 480/2014, and no other advantage is granted by the State. Where the fund of fund only transfers the ESIF contribution to the financial intermediary, and has a public interest mission, and has no commercial activity when implementing the measure, and is not co-investing with its own resources — therefore it is not considered a beneficiary of aid, — it is enough that the fund of fund is not overcompensated and (2) The financial institution shall be selected through an open, transparent, non-discriminatory and objective selection procedure to build up the portfolio of new loans with its own resources and the risk retained by the financial institution is in no case less than 20 % of the loan amount (on a loan by loan basis), and (3) In addition, the financial advantage of the programme public contribution to the instrument shall be fully passed on to the final recipients in the form of an interest rate reduction. When selecting the financial intermediary, the managing authority shall, in line with the Article 7(2) of Delegated Regulation (EU) No 480/2014, assess the pricing policy and the methodology to pass on the financial advantage to the final recipients.

	<p>Where the financial intermediary does not pass on all the financial advantage to the final recipients, the uncommitted public contribution shall be transferred back to the managing authority.</p> <p>The guarantee must be linked to a specific financial transaction, for a fixed maximum amount and limited in time.</p> <p>(b) <i>At the level of final recipients:</i></p> <p>At the SMEs' level, the guaranteed loan shall comply with the <i>de minimis</i> rules.</p> <p>For each loan inserted within the guaranteed portfolio, the financial intermediary shall calculate the GGE by using the following calculation methodology:</p> <p>Calculation of the GGE = Nominal amount of the loan (EUR) × Cost of risk (standard practice) × Guarantee rate × Guarantee cap rate × Weighted average life of the loan (Years).</p> <p>The total amount of aid calculated with the GGE cannot be above EUR 200 000 over a 3 years fiscal period taking into account the cumulation rule for final recipients in the <i>de minimis</i> Regulation.</p> <p>When the GGE is calculated with the above mentioned formula, for the purpose of a Capped Portfolio Guarantee instrument, the requirement as foreseen in Article 4 of the <i>de minimis</i> Regulation (!) is considered to be met.</p> <p>A verification mechanism shall ensure that the GGE calculated with the above mentioned formula is not below than the GGE calculated following the Article 4(6)(c) of the <i>de minimis</i> Regulation.</p> <p>Technical support grant or another grant provided to the final recipient shall be cumulated with the calculated GGE.</p> <p>Regarding SMEs in the fisheries and aquaculture sector, the aid shall comply with the relevant rules of the fisheries <i>de minimis</i> Regulation</p> <p>For activities supported by the EAFRD, general rules apply.</p>
<p>Guarantee policy</p>	<p>(a) <i>Transfer from the managing authority to the financial intermediary:</i></p> <p>Following the signature of a funding agreement between the managing authority and the fund of funds or the financial intermediary, the relevant managing authority transfers contributions from the programme to the fund of funds or to the financial intermediary which places such contributions in a dedicated guarantee fund. The transfer shall be in tranches and respect the ceilings of Article 41 of Regulation (EU) No 1303/2013.</p> <p>(b) <i>Origination of a portfolio of new loans:</i></p> <p>The financial institutions shall be required to build up within a pre-determined limited period of time portfolios of new SME loans. Newly originated SME loans are partly covered by the programme contribution on a loan by loan basis up to a certain amount (Cap). Eligible SME loans are automatically included in the portfolio subject to a pre-set loan inclusion criteria.</p> <p>Inclusion of SME loans shall occur automatically upon receipt by the financial intermediary managing the guarantee fund of an inclusion notice submitted at least on a quarterly basis until the end of the relevant inclusion period.</p> <p>The financial institutions shall implement a consistent loan policy regarding portfolio diversification, enabling a sound portfolio management and risk diversification, while complying with the applicable industry standards and while remaining appropriate to the managing authority's financial interests and policy objectives.</p> <p>The identification, selection, due diligence, documentation and execution of the loans for final recipients shall be performed by the financial institutions in accordance with their standard procedures and in accordance with the principles set out in the agreement between the financial intermediary and the financial institution building up a portfolio of new loans.</p>

	<p>(c) <i>Loss cover:</i></p> <p>The Capped Portfolio Guarantee shall cover losses incurred by the financial institutions in respect of each defaulted eligible SME loan in accordance with the guarantee rate of a maximum percentage of 80 %.</p> <p>Losses covered by the Capped Portfolio Guarantee in respect of the portfolio of eligible SME loans shall in aggregate not exceed the cap amount.</p> <p>The cap amount which is the maximum liability under this instrument is the product of the volume of the target loan portfolio multiplied by the guarantee rate and the guarantee cap rate.</p> <p>The guarantee cap rate shall be determined as part of the <i>ex-ante</i> risk assessment in accordance with Article 42(1)(b) of Regulation (EU) No 1303/2013 and Article 8 of Delegated Regulation (EU) No 480/2014.</p> <p>Losses covered are principal amounts due, payable and outstanding and standard interest (but excluding late payment, fees and any other costs and expenses).</p> <p>(d) <i>Guarantee payment:</i></p> <p>Following the occurrence of a loss related to a default, the financial intermediary managing the guarantee fund shall make guarantee payments to the financial institution under the Guarantee within typically 60 days.</p>
<p>Pricing and collateral policies</p>	<p>The financial intermediary shall present a methodology that ensures the full pass on of the financial advantage of the programme public contribution to the eligible SMEs. The financial institution shall have a pricing/collateral policy in line with the methodology. The pricing/collateral policy and the methodology shall include the following elements:</p> <ol style="list-style-type: none"> (1) The instrument shall cover a maximum of 80 % of the risk exposure of each eligible SME Loan (up to a Cap). (2) The entire financial advantage of the programme public contribution shall be passed on to the eligible SMEs, through a reduction of the interest rate charged and/or a reduction of the collateral required by the financial institution. (3) The GGE calculation as presented in the State aid section shall be applied for each loan included in the portfolio. (4) No Guarantee fees shall be charged to the financial institution by the financial intermediary managing the guarantee fund. (5) The financial institution shall reduce the overall interest rate and/or collateral requirement under each eligible SME loan included in the portfolio following the pricing policy and methodology ensuring the full pass on of the financial advantage. The level of such reduction proposed by the financial institution shall be assessed and confirmed by the financial intermediary following the relevant analysis and due diligence and shall be deemed to be an eligibility criterion for SME loans to be included in the Portfolio. (6) The managing authority may decide based on the <i>ex-ante</i> assessment which identifies the targeted SMEs and the <i>ex-ante</i> risk assessment that determines the risk, to require guarantee fees payable by the final recipients. In such case, the GGE shall be calculated with the formula presented in the section on State aid here above or be aligned with the conditions of the Guarantee Notice. The fees paid by the final recipients shall be paid back to the guarantee fund as resources returned in the sense of Article 43 of Regulation (EU) No 1303/2013. (7) The pricing policy and the methodology shall remain constant during the eligibility period.
<p>Guarantee to financial institution amount and rate (product details)</p>	<p>The Capped Portfolio Guarantee shall respect the conditions set in Article 8 of the Delegated Regulation (EU) No 480/2014.</p> <p>The Guarantee Cap rate shall be determined in the <i>ex-ante</i> risk assessment in accordance with Article 42(1)(b) of Regulation (EU) No 1303/2013 and Article 8 of Delegated Regulation (EU) No 480/2014 and in all cases not exceed 25 %. The guarantee may cover expected and unexpected losses.</p>

	<p>The multiplier of the guarantee financed by the programme contribution is defined as:</p> $\text{Multiplier} = (1/\text{Guarantee Rate}) \times (1/\text{Guarantee Cap Rate}).$ <p>The multiplier ratio shall be based on the <i>ex-ante</i> risk assessment and be equal to or higher than 5.</p> <p>The size of the target portfolio partially covered by the guarantee shall be based on the <i>ex-ante</i> assessment findings justifying the support to the financial instrument (Article 37 of Regulation (EU) No 1303/2013) and take into account the revolving approach of the instrument (if applicable). The composition of the targeted portfolio of loans shall be defined in a way to ensure diversification of risk.</p>
Guarantee to financial institution (activities)	<p>The loan portfolio guaranteed by the guarantee instrument shall include newly originated loans provided to the final recipients, to the exclusion of refinancing of existing loans. The eligibility criteria for inclusion in the portfolio are determined pursuant to the Union law (e.g. Regulation (EU) No 1303/2013 and Fund-specific rules), programme, national eligibility rules, and with the financial intermediary with the aim of reaching a large number of final recipients and achieving sufficient portfolio diversification. Financial institutions shall have a reasonable estimation of the portfolio risk profile (concentration limit by sector for example). These criteria shall reflect market conditions and practices in the relevant country or region.</p> <p>The financial institution shall estimate <i>ex-ante</i> a recovery rate to be used for calculating the amount expected to be recovered from the defaults in the portfolio, which impacts the evaluation of the guarantee cap rate.</p>
Managing authority's liability	<p>The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Delegated Regulation (EU) No 480/2014.</p> <p>Default means, in respect of a loan to final recipient that (i) the financial institution can prove at any time (acting in accordance with its internal procedures and as reflected in its financial and regulatory reporting) that a final recipient is unlikely to meet its payment obligations; or (ii) a final recipient has failed to meet any payment obligation under the relevant SME loan which has continued for at least 90 consecutive calendar days</p>
Duration	<p>The guarantee period of the financial instrument shall be set in order to ensure that the programme contribution as referred in Article 42 of Regulation (EU) No 1303/2013 is used with guarantees of loans disbursed to final recipients no later than the 31 December 2023.</p> <p>The typical duration to create the portfolio of guaranteed loans is recommended to be up to 4 years from the date of signature of the funding agreement (between the managing authority or fund of funds and the financial intermediary).</p>
Risk-sharing at FI level (alignment of interest)	<p>Alignment of interest between the managing authority, the financial intermediary and the financial institution shall be achieved through:</p> <ul style="list-style-type: none"> — The own credit risk retained by the financial institution in no case shall be less than 20 % on a loan by loan basis. — The financial institution commits to build up a portfolio of new loans with its own resources. — The financial advantage of the Capped Guarantee is fully passed on to final recipient SMEs. — Performance fees for financial intermediary as provided by Articles 12 and 13 of Delegated Regulation (EU) No 480/2014.
Eligible Financial Intermediaries and Financial Institutions	<p>Financial intermediaries shall be public and private bodies established in a Member State which are legally authorised to provide guarantees on loans to enterprises operating in the jurisdiction of the programme which contributes to the financial instrument.</p>

	<p>Financial institutions shall be public and private bodies established in a Member States which are legally authorised to provide loans to enterprises operating in the jurisdiction of the programme which contributes to the financial instrument. Such bodies are financial institutions, and, as appropriate, microfinance institutions or any other institution authorised to provide loans.</p>
<p>Final Recipient (final recipients) eligibility</p>	<p>The final recipients shall be eligible under Union and national law, the relevant programme, and funding agreement. The final recipients shall fulfil the following eligibility criteria at the date of the document evidencing the relevant SME guarantee, meaning the guarantee commitment:</p> <ul style="list-style-type: none"> (a) shall be a micro, small and medium enterprise (SMEs (including individual entrepreneurs/self-employed persons) as defined in the Commission Recommendation 2003/361/EC ⁽²⁾). (b) shall not be a SME active in the sectors defined in points (d)-(f) of Article 1 of the <i>de minimis</i> Regulation. (c) shall not be part of one or more restricted sectors ⁽³⁾. (d) shall not be a firm in difficulty as defined by State aid rule. (e) shall not be delinquent or in default in respect of any other loan or lease either granted by the financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy. <p>In addition, at the time of the investment and during the reimbursement of the guaranteed loan, final recipients shall have a registered place of business in a Member State and the economic activity for which the guaranteed loan was disbursed shall be located in the relevant Member State and Region/Jurisdiction of the ESIF programme.</p>
<p>Characteristics of the product for the final recipients</p>	<p>The financial institution shall deliver to final recipients the loans that contribute to the objective of the programme and that are guaranteed by the programme under the Capped guarantee portfolio. The terms of the guarantees and of the loans shall be grounded on the <i>ex-ante</i> assessment referred to in Article 37(2) of Regulation (EU) No 1303/2013.</p> <p>The loans shall be used exclusively for the following permitted purposes:</p> <ul style="list-style-type: none"> (a) Investments in tangible and intangible assets including transfer of proprietary rights in enterprises provided that such transfer takes place between independent investors. (b) Working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the final recipient and the amount of the financing). <p>The following eligibility criteria shall be met at all times by the loans included in the portfolio:</p> <ul style="list-style-type: none"> (c) Loans shall be newly originated, to the exclusion of refinancing existing loans. (d) The guaranteed part of the underlying loan included in the portfolio i) shall be up to EUR 1 500 000 based on the <i>ex-ante</i> assessment and ii) shall be provided under such conditions that would not cause the GGE with respect to each final recipient to exceed EUR 200 000 (or EUR 100 000 in the road freight transport and EUR 30 000 in the fishery and aquaculture sectors) over any period of three fiscal years. Eligible SMEs could potentially apply more than once for loans allocated in the context of this financial instrument provided that the above-mentioned GGE limit is fully respected. (e) Loans shall provide financing for one or more of the permitted purposes in EUR and/or national currency in the relevant jurisdiction and, as the case may be, in any other currency. (f) Loans shall not be in the form of mezzanine loans, subordinated debt or quasi equity. (g) Loans shall not be in the form of revolving credit lines.

	<p>(h) Shall have a repayment schedule, including regular amortising and/or bullet payments.</p> <p>(i) Loans shall not finance pure financial activities or real estate development when undertaken as a financial investment activity and shall not finance the provision of consumer finance.</p> <p>(j) Shall have between a minimum maturity of 12 months and a maximum maturity of 120 months.</p>
<p>Reporting and targeted results.</p>	<p>Financial intermediaries shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope.</p> <p>The report shall include all the relevant elements for the managing authority to fulfil the provisions of Article 46 of Regulation (EU) No 1303/2013.</p> <p>Member States shall also fulfil their reporting obligations pursuant to the <i>de minimis</i> Regulation.</p> <p>Indicators must be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and on the expected results of the <i>ex-ante</i> assessment. They shall be measured and reported at least quarterly for the guarantee fund and aligned as a minimum with the regulation requirements. In addition to the common indicators of the priority axis of the ESIF programme (employment increase, number of SMEs,...) other indicators are:</p> <p>Numbers of loans guaranteed Volume of the loans guaranteed Number of loans defaulted Value of the loans defaulted Guarantees committed/called (number, amounts) Resources uncalled and gains (e.g. interest generated)</p>
<p>Evaluation of the economic benefit of the programme contribution</p>	<p>The financial advantage of the programme public contribution to the instrument shall be fully passed on to the final recipients (benefit of the guarantee).</p> <p>The financial advantage for the eligible SMEs shall be evidenced by a reduction of the overall interest rate required by the financial institution and/or collateral reduction on such SME loan.</p> <p>The financial intermediary shall monitor and report on the GGE for final recipients as referred in the State aid section.</p> <p>These principles shall be reflected in the agreements between the managing authority or fund of funds and the financial intermediaries and between the financial intermediaries and the financial institutions building up portfolios of new loans.</p>

(1) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

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

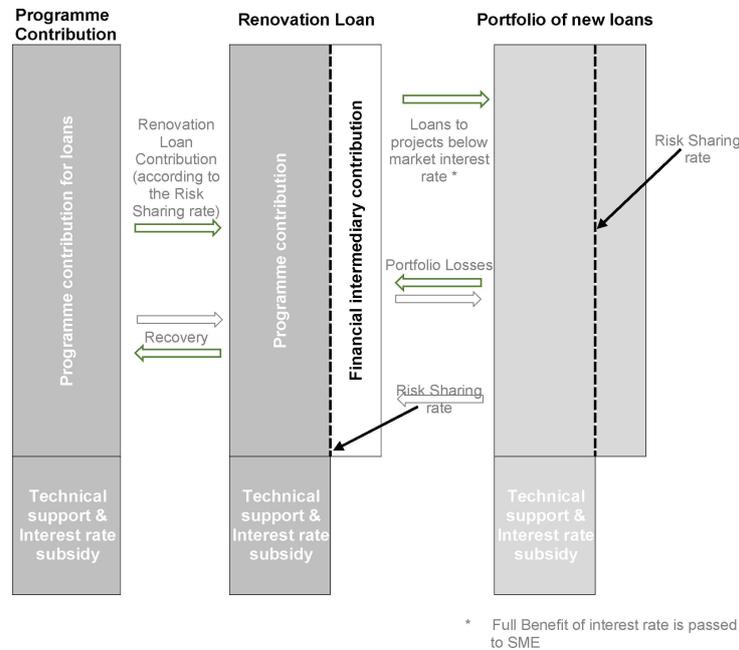
(3) The following economic sectors are together referred to as the 'restricted sectors':

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

ANNEX IV

Loan for energy efficiency and renewable energies in the residential building sector (Renovation loan)

Schematic representation of the Renovation loan principle



<p>Structure of the financial instrument</p>	<p>The Renovation loan shall take the form of a loan fund to be set up by a financial intermediary with contributions from the programme and the financial intermediary itself to finance a portfolio of newly originated loans, to the exclusion of the refinancing of existing loans.</p> <p>The Renovation loan shall be made available, in the framework of the operation which is part of the priority axis defined in the programme funded by the ESIF and defined in the context of the <i>ex-ante</i> assessment required in Article 37 of Regulation (EU) No 1303/2013.</p>
<p>Aim of the instrument</p>	<p>The aim of the instrument is to offer preferential loans to natural and legal persons or independent professionals owning premises (apartment, social housing or individual household), as well as administrators or other legal bodies acting on behalf and for the benefit of the owners in order to undertake renovation works that are eligible for ESIF support.</p> <p>The ESIF programme contribution from the managing authority to a financial intermediary shall not crowd out financing available from other private or public investors.</p> <p>The ESIF programme shall provide funding to the financial intermediary in order to build up a portfolio of newly generated loans, and in parallel, participate in the losses/defaults and recoveries on the loans in this portfolio on a loan by loan basis and in the same proportion as the programme contribution in the instrument.</p> <p>In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary.</p> <p>In addition to the ESIF programme contribution, the fund of funds may provide its own resources which are combined with the financial intermediary resources. The fund of funds shall in this case take the pro-rata part of the risk sharing between the different contributions in the portfolio of loans. State aid rules have to be respected also in relation to such resources if they are public resources.</p>

State aid implication

The Renovation Loan shall be designed as a State aid free instrument, i.e. market-conform remuneration for the financial intermediary, full pass-on of financial advantage by the financial intermediary to the final recipients, and the financing provided to the final recipients are under the applicable *de minimis* Regulation.

(a) *Aid at the level of the financial intermediary and the fund of funds is excluded when:*

- (1) the financial intermediary and the managing authority or fund of funds bear at any time the losses and benefits in proportion to their contribution (pro-rata) and there is an economically significant participation of the financial intermediary in the Renovation loan instrument, and
- (2) The remuneration (i.e. management costs and/or fees) of the financial intermediary and the fund of funds reflects the current market remuneration in comparable situations, which is the case when they have been selected through an open, transparent, non-discriminatory and objective selection procedure or if their remuneration is aligned with the Articles 12 and 13 of Delegated Regulation (EU) No 480/2014 and no other advantages are granted by the State. Where the fund of fund only transfers the ESIF contribution to the financial intermediary, and has a public interest mission, and has no commercial activity when implementing the measure, and is not co-investing with its own resources — therefore it is not considered a beneficiary of aid, — it is enough that the fund of fund is not overcompensated, and
- (3) The financial advantage of the programme public contribution to the instrument shall be fully passed on to the final recipients in the form of an interest rate reduction. When selecting the financial intermediary, the managing authority shall, in line with the Article 7(2) of Delegated Regulation (EU) No 480/2014, assess the pricing policy and the methodology to pass on the financial advantage to the final recipients.

Where the financial intermediary does not pass on all the financial advantage to the final recipients, the undisbursed public contribution shall be transferred back to the managing authority.

(b) *Aid at the level of an entity acting on behalf of the owners (i.e. natural and legal persons, independent professionals owning premises, administrators, other legal bodies):*

Aid at the level of an entity acting on behalf of the owners is excluded when:

- (1) the entity does not benefit from any direct transfers of public support and
- (2) The entity transfers all the financial advantages of the programme public contribution to the final recipients

(c) *At the level of the owners without or with an economic activity (legal person or independent professionals, landlords and owners who install renewable energies, supplying part of the energy produced to the grid):*

Owners that are natural persons and which are not considered undertakings because they do not exercise an economic activity are not considered to be beneficiaries of State aid.

Owners with an economic activity qualify as an 'undertaking' and are subject to State aid rules. In particular, this is the case if they are landlords (renting is an economic activity) and in the case of installing renewable energies, if part of the renewable energies produced is supplied to the grid (supplying energy to the grid is considered an economic activity).

At the level of the owners with an economic activity, the aid shall comply with the *de minimis* rules.

For each loan inserted within the portfolio regarding owners with an economic activity, the financial intermediary shall calculate the GGE by using the following calculation methodology:

Calculation of the GGE = Nominal amount of the loan (EUR) × (Cost of funding (standard practice) + Cost of risk (standard practice) – Any fees charged by the managing authority on the programme contribution to the financial intermediary) × Weighted average life of the loan (Years) × Risk sharing rate.

When the GGE is calculated with the above mentioned formula, for the purpose of the Renovation loan instrument, the requirement as foreseen in Article 4 of the *de minimis* Regulation ⁽¹⁾ is considered to be met. There is no minimum collateral requirement.

	<p>A verification mechanism shall ensure that the GGE calculated with the above mentioned formula is not below than the GGE calculated following the Article 4(3)(c) of the <i>de minimis</i> Regulation.</p> <p>The total amount of aid calculated with the GGE cannot be above EUR 200 000 over a 3 years fiscal period taking into account the cumulation rule for final recipients in the <i>de minimis</i> Regulation.</p> <p>Technical support grant or another grant provided to the final recipient shall be cumulated with the calculated GGE.</p>
<p>Lending policy</p>	<p>(a) <i>Disbursement from the managing authority or fund of funds to the financial intermediary:</i></p> <p>Following the signature of a funding agreement between the managing authority and the fund of funds or the financial intermediary, the relevant managing authority transfers public contributions from the programme to the fund of funds or the financial intermediary which places such contributions in a dedicated Renovation loan fund. The transfer shall be in tranches and respect the ceilings of Article 41 of Regulation (EU) No 1303/2013.</p> <p>The target lending volume and range of interest rate shall be confirmed within the <i>ex-ante</i> assessment in accordance with Article 37 of Regulation (EU) No 1303/2013 and shall be taken into account to determine the nature of the instrument (revolving or non-revolving instrument).</p> <p>The maximum risk-sharing of the financial instrument towards the final recipients shall be 85 % (i.e. at least 15 % shall be provided by the financial intermediary own funds).</p> <p>(b) <i>Origination of a portfolio of new loans:</i></p> <p>The financial intermediary shall be required to originate within a pre-determined limited period of time a portfolio of new loans funded according to a risk-sharing rate agreed in the funding agreement (i.e. funded by (i) the programme contribution) (ii) the financial intermediary own fund).</p> <p>Eligible loans pre-defined according to eligibility criteria on a loan-by-loan basis and portfolio level shall be automatically included in the portfolio by way of submitting inclusion notices at least on a quarterly basis.</p> <p>The financial intermediary shall implement a consistent lending policy, especially regarding portfolio composition enabling a sound credit portfolio management and risk diversification, while aiming at reducing the market failure identified in the <i>ex-ante</i> assessment (referring to Article 37 of Regulation (EU) No 1303/2013) and while remaining aligned with the managing authority's financial interests and policy objectives.</p> <p>The identification, selection, due diligence, documentation and execution of the loans to final recipients shall be performed by the financial intermediary in accordance with its standard procedures and in accordance with the principles set out in the relevant funding agreement.</p> <p>(c) <i>Re-use of resources paid back to financial instrument:</i></p> <p>Resources paid back to the financial instrument shall be either reused within the same financial instrument (revolving within the same financial instrument) or after being paid back to the managing authority or the fund of funds they shall be used in accordance with Article 44 of Regulation (EU) No 1303/2013.</p> <p>When revolving within the same financial instrument, as a matter of principles, the amounts that are attributable to the support of the ESIF and that are reimbursed and/or recovered by the financial intermediary from loans to final recipients within the time framework for investments shall be made available for new use within the same financial instrument. This revolving approach as referred at Articles 44 and 45 of Regulation (EU) No 1303/2013 shall be included in the funding agreement.</p> <p>Alternatively, if managing authority or fund of funds is directly repaid, the repayments shall occur regularly mirroring (i) principal repayments (on a pro rata basis on the basis of the risk sharing rate) (ii) any recovered amounts and losses deductions (according to the risk sharing rate), of the Renovation loans and (iii) any interest rate payments. These resources have to be used in accordance with Articles 44 and 45 of Regulation (EU) No 1303/2013.</p>

	<p>(d) <i>Loss recoveries:</i></p> <p>The financial intermediary shall take recovery actions in relation to each defaulted loan co-financed by the Renovation loan in accordance with its internal guidelines and procedures.</p> <p>Amounts recovered by the financial intermediary (net of recovery and foreclosure costs, if any) shall be allocated pro-rata to the risk-sharing between the financial intermediary and the managing authority or the fund of funds.</p> <p>(e) <i>Others:</i></p> <p>Interest and other gains generated by support from the ESI Funds to financial instrument shall be used in accordance with Article 43 of Regulation (EU) No 1303/2013.</p>
Pricing policy	<p>When proposing its pricing, the financial intermediary shall present a pricing policy and the methodology to ensure the full pass on of the financial advantage of the programme public contribution to the final recipients. The pricing policy and the methodology shall include the following elements:</p> <ol style="list-style-type: none"> (1) the interest rate on the financial intermediary participation is set at market basis (i.e. according to the financial intermediary own policy), (2) the overall interest rate, to be charged on loans to the final recipients included in the portfolio, must be reduced proportionally to the allocation provided by the public contribution of the programme. This reduction shall take into account the fees that the managing authority might charge on the programme contribution. (3) The GGE calculation as presented in the State aid section shall be applied on each loan included in the Portfolio. (4) The pricing policy and the methodology shall remain constant during the eligibility period.
Programme contribution to financial instrument: amount and rate (product details)	<p>The Renovation loan allocation to financial intermediaries and the minimum risk sharing rate shall be based on the <i>ex-ante</i> assessment findings justifying the support to the financial instrument (Article 37 of Regulation (EU) No 1303/2013) and taking into account the revolving approach of the instrument (if applicable).</p>
Programme contribution to financial instrument (activities)	<p>The loan portfolio funded by the Renovation loan instrument shall include newly originated loans to the final recipients, to the exclusion of the refinancing of existing loans. The eligibility criteria for inclusion in the portfolio are determined pursuant to the Union law (e.g. Regulation (EU) No 1303/2013 and Fund-specific rules), programme, national eligibility rules, and with the financial intermediary with the aim of reaching a large number of final recipients and achieving sufficient portfolio diversification and homogeneity in order to allow a reasonable estimation of the portfolio risk profile. These criteria shall reflect market conditions and practices in the relevant country or region.</p> <p>The financial intermediary shall be required to cooperate with regional or national bodies responsible for providing additional services in relation to the implementation of the renovation projects, which includes inter alia: consultancy services; verification and evaluation of project preparation, construction, technical supervision and procurement documents; evaluation of the compliance of renovation projects with Union and national law; the provision of grant support, State aid verification and registration.</p>
Managing authority's liability	<p>The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Delegated Regulation (EU) No 480/2014.</p>
Duration	<p>The lending period of the financial instrument shall be set in order to ensure that the programme contribution as referred in Article 42 of Regulation (EU) No 1303/2013 is used for loans disbursed to final recipients no later than by 31 December 2023.</p>

Lending and risk-sharing at financial intermediary level (alignment of interest)	<p>Alignment of interest between the managing authority and the financial intermediary shall be achieved through:</p> <ul style="list-style-type: none"> — Performance fees as provided by Articles 12 and 13 of Delegated Regulation (EU) No 480/2014. — The financial intermediary must contribute under local market conditions to the financing with at least 15 % of the total financing commitment for lending to final recipients (allowing determining the risk sharing rate). — The losses and recoveries shall impact pro-rata the financial intermediary and the managing authority within their respective liability.
Eligible financial intermediaries	<p>Public and private bodies established in a Member State which shall be legally authorised to provide Renovation loans to persons owning premises and enterprises operating and owning premises in the jurisdiction of the programme which contributes to the financial instrument. Such bodies are financial institutions, and as appropriate microfinance institutions or any other institution authorised to provide loans.</p>
Final recipient eligibility	<p>The final recipients shall be eligible under Union and national law, the relevant priority, and funding agreement.</p> <p>Final recipients shall be natural or legal persons or independent professionals (economic activity), as well as administrators or other legal bodies acting on behalf and for the benefit of owners, owning premises (apartment or individual household) implementing energy efficiency or renewable energies measures that are eligible under Regulation (EU) No 1303/2013 and programme support.</p> <p>Within the eligibility rules under the programme and in line with national and Union rules the following examples of types of works may be eligible:</p> <ul style="list-style-type: none"> — Technical support for the preparation of the part of the project relating to the energy efficiency or renewable energies measures. — Implementation costs of the part of the project relating to the energy efficiency or renewable energies measures. — Major repairs or replacement of heating and hot water systems: — Replacement or refitting of the heating substation or the boiler house (individual boilers) as well as hot water preparation systems. — Installation of balancing valves for stands. — Improvement of heat insulation for pipes. — Replacement of pipes and heating devices. — Installation of individual heating measurement system and thermostatic valves in apartments. — Replacement or refitting of hot water system pipes and installations. — Replacement or refitting of ventilation system. — Replacement of windows and entrance doors. — Roof insulation, including construction of a new sloping roof (excluding construction of premises in the attic). — Insulation of façade walls. — Insulation of cellar ceiling. — Installation of alternative energy sources (sun, wind, etc.) systems. — Major repairs or replacement of elevators by replacing them by more energy efficient elevators. — Replacement or repair of the common use engineering systems of the building (sewage system, electric installations, fire prevention installations, drinking water pipelines and installations ventilation system).

	<p>Regarding the final recipients, the following eligibility criteria shall apply when lending to final recipient/owners with an economic activity under a legal entity (for example independent professionals). The eligibility criteria shall be met at the date of the signature of the loan:</p> <ul style="list-style-type: none"> (a) shall be a micro, small and medium enterprise (SMEs (including individual entrepreneurs/self-employed persons) as defined in the Commission Recommendation 2003/361/EC. (b) shall not be a SME active in the sectors defined in points (a) — (f) of Article 1 of the <i>de minimis</i> Regulation. (c) shall not be part of on one or more restricted sectors ⁽²⁾. (d) shall not be a firm in difficulty as defined by State aid rules. (e) shall not be delinquent or in default in respect of any other loan or lease either granted by the financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy. <p>In addition, at the time of the investment and during the reimbursement of the loan, final recipients shall have a registered place of business in a Member State and the economic activity for which the loan was disbursed shall be located in the relevant Member State and Region/Jurisdiction of the ESIF programme.</p>
<p>Characteristics of the product for the final recipients</p>	<p>The financial intermediary shall deliver to final recipients new loans that contribute to the objective of the programme and that are co-financed by the programme under the Renovation loan, to the exclusion of the refinancing of existing loans. Their terms shall be grounded on the <i>ex-ante</i> assessment referred to in Article 37 of Regulation (EU) No 1303/2013.</p> <p>The Renovation loan maturity shall be for a period of up to 20 years.</p> <p>The maximum amount of each Renovation loan shall be fixed in relation with the <i>ex-ante</i> assessment findings justifying the programme contribution to the financial instrument and shall be fixed in the funding agreement between the managing authority, fund of funds and the financial intermediary. The maximum amount per loan per individual household shall not exceed EUR 75 000. Loans for a building administrator are the sum of individual households of the building.</p> <p>The financial instrument may require from the final recipients or the administrators of common property acting on behalf of final recipients, an 'own funds' contribution.</p> <p>The Renovation loan shall be subject to <u>annual fixed interest rate</u> and shall include regular amortisation. The interest rate on the financial intermediary participation is set at market basis. The interest rate applicable to the relevant eligible loan included in the portfolio shall be reduced by the proportion of the programme public contribution in favour of the final recipients.</p> <p>An interest rate subsidy, as under Article 37(7) of Regulation (EU) No 1303/2013, may be awarded to low income households or vulnerable households ⁽³⁾. The maximum interest rate subsidy shall correspond to the interest rate to be paid by the low income households or vulnerable households on the contribution of the financial intermediary in each loan.</p> <p><u>Certain technical support costs may be included in the financial instrument</u> in the context of Article 37(7) of Regulation (EU) No 1303/2013. Support must be provided for project preparation only (preparatory studies and assisting in the preparation of the investment up to the investment decision). These technical support costs shall only be eligible in the event that a Renovation loan is signed between the financial intermediary and the final recipients and regardless of the entity that provides these services (e.g. regardless of whether the financial intermediary provides such services or they are obtained from another entity).</p>
<p>Reporting and targeted results</p>	<p>Financial intermediaries shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope.</p> <p>The report shall include all the relevant elements for the managing authority to fulfil the conditions of Article 46 of Regulation (EU) No 1303/2013.</p>

	<p>Member States shall also fulfil their reporting obligations pursuant to the <i>de minimis</i> Regulation.</p> <p>Indicators must be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and on the expected results of the <i>ex-ante</i> assessment. They shall be measured and reported at least quarterly for the Renovation loan and aligned as a minimum with the regulation requirements. In addition to the common indicators of the priority axis of the ESIF programme (number of households with improved energy consumption classification, estimated annual decrease of GHG ...) other indicators are:</p> <p>Number and volume of the loans</p> <p>Renovated family houses (square meters)</p> <p>Renovated apartments in buildings (square meters).</p> <p>Defaults (numbers and amounts)</p> <p>Resources repaid and gains</p> <p>Number and amounts of the technical support</p> <p>Number and amounts of interest rate subsidies</p>
<p>Evaluation of the economic benefit of the programme contribution</p>	<p>The financial intermediary shall reduce the overall effective interest rate (and collateral policy where appropriate) charged to the final recipients under each eligible loan included in the portfolio reflecting the favourable funding and risk sharing conditions of the Renovation loan.</p> <p>The entire financial advantage of the programme public contribution to the instrument shall be transferred to the final recipients in the form of an interest rate reduction. The financial intermediary shall monitor and report on the GGE for final recipients as referred in the State aid section. This principle shall be reflected in the funding agreement between the managing authority or fund of funds and the financial intermediary.</p>

- (¹) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).
- (²) The following economic sectors are together referred to as the 'restricted sectors'.
- (a) illegal economic activities: any production, trade or other activity, which is illegal under the laws or regulations of the home jurisdiction for such production, trade or activity.
 - (b) Tobacco and distilled alcoholic beverages. The production of and trade in tobacco and distilled alcoholic beverages and related products.
 - (c) Production of and trade in weapons and ammunition: the financing of the production of and trade in weapons and ammunition of any kind. This restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies.
 - (d) Casinos. Casinos and equivalent enterprises.
 - (e) IT sector restrictions. Research, development or technical applications relating to electronic data programs or solutions, which
 - (i) aim specifically at: (a) supporting any activity included in the Restricted Sectors referred to a to d above; (b) internet gambling and online casinos; or (c) pornography, or which
 - (ii) are intended to enable to illegally (a) enter into electronic data networks; or (b) download electronic data.
 - (f) Life science sector restrictions. When providing support to the financing of the research, development or technical applications relating to: (i) human cloning for research or therapeutic purposes; or (ii) Genetically Modified Organisms (GMOs).
- (³) As defined in Commission Decision 2012/21/EU of 20 December 2011 as disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions.

COMMISSION IMPLEMENTING REGULATION (EU) No 965/2014**of 11 September 2014****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 11 September 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MK	59,9
	TR	64,5
	ZZ	62,2
0707 00 05	TR	124,7
	ZZ	124,7
0709 93 10	TR	123,3
	ZZ	123,3
0805 50 10	AR	187,5
	BR	100,4
	CL	194,1
	IL	182,0
	UY	126,6
	ZA	179,1
	ZZ	161,6
	ZZ	161,6
0806 10 10	BR	163,2
	EG	159,9
	MA	157,9
	TR	120,3
	ZZ	150,3
	ZZ	150,3
	ZZ	150,3
0808 10 80	BA	50,7
	BR	65,4
	CL	74,2
	NZ	120,1
	US	129,1
	ZA	101,1
	ZZ	90,1
	ZZ	90,1
0808 30 90	CN	102,4
	TR	132,3
	XS	50,3
	ZA	120,5
	ZZ	101,4
	ZZ	101,4
0809 30	TR	134,9
	ZZ	134,9
0809 40 05	MK	41,2
	ZZ	41,2

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION 2014/658/CFSP

of 8 September 2014

amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 17 March 2014, the Council adopted Decision 2014/145/CFSP ⁽¹⁾.
- (2) On 30 August 2014, the European Council expressed its concern over the ongoing and increasingly intense fighting in Eastern Ukraine and requested a new provision for the listing of every person and institution dealing with the separatist groups in the Donbass region.
- (3) In addition, the Council considers that additional natural and legal persons should be added to the list of persons, entities and bodies subject to restrictive measures as set out in the Annex to Decision 2014/145/CFSP.
- (4) In view of the continuing undermining or threatening of the territorial integrity, sovereignty and independence of Ukraine, Decision 2014/145/CFSP should be renewed for a further six months.
- (5) Decision 2014/145/CFSP should be amended accordingly.
- (6) Further action by the Union is needed in order to implement these measures,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/145/CFSP is hereby amended as follows:

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

‘1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:

- (a) natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural persons associated with them;
- (b) natural persons actively supporting, materially or financially, or benefitting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine; or
- (c) natural persons conducting transactions with the separatist groups in the Donbass region of Ukraine, as listed in the Annex.’

(2) Article 2(1) is replaced by the following:

‘1. All funds and economic resources belonging to, or owned, held or controlled by:

- (a) natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them;

⁽¹⁾ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78, 17.3.2014, p.16).

- (b) legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;
- (c) legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefitted from such a transfer;
- (d) natural or legal persons, entities or bodies actively supporting, materially or financially, or benefitting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine; or
- (e) natural or legal persons, entities or bodies conducting transactions with the separatist groups in the Donbass region of Ukraine,

as listed in the Annex, shall be frozen.’

(3) Article 6, second paragraph is replaced by the following:

‘This Decision shall apply until 15 March 2015.’

Article 2

The persons and entities listed in the Annex to this Decision shall be added to the list set out in the Annex to Decision 2014/145/CFSP.

Article 3

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Brussels, 8 September 2014.

For the Council
The President
S. GOZI

ANNEX

List of persons and entities referred to in Article 2

	Name	Identifying information	Reasons	Date of listing
1.	Alexander ZAKHARCHENKO Александр Владимирович Захарченко	Born in 1976 in Donetsk	As of 7 August, he replaced Alexander Borodai as the so-called 'Prime minister' of the so-called 'Donetsk People's Republic'. In taking on and acting in this capacity, Zakharchenko has supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
2.	Vladimir KONONOV/ aka 'Tsar' Владимир Петрович Кононов	Born on 14.10.1974 in Gorsky	As of 14 August, he replaced Igor Strelkov/Girkin, as the so-called 'Defence minister' of the so-called 'Donetsk People's Republic'. He has reportedly commanded a division of separatist fighters in Donetsk since April and has promised to solve the strategic task of repelling Ukraine's military aggression. Konokov has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
3.	Miroslav Vladimirovich RUDENKO Мирослав Владимирович Руденко	21.1.1983 in Debalcevo	Commander of the Donbass People's Militia. He has inter alia stated that they will continue their fighting in the rest of the country. Rudenko has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
4.	Gennadiy Nikolaiovych TSYPKALOV Геннадий Николаевич Цыпкалов.	Born on 6.21.1973	Replaced Marat Bashirov as so-called 'Prime Minister' of the so-called 'Lugansk People's Republic'. Previously active in the militia Army of the Southeast. Tsyplakov has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
5.	Andrey Yurevich PINCHUK Андрей Юрьевич ПИНЧУК		'State security minister' of the so-called 'Donetsk People's Republic'. Associated with Vladimir Antyufeyev, who is responsible for the separatist 'governmental' activities of the so called 'government of the Donetsk People's Republic'. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
6.	Oleg BEREZA Олег БЕРЕЗА		'Internal affairs minister' of the so-called 'Donetsk People's Republic'. Associated with Vladimir Antyufeyev, who is responsible for the separatist 'governmental' activities of the so called 'Government of the Donetsk People's Republic'. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
7.	Andrei Nikolaevich RODKIN Андрей Николаевич Родкин		Moscow Representative of the so called 'Donetsk People's Republic'. In his statements, he has inter alia talked about the militias' readiness to conduct a guerrilla war and their seizure of weapon systems from the Ukrainian armed forces. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
8.	Aleksandr KARAMAN Александр караман		'Deputy Prime Minister for Social Issues' of the so called 'Donetsk People's Republic'. Associated with Vladimir Antyufeyev, who is responsible for the separatist 'governmental' activities of the so called 'Government of the Donetsk People's Republic'. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine. Protégé of Russia's Deputy Prime Minister Dmitry Rogozin.	12.9.2014
9.	Georgiy L'vovich MURADOV Георгий Львович Мурадов	Born on 19.11.1954	So called 'Deputy Prime Minister' of Crimea and Plenipotentiary Representative of Crimea to President Putin. Muradov has played an important role in consolidating Russian institutional control over Crimea since the illegal annexation. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
10.	Mikhail Sergeyevich SHEREMET Михаил Сергеевич Шеремет	Born on 23.5.1971 in Dzhankoy	So called 'First Deputy Prime Minister' of Crimea. Sheremet played a key role in the organization and implementation of the 16 March referendum in Crimea on unification with Russia. At the time of the referendum, Sheremet reportedly commanded the pro-Moscow 'self-defense forces' in Crimea. He has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.	12.9.2014
11.	Yuri Leonidovich VOROBIOV Юрий Леонидович Воробьев	Born on 2.2.1948 in Krasnoyarsk	Deputy Speaker of the Federation Council of the Russian Federation On 1 March 2014 Vorobiov publicly supported in the Federation Council the deployment of Russian forces in Ukraine. He subsequently voted in favour of the related decree.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
12.	Vladimir Volfovich ZHIRINOVSKY Владимир Вольфович Жириновски	Born on 10.6.1964 in Eidelshstein, Kazakhstan	Member of the Council of the State Duma; leader of the LDPR party. He actively supported the use of Russian Armed Forces in Ukraine and annexation of Crimea. He has actively called for the split of Ukraine. He signed on behalf of the LDPR party he chairs an agreement with the so-called, 'Donetsk People's Republic'.	12.9.2014
13.	Vladimir Abdualiye- vich VASILYEV Владимир Абдуалиевич Васильев	Born on 11.8.1949 in Klin	Deputy Speaker of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
14.	Viktor Petrovich VODOLATSKY Виктор Петрович Водолацкий	Born on 19.8.1957 in Azov Region.	Chairman ('ataman') of the Union of the Russian and Foreign Cossack Forces, and deputy of the State Duma. He supported the annexation of Crimea and admitted that Russian Cossacks were actively engaged in the Ukrainian conflict on the side of the Moscow-backed separatists. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
15.	Leonid Ivanovich KALASHNIKOV Леонид Иванович Калашников	Born on 6.8.1960 in Stepnoy Dvorets	First deputy Chairman of the Committee on Foreign Affairs of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
16.	Vladimir Stepanovich NIKITIN Владимир Степанович Никитин	Born on 5.4.1948 in Opochka	First Deputy Chairman of the Committee on Relations with CIS Countries, Eurasian Integration and Links with Compatriots of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
17.	Oleg Vladimirovich LEBEDEV Олег Владимирович Лебедев	Born on 21.3.1964 in Orel/Rudny	First Deputy Chairman of the Committee on Relations with CIS Countries, Eurasian Integration and Links with Compatriots of the State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
18.	Ivan Ivanovich MELNIKOV Иван Иванович Мельников	Born on 7.8.1950 in Bogoroditsk	First Deputy Speaker, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
19.	Igor Vladimirovich LEBEDEV Игорь Владимирович Лебедев	Born on 27.9.1972 in Moscow	Deputy Speaker, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
20.	Nikolai Vladimirovich LEVICHEV Николай Владимирович Левичев	Born on 28.5.1953 in Pushkin	Deputy Speaker, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
21.	Svetlana Sergeevna ZHUROVA Светлана Сергеевна Журова	Born on 7.1.1972 in Pavlov-on-the-Neva	First Deputy Chairman of the Committee on Foreign Affairs, State Duma. On 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects- the republic of Crimea and the City of Federal Status Sevastopol'.	12.9.2014
22.	Aleksey Vasilevich NAUMETS Алексей Васильевич Наумец	Born on 11.2.1968	Major-general of the Russian Army. He is the commander of the 76th airborne division which has been involved in the Russian military presence on the territory of Ukraine, notably during the illegal annexation of Crimea.	12.9.2014

	Name	Identifying information	Reasons	Date of listing
23.	Sergey Viktorovich CHEMEZOV Сергей Викторович Чемезов	Born on 20.8.1952 in Cheremkhovo	<p>Sergei Chemezov is one of President Putin's known close associate, both were KGB officers posted in Dresden and he is a member of the Supreme Council of 'United Russia'. He is benefiting from his links with the Russian President by being promoted to senior positions in State-controlled firms. He chairs the Rostec conglomerate, the leading Russian state-controlled defence and industrial manufacturing corporation. Further to a decision of the Russian government, Technopromexport, a subsidiary of Rostec, is planning to build energy plants in Crimea thereby supporting its integration into the Russian Federation.</p> <p>Furthermore, Rosoboronexport, a subsidiary of Rostec, has supported the integration of Crimean defence companies into Russia's defence industry, thereby consolidating the illegal annexation of Crimea into the Russian Federation.</p>	12.9.2014
24.	Alexander Mikhailovich BABAКOV Александр Михайлович Бабаков	Born on 8.2.1963 in Chisinau	<p>State Duma Deputy, Chair of the State Duma Commission on Legislative Provisions for Development of the Military-Industrial Complex of the Russian Federation. He is a prominent member of 'United Russia' and a businessman with heavy investments in Ukraine and in Crimea.</p> <p>On the 20 March 2014 he voted in favour of the draft Federal Constitutional Law 'on the acceptance into the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new federal subjects — the Republic of Crimea and the city of federal status of Sevastopol'.</p>	12.9.2014

COUNCIL DECISION 2014/659/CFSP**of 8 September 2014****amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 31 July 2014, the Council adopted Decision 2014/512/CFSP ⁽¹⁾.
- (2) On 30 August 2014, the European Council condemned the increasing inflows of fighters and weapons from the territory of the Russian Federation into Eastern Ukraine and the aggression of Russian armed forces on Ukrainian soil.
- (3) The European Council called for preparatory work on proposals to be undertaken so that significant further steps could be taken in light of the evolution of the situation on the ground.
- (4) In view of the gravity of the situation, the Council considers it appropriate to take further restrictive measures in response to Russia's actions destabilising the situation in Ukraine.
- (5) In this context, it is appropriate to extend the prohibition in relation to certain financial instruments. Additional restrictions on access to the capital market should be imposed in relation to State-owned Russian financial institutions, certain Russian entities in the defence sector, and certain Russian entities whose main business is the sale or transportation of oil. These prohibitions do not affect the financial services not referred to in Article 1. Loans are only to be considered new loans if they are drawn after 12 September 2014.
- (6) Furthermore, the sale, supply or transfer of dual-use items to certain persons, entities or bodies in Russia should be prohibited.
- (7) In addition, the provision of services necessary for deep water oil exploration and production, arctic oil exploration and production or shale oil projects should be prohibited.
- (8) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/512/CFSP is hereby amended as follows:

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

'Article 1

1. The direct or indirect purchase or sale of, the direct or indirect provision of investment services for or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:

- (a) major credit institutions or finance development institutions established in Russia with over 50 % public ownership or control as of 1 August 2014, as listed in Annex I;

⁽¹⁾ Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13).

- (b) any legal person, entity or body established outside the Union owned for more than 50 % by an entity listed in Annex I; or
- (c) any legal person, entity or body acting on behalf, or at the direction, of an entity within the category referred to in point (b) of this paragraph or listed in Annex I,

shall be prohibited.

2. The direct or indirect purchase or sale of, the direct or indirect provision of investment services for, or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 30 days, issued after 12 September 2014 by:

- (a) entities established in Russia predominantly engaged and with major activities in the conception, production, sales or export of military equipment or services, as listed in Annex II, except entities active in the space and nuclear energy sectors;
- (b) entities established in Russia which are publicly controlled or with over 50 % public ownership which have estimated total assets of over 1 trillion Russian Roubles and whose estimated revenues originate for at least 50 % from the sale or transportation of crude oil or petroleum products as of 12 September 2014, as listed in Annex III;
- (c) any legal person, entity or body established outside the Union owned for more than 50 % by an entity referred to in points (a) and (b); or
- (d) any legal person, entity or body acting on behalf, or at the direction, of an entity within the category referred to in point (c) or listed in Annex II or III,

shall be prohibited.

3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014 except for loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the Union and Russia or for loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50 % by an entity referred to in Annex I.

(2) The following Article is inserted:

Article 3a

1. The direct or indirect sale, supply, transfer or export of dual use goods and technology as included in Annex I to Regulation (EC) No 428/2009 to any person, entity or body in Russia as listed in Annex IV to this Decision by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

- (a) to provide technical assistance, brokering services or other services related to goods and technology set out in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any person, entity or body in Russia, as listed in Annex IV;
- (b) to provide financing or financial assistance related to goods and technology referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of these goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any person, entity or body in Russia, as listed in Annex IV.

3. The prohibitions in paragraphs 1 and 2 shall be without prejudice to the execution of contracts or agreements concluded before 12 September 2014 and to the provision of assistance necessary to the maintenance and safety of existing capabilities within the EU.

4. The prohibitions in paragraphs 1 and 2 shall not apply to exports, sale, supplies or transfers of dual-use goods and technology for the aeronautics and for the space industry, or the related provision of technical or financial assistance, for non-military use and for a non-military end user, as well as for maintenance and safety of existing civil nuclear capabilities within the EU, for non-military use and for a non-military end user.

(3) The following Article is inserted:

Article 4a

1. The direct or indirect provision of associated services necessary for deep water oil exploration and production, arctic oil exploration and production or shale oil projects in Russia, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States, shall be prohibited.

2. The prohibition set out in paragraph 1 shall be without prejudice to the execution of contracts or framework agreements concluded before 12 September 2014 or ancillary contracts necessary for the execution of such contracts.

3. The prohibition set out in paragraph 1 shall not apply where the services in question are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.’.

(4) Article 7(1)(a) is replaced by the following:

‘(a) entities referred to in point (b) or (c) of Article 1(1) and in point (c) or (d) of Article 1(2), or listed in Annex I, II, III or IV.’.

(5) Article 8 is replaced by the following:

Article 8

It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in Articles 1 to 4a, including by acting as a substitute for the entities referred to in Article 1.’.

Article 2

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Brussels, 8 September 2014.

For the Council
The President
S. GOZI

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ANNEX

1. The Annex to Decision 2014/512/CFSP is renamed Annex I;
2. The following Annexes are added:

ANNEX II

LIST OF LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLE 1(2)(a)

OPK OBORONPROM
UNITED AIRCRAFT CORPORATION
URALVAGONZAVOD

ANNEX III

LIST OF LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLE 1(2)(b)

ROSNEFT
TRANSNEFT
GAZPROM NEFT

ANNEX IV

LIST OF LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLE 3a

JSC Sirius (optoelectronics for civil and military purposes)
OJSC Stankoinstrument (mechanical engineering for civil and military purposes)
OAO JSC Chemcomposite (materials for civil and military purposes)
JSC Kalashnikov (small arms)
JSC Tula Arms Plant (weapons systems)
NPK Technologii Maschinostrojenija (ammunition)
OAO Wysokototschnye Kompleksi (anti-aircraft and anti-tank systems)
OAO Almaz Antey (state-owned enterprise; arms, ammunition, research)
OAO NPO Bazalt (state-owned enterprise, production of machinery for the production of arms and ammunition).

COMMISSION IMPLEMENTING DECISION**of 11 September 2014****on the model of funding agreement for the contribution of the European Regional Development Fund and the European Agricultural Fund for Rural Development to joint uncapped guarantee and securitisation financial instruments in favour of small and medium-sized enterprises**

(2014/660/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ⁽¹⁾, and in particular the second subparagraph of Article 39(4) thereof,

Whereas:

- (1) The financial crisis has affected small and medium-sized enterprises (SMEs) in the European Union since 2009 due, *inter alia*, to the deleveraging carried out by European banks in their balance sheets to comply with the capital requirements enshrined in Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽²⁾ and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽³⁾. In order to address the resulting potential market failures for financial services and financial instruments for SMEs, the European Council has mandated the Commission to explore options for making financial instruments available to SMEs at a pan-European level.
- (2) The Commission, together with the European Investment Bank (EIB), concluded in December 2013 an *ex-ante* assessment exercise ⁽⁴⁾ showing a market failure in the provision of finance to viable SMEs in the European Union comprised in an estimated range of EUR 20 to 112 billion.
- (3) The *ex-ante* assessment stressed the importance of a fast response to the financial crisis affecting SMEs, in the context of a joint European effort to revitalize the blocked credit channel to SMEs, stimulate economic growth and counter fragmentation of the internal market regarding SMEs access to credit.
- (4) One part of this response is to open specific windows within financial instruments set up at Union level under Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 — 2020) and repealing Decision No 1639/2006/EC ⁽⁵⁾ as well as Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC ⁽⁶⁾.
- (5) Since Article 17(2) of Regulation (EU) No 1287/2013 (COSME) and Articles 20 and 21) of Regulation (EU) No 1291/2013 establishing Horizon 2020 explicitly seek to ensure complementarity and synergies with the European Structural and Investment Funds (ESI Funds), another part of the response is to allow Member States to use the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development (EAFRD) in order to provide a financial contribution to these financial instruments set up at Union level under Article 39(2) of Regulation (EU) No 1303/2013.

⁽¹⁾ OJ L 347, 20.12.2013, p. 320.⁽²⁾ OJ L 176, 27.6.2013, p. 338.⁽³⁾ OJ L 176, 27.6.2013, p. 1.⁽⁴⁾ Commission Staff Working Document SWD(2013) 517 final.⁽⁵⁾ OJ L 347, 20.12.2013, p. 33.⁽⁶⁾ OJ L 347, 20.12.2013, p. 104.

- (6) These financial instruments set up at Union level are managed indirectly by the Commission with implementation tasks entrusted to the EIB or the EIF pursuant to Article 58(1)(c)(iii) and Article 139(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002⁽¹⁾, in respect of uncapped guarantees and securitisation financial instruments in favour of SMEs. To that end, the Commission has to conclude delegation agreements with the EIB or the European Investment Fund (EIF).
- (7) Where a Member State avails itself of the possibility to provide a financial contribution from the ERDF and EAFRD resources to the financial instruments set up at Union level, Article 39(4)(c) of Regulation (EU) No 1303/2013 requires the participating Member States to conclude a funding agreement with the EIB or the EIF.
- (8) The financial instruments set up at Union level can only deliver the desired fast response if their functioning respects two conditions. Firstly, uniform conditions and equal treatment for, and among, participating Member States in the utilisation of the ERDF and EAFRD resources must be ensured. Secondly, the conditions for the contribution of ERDF and EAFRD resources pursuant to any individual funding agreement to be entered into by participating Member States and the EIB or the EIF and the conditions contained in the delegation agreements regarding other sources under COSME and Horizon 2020 must be consistent. A model of the funding agreement, available to both, the participating Member States and the EIB or the EIF, is the best way to ensure the compliance with these conditions. It is therefore necessary to lay down a model of the funding agreement.
- (9) In order to ensure an efficient deployment of concerned ERDF and EAFRD resources, the model of the funding agreement should include, inter alia, tasks and obligations of the EIB or the EIF such as remuneration, a minimum leverage to be achieved at clearly defined milestones, conditions for the creation of new debt finance to the benefit of the SMEs, provisions relating to non-eligible activities and exclusion criteria, a schedule of ERDF and EAFRD payments to the financial instruments, penalties in the event of non-performance by the concerned financial intermediaries, provisions on the selection of the financial intermediaries, provisions on monitoring, reporting, auditing and visibility of the financial instruments and conditions for termination of the agreement.
- (10) In order to allow for the prompt application of the measures provided for in this Decision, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Coordination Committee for the European Structural and Investment Funds established by Article 150(1) of Regulation (EU) No 1303/2013,

HAS ADOPTED THIS DECISION:

Article 1

The model of the funding agreement for the financial contribution of the European Regional Development Fund and the European Agricultural Fund for Rural Development to joint uncapped guarantee and securitisation financial instruments in favour of small and medium-sized enterprises, which is to be concluded between the European Investment Bank or the European Investment Fund and each participating Member State, is set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 11 September 2014.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 298, 26.10.2012, p. 1.

ANNEX

[MANAGING AUTHORITY OF MEMBER STATE PARTICIPATING IN THE SME INITIATIVE]

and

[EUROPEAN INVESTMENT FUND]/[EUROPEAN INVESTMENT BANK]

MODEL FUNDING AGREEMENT**Table of Contents**

Article 1	Definitions and Interpretation
Article 2	Purpose and Scope of this Funding Agreement
Article 3	Eligibility and exclusion criteria of the New Debt Finance
Article 4	General principles related to the implementation and management of the Dedicated Window[s]
Article 5	Objectives and Description of the Dedicated Window[s]
Article 6	Territorial Coverage
Article 7	Minimum Leverage Effect, Milestones and Penalties
Article 8	Tasks and obligations of the EIF
Article 9	Selection of Financial Intermediaries and Operational Agreements
Article 10	Governance
Article 11	MS Contribution
Article 12	EIF Contribution
Article 13	Dedicated Window[s] Account[s] and Treasury Asset Management
Article 14	Management Costs and Fees
Article 15	Accounting
Article 16	Operational and financial reporting
Article 17	Audits, Controls and Monitoring
Article 18	Evaluation
Article 19	Procurement of goods, works and services
Article 20	Visibility
Article 21	Publication of information on Financial Intermediaries and Final Recipients
Article 22	Assignment
Article 23	Liability
Article 24	Governing Law and Jurisdiction
Article 25	Effectiveness — Termination
Article 26	Notices and Communications
Article 27	Amendments and miscellaneous
Article 28	Annexes
Annex 1	Term Sheet for the Dedicated Window[s]
Annex 2	Exclusion criteria for Financial Intermediaries and Final Recipients and eligibility criteria for the EU contribution [to be provided in part under the specific Funding Agreements]
Annex 3	Payment Request [to be provided under the specific Funding Agreements]
Annex 4	Treasury Asset Management guidelines [to be provided under the specific Funding Agreements]

Annex 5 Reporting on the operational aspects of the Dedicated Window[s] [to be provided under the specific Funding Agreements]

Annex 6 Reporting on the financial aspects of the Dedicated Window[s] [to be provided under the specific Funding Agreements]

This Agreement is entered into on [•] 2014, by and between:

(1) **[Managing Authority of Member State participating in the SME Initiative]** (the 'Managing Authority') which is represented for the purposes of the signature of this Agreement by **[Name of the person]**, **[Function]**;

and

(2) The **[European Investment Fund]/[European Investment Bank]**, [15, avenue J.F. Kennedy]/[98-100 Boulevard Konrad Adenauer], [L-2968]/[L-2950] Luxembourg, Luxembourg (the 'EIF'), which is represented for the purposes of the signature of this Agreement by **[Name of the person]**, **[Function]**; collectively the 'Parties' and, individually, the 'Party', as the context may require.

WHEREAS:

- (1) Following the conclusions of the European Council of 27 and 28 June 2013, the European Investment Bank (EIB) and the European Commission carried out an *ex-ante* assessment aimed at defining the market failure for financial services and available financial instruments for SMEs currently existing at a pan-European level (the '**Ex-Ante Assessment**'), in the context of a joint European effort to revitalise the blocked credit channel to SMEs, stimulate economic growth and counter fragmentation of the internal market regarding SMEs access to credit (the '**SME Initiative**');
- (2) the Ex-Ante Assessment exercise was concluded in December 2013 and showed a market failure in the provision of finance to viable SMEs in **[Name of the Member State]** comprised in an estimated range of EUR [•] to [•] million;
- (3) on 17 December 2013, Regulation (EU) No 1303/2013 of the European Parliament and the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ⁽¹⁾ was adopted (the '**CPR**');
- (4) pursuant to Article 38(1)(a) of the CPR, managing authorities may provide a financial contribution to a financial instrument set up at Union level; pursuant to Article 39(2) of the CPR, **[Name of the Member State]** may use up to 7 % of its ERDF and EAFRD aggregate allocation to provide a financial contribution to such financial instruments managed indirectly by the European Commission with implementation tasks entrusted to the EIB group (EIB being defined under Article 2(23) of the CPR as the European Investment Bank, the European Investment Fund or any subsidiary of the EIB) (the '**EIB Group**') pursuant to point (c)(iii) of Article 58(1) and Article 139(4) of the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ⁽²⁾ (Financial Regulation), in respect of [uncapped guarantees providing capital relief to financial intermediaries for new portfolios of debt finance to eligible SMEs in accordance with Article 37(4) of the CPR] AND/OR [securitisation, as defined in point (61) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽³⁾, of [existing portfolios of debt finance to SMEs and other enterprises with less than 500 employees;] AND/OR [new portfolios of debt finance to SMEs] (Option 2); [with pooling of the MS Contribution with contributions from other Member States (Option 3)];

⁽¹⁾ OJ L 347, 20.12.2013, p. 320.

⁽²⁾ OJ L 298, 26.10.2012, p. 1.

⁽³⁾ OJ L 176, 27.6.2013, p. 1.

- (5) pursuant to Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 — 2020) and repealing Decision No 1639/2006/EC ⁽¹⁾ (the '**COSME Regulation**'), the European Commission has established financial instruments (the '**COSME Financial Instruments**') that aim to facilitate and improve access to finance for SMEs in their start-up, growth and transfer phases, complementary to the Member States' use of financial instruments for SMEs at national and regional level; the indicative contribution of the European Commission to the COSME Financial Instruments in the 2014-2016 period is envisaged to be up to EUR [•]million;
- (6) pursuant to Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC ⁽²⁾ and pursuant to the Council Decision 2013/743/EU of 3 December 2013 establishing the specific programme implementing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC ⁽³⁾ (collectively, the '**H2020 Regulation**'), the European Commission has established financial instruments (the '**H2020 Financial Instruments**') that aim to ease access to the risk financing for final recipients carrying out research and innovation projects; the indicative contribution of the European Commission to the H2020 Financial Instruments in the 2014-2016 period is envisaged to be up to EUR [•]million;
- (7) on [date] [and on [date], respectively,] the European Commission [, the EIB] and the EIF signed [a] delegation agreement[s] (the '**Delegation Agreement[s]**'), setting out, inter alia, the terms and conditions applicable to (i) the [COSME Financial Instruments] AND/OR [H2020 Financial Instruments] and in particular to the dedicated windows corresponding to different equity-based and debt-based financial products (including products proposed in the context of the SME Initiative) also open to contributions from Member States, (ii) the contribution of the European Commission to such dedicated windows of the [COSME Financial Instruments] AND/OR [H2020 Financial Instruments];
- (8) in the context of the SME Initiative, the Parties are willing to cooperate in view of the implementation and management of [a] dedicated window[s] corresponding to the MS Contribution to the [COSME Financial Instruments] [AND/OR] the [H2020 Financial Instruments] (the '**Dedicated Window[s]**'), providing [uncapped guarantees for new portfolios of debt finance to eligible SMEs in accordance with Article 37(4) of the CPR (Option 1)] [AND/OR] [securitisation, as defined in point (61) of Article 4(1) of Regulation (EU) No 575/2013 [existing portfolios of debt finance to SMEs and other enterprises with less than 500 employees;] [AND/OR] [new portfolios of debt finance to SMEs] (Option 2); [with pooling of the MS Contribution with contributions from other Member States (Option 3)];
- (9) pursuant to Article 39(4)(b) of the CPR, on [insert date] 2014, [Name of the Member State] submitted to the Commission a single dedicated national programme in relation to its participation in the Dedicated Window[s] (the '**Single Dedicated National Programme**'). On [insert date] 2014, Decision C(2014)[•] of the European Commission approved the Single Dedicated National Programme;
- (10) pursuant to Article 39 of the CPR, the conditions to participate in the SME Initiative must be set out in a Funding Agreement concluded between each participating Member State and the EIB Group;
- (11) the Dedicated Window[s] shall be implemented as a part of a compartment of the [COSME Financial Instruments] AND/OR [H2020 Financial Instruments] dedicated to [NAME OF THE MEMBER STATE] (the '**Compartment**'); the Compartment shall also avail of the EU Contribution, as well as of the EIF Contribution and of EIB's and other investors' own resources, if applicable, pursuant to the terms and conditions of the Delegation Agreement[s] and any other agreement entered into between the EIF and relevant investors, if applicable. In order to take into due consideration the magnitude and role of the MS Contribution within the [COSME Financial Instruments] AND/OR [H2020 Financial Instruments], the Parties intend to set out a specific governance of the Dedicated Window[s] including, inter alia, an *ad hoc* investors' board having an advisory role and supplementing the provisions of the Delegation Agreement[s] for matters related to the MS Contributions;

⁽¹⁾ OJ L 347, 20.12.2013, p. 33.

⁽²⁾ OJ L 347, 20.12.2012, p. 104.

⁽³⁾ OJ L 347, 20.12.2013, p. 965.

- (12) also taking into account the results of the Ex-Ante Assessment and the discussions with relevant institutions and market players in order to define the amount of public resources to allocate to the Dedicated Window[s], the Dedicated Window[s] is endowed with an indicative MS Contribution equal to [•] EUR million; the indicative EU Contribution in the 2014-2016 period is envisaged to be up to [•] EUR million;
- (13) the set-up of the Dedicated Window[s] is compliant with state aid rules under Union law; [NAME OF THE MEMBER STATE] and the EIF acknowledge that the implementation of the Dedicated Window[s] must be compliant with Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid ⁽¹⁾ (*de minimis* Regulation), or Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector ⁽²⁾, or with the relevant General Block Exemption Regulation and that, otherwise, notification to the European Commission for individual assessment is required;
- (14) the signature of this Funding Agreement on behalf of the Managing Authority has been authorised by a [Managing Authority to provide];
- (15) the signature of this Funding Agreement on behalf of the EIF has been authorised by a [EIF to provide];

the Parties have agreed as follows:

Article 1

Definitions and Interpretation

1.1. Wherever used in this Agreement, the following terms shall have the meanings opposite them:

‘Business Day’	means any working day on which the Managing Authority’s public services and the EIF are open for business in [Member State place of business] and Luxembourg;
‘Commitment Period’	means the period during which [NAME OF MEMBER STATE] may commit the MS Contribution from the [NAME OF MEMBER STATE] budget to the EIF for the purposes of the Dedicated Window[s]. The Commitment Period shall expire on 31 December 2016;
‘Compartment’	has the meaning set out in Recital 11;
‘COSME Financial Instruments’	has the meaning set out in Recital 5;
‘COSME Regulation’	has the meaning set out in Recital 5;
‘CPR’	has the meaning set out in Recital 3;
‘Dedicated Window[s]’	has the meaning set out in Recital 8;
‘Dedicated Window[s] Account[s]’	means any separate account[s] (i) opened by the EIF in its name at a commercial bank, on behalf of the Managing Authority and (ii) managed on behalf of the Managing Authority in accordance with Article 13 of this Funding Agreement;
‘Delegation Agreement[s]’	has the meaning set out in Recital 7;
‘Designated Service’	means the European Commission’s service entrusted with the indirect management of the [COSME Financial Instruments] [AND/OR] [H2020 Financial Instruments]; for the purpose of this Funding Agreement, respectively DG [ENTR AND/OR RTD] of the European Commission or the successor[s] thereto;

⁽¹⁾ OJ L 352, 24.12.2013, p. 1.

⁽²⁾ OJ L 352, 24.12.2013, p. 9.

‘EAFRD’	means the European Agricultural Fund for Rural Development;
‘EIF’	has the meaning set out in the Preamble;
‘EIF Activity’	means the obligations and tasks to be carried out by the EIF under this Funding Agreement;
‘EIF Contribution’	means the aggregate amount of financial resources committed by the EIF (including under mandates from EIB but excluding other ESIF resources and resources from the COSME Financial Instrument and the H2020 Financial Instrument) in relation to the Compartment as provided in Article 12;
‘ERDF’	means the European Regional Development Fund;
‘EU Contribution’	means the aggregate amount of any financial resources committed or paid, as the case may be, by the European Commission to the Compartment;
‘Euro Account’	means an account denominated in Euro, which is part of the Dedicated Window[s] Account[s];
‘Evaluation’	means any evaluation or assessment referred to in Article 18 to be carried out in respect of the Dedicated Window[s], with the exclusion of the evaluation provided for in Article 57(3) of the CPR;
‘Exit Policy’	means the procedure for the distribution of the liquidation proceeds of the Dedicated Window[s] following termination of this Funding Agreement, and in particular (i) the calculation of the balance of the Dedicated Window[s] Account[s] with reference to the MS Contribution after deduction of applicable Management Costs and Fees, (ii) the return of the net balance of the Dedicated Window[s] Account[s] to the Managing Authority and (iii) the closure of Dedicated Window[s] Account[s] [<i>Procedure shall be further contractually specified</i>];
‘Final Recipient’	means an SME receiving New Debt Finance under a Transaction;
‘Financial Intermediary’	means financial entities such as a bank, financial institution, fund, entity implementing a guarantee scheme, mutual guarantee organisation, micro-finance institution, leasing company or any other legal person or entity selected by the EIF in accordance with the conditions set out in this Funding Agreement, for an Operation with the objective of implementing the Dedicated Window[s]; for the avoidance of doubt, the definition of Financial Intermediary (i) includes also financial entities selected as financial sub-intermediaries by a Financial Intermediary, if applicable; and (ii) does not include counter-parties selected by the EIF for the purposes of asset management carried out by the EIF or, as regards Option 2 in case of true-sale securitisation, the beneficiary of the Guarantee Agreement;
‘Financial Regulation’	means Regulation (EU, Euratom) No 966/2012, together with its rules of application (Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union ⁽¹⁾) as they may be amended, supplemented or modified from time to time;

⁽¹⁾ OJ L 362, 31.12.2012, p. 1.

‘Force Majeure’	means any unforeseeable exceptional situation or event beyond the Parties’ control, which prevents either of them from fulfilling any of their obligations under this Funding Agreement, which was not attributable to error or negligence on their part or on the part of their subcontractors and which could not have been avoided by the exercise of appropriate and reasonable due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of <i>force majeure</i> , as well as labour disputes or strikes or financial difficulties cannot be invoked as <i>force majeure</i> ;
‘Funding Agreement’	means this Funding Agreement as may be amended, supplemented or modified from time to time;
‘Guarantee Agreement’	means the Operational Agreement and, in case of true-sale securitisation within Option 2, the guarantee agreement entered into between the EIF and a beneficiary in connection with an Operation;
‘H2020 Financial Instruments’	has the meaning set out in Recital 6;
‘H2020 Regulation’	has the meaning set out in Recital 6;
‘Implementation Period’	means the period during which the EIF may commit any part of the MS Contribution to Operations under the Dedicated Window[s]. The Implementation Period shall expire on 31 December 2016, with the exclusion of Repayments and Revenues, which may be committed until the winding-up of the Dedicated Window[s];
‘Implementation Strategy’	means the policy of the EIF concerning the allocation of Operations as set out in Article 4.6;
‘Internal Control’	means a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives: (a) effectiveness, efficiency and economy of operations; (b) reliability of reporting; (c) safeguarding of assets and information; (d) prevention, detection, correction and follow-up of fraud and irregularities; (e) adequate management of the risks relating to the legality and regularity of the financial operations, taking into account the multi-annual character of programmes as well as the nature of the payments concerned;
‘Investors’ Board’	means the steering committee of the Dedicated Window[s] set forth in Article 10;
‘Leverage Effect’	means, where relating to this Funding Agreement, the ratio between the New Debt Finance to be provided to Final Recipients under the Dedicated Window[s] and the corresponding MS Contribution or, where relating to a particular Operational Agreement, the ratio between the New Debt Finance to be provided to Final Recipients under such Operational Agreement and the corresponding MS Contribution;
‘Management Costs and Fees’	means as set out in Article 14;
‘Managing Authority’	has the meaning set out in the Preamble;

‘Milestone’	means each of the milestones under Article 39(5) of the CPR as set out in Article 7;
‘MS Contribution’	means the MS Contribution Committed or the MS Contribution Paid or both, as the case may be;
‘MS Contribution Committed’	means the aggregate amount of any commitment appropriations under the budget of the [ERDF Operational Programme] [and the EAFRD rural development programme] in respect of the Dedicated Window[s];
‘MS Contribution Paid’	means the aggregate amount of any financial resources from the [ERDF Operational Programme] [and the EAFRD rural development programme] paid by the Managing Authority in relation to the Dedicated Window[s] including Revenues and Repayments;
‘New Debt Finance’	means the new loans, leases or guarantees to Final Recipients originated by the Financial Intermediary no later than 31 December 2023 pursuant to the terms and conditions set out in the Operational Agreements;
‘Non-Euro Account’	means an account denominated in a currency rather than in Euro, which is part of the Dedicated Window[s] Account[s];
‘OLAF’	means the European Anti-Fraud Office;
‘Operation’	means the set of activities carried out [by the EIF and a Financial Intermediary] [for Option 1] AND/OR [by the EIF, a Financial Intermediary and other parties] [Option 2], as further specified in Annex 1, with the objective of implementing the Dedicated Window[s];
‘Operational Agreement’	means the agreement(s) entered into between [the EIF and a Financial Intermediary setting out terms and conditions of an Operation] [for Option 1] AND/OR [the EIF and the Financial Intermediary for the origination of New Debt Finance] [Option 2];
‘Option 1’	means as set out under Article 5(i);
‘Option 2’	means as set out under Article 5(ii);
‘Option 3’	means as set out under Article 5(ii);
‘Payment Request’	means the payment request referred to in Article 11.3;
‘Penalties’	means contractual penalties set out in Article 7 which are payable by a Financial Intermediary pursuant to an Operational Agreement and subject to applicable law;
‘Repayments’	means amounts resulting from guarantees released, and amounts recovered under the Dedicated Window[s];
‘Revenues’	means any revenues, including guarantee fees and interest on amounts on fiduciary accounts, paid to the Dedicated Window[s] Account[s] under the Dedicated Window[s], including any such amounts arising in the context of the Exit Policy;
‘Secretariat’	means the secretariat to the Investors’ Board set out in Article 10;
‘Single Dedicated National Programme’	means as set out in Recital 9;

‘SME’	means a micro (including individual entrepreneurs/self-employed persons), small and medium enterprise as defined in the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁾ ;
‘SME Initiative’	has the meaning set out in Recital 1;
‘Termination Event’	means any of the events referred to in Article 25.5;
‘Terms of Reference’	means the open call for expression of interest prepared by the EIF;
‘Transaction’	means the loan, lease or guarantee transaction giving rise to New Debt Finance, entered into between a Financial Intermediary (or a sub-level Financial Intermediary) and a Final Recipient;
‘Treasury Asset Management’	means the treasury management of the MS Contribution Paid, as further set out in Article 13;
‘Union Emblem’	means the logo of the European Union representing twelve yellow stars on a blue background.

1.2. In this Agreement, unless the context otherwise requires,

- (a) headings are for convenience only and do not affect the construction or the interpretation of any provisions of this Funding Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to an article, section, part or schedule is a reference to that article, section, part of, or schedule to this Funding Agreement.

Article 2

Purpose and Scope of this Funding Agreement

- 2.1. This Funding Agreement sets out the terms and conditions for the use of the MS Contribution in connection with the implementation of the Dedicated Window[s] by the EIF.
- 2.2. The indicative amount of MS Contribution to the Dedicated Window[s] shall be an amount up to EUR [●] million.
- 2.3. The Managing Authority hereby mandates the EIF with the implementation and the management of the Dedicated Window[s] in relation to the MS Contribution, in the EIF's name and on behalf and at the risk of the Managing Authority, in compliance with the provisions of the CPR and of this Funding Agreement.

Article 3

Eligibility and exclusion criteria of the New Debt Finance

- 3.1. The EIF shall commit the MS Contribution to Operations for the creation of New Debt Finance under the Dedicated Window[s] supporting SMEs and targeting:
 - the establishment of new enterprises,
 - early stage capital (i.e. seed capital and start-up capital),
 - expansion capital,
 - capital for the strengthening of the general activities of an enterprise, or
 - the realisation of new projects, penetration of new markets or new developments by existing enterprises,in each case, without prejudice to applicable Union state aid rules, and in accordance with the specific rules of the ERDF and EAFRD, as applicable.

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

- 3.2. Within the criteria set out in Article 3.1, the Dedicated Window[s]:
- (i) may include investments in both tangible and intangible assets as well as working capital within the limits of applicable Union state aid rules and with a view to stimulating the private sector as a supplier of funding to enterprises. The investments may also include the costs of transfer of proprietary rights in enterprises provided that such transfers take place between independent investors;
 - (ii) shall support investments which are expected to be financially viable and investments that are not physically completed or fully implemented at the date of inclusion in the New Debt Finance; and
 - (iii) shall support Final Recipients that are deemed potentially economically viable at the time of the support of the MS Contribution in accordance with the objectives set out in the CPR, the [COSME Regulation] OR the [H2020 Regulation] as may be further developed in this Funding Agreement.
- [3.3] [The Dedicated Window[s] may only support working capital that is ancillary to, and linked to a new investment in the agriculture or forestry sector for an amount which shall not exceed 30 % of the total amount of the Transaction and upon due justification acceptable to the Financial Intermediary. For non-agricultural activities, no working capital may be supported.] **[This paragraph only applies in case of Dedicated Window[s] supported under the EAFRD]**
- 3.4. Financial support under the Dedicated Window[s] shall be granted taking into account the exclusion criteria applicable to the EU Contribution under [the COSME Financial Instruments] AND/OR [the H2020 Financial instruments] and set out for information in Annex 2.
- 3.5. The Parties acknowledge that a portion of the New Debt Finance created pursuant to Article 3.1 corresponding to a multiple of the EU Contribution under [the COSME Financial Instruments] AND/OR [the H2020 Financial instruments] is subject to provisions set out in the Delegation Agreement(s) governing the EU Contribution.

Article 4

General principles related to the implementation and management of the Dedicated Window[s]

- 4.1. The EIF shall implement, manage, monitor and wind-up the Dedicated Window[s] in accordance with the Funding Agreement, applicable terms of the CPR, the Delegation Agreement(s), the Financial Regulation and other relevant provisions of Union law, in particular state aid rules. In so doing, the EIF shall apply its own rules, policies and procedures as amended, modified or supplemented from time to time, good industry practices and appropriate monitoring, control and audit measures as further set out herein.
- 4.2. The EIF shall be responsible for the hiring and employment of staff and/or consultants which it may assign to the implementation of the Dedicated Window[s] and which shall be under the responsibility of the EIF for the purposes of this Funding Agreement and be regulated in all aspects by and be subject to the rules, policies and procedures applied by the EIF in relation to its staff and/or consultants.
- 4.3. The EIF shall perform its obligations relating to the Dedicated Window[s] as specifically set forth in this Funding Agreement with the requisite professional degree of care, efficiency, transparency and diligence, as it applies to the discharge of its own affairs.
- 4.4. A Party faced with Force Majeure shall notify the other Party without delay, stating the nature, likely duration and foreseeable effects. The Parties shall take the necessary measures to limit or minimise costs and possible damages due to Force Majeure.
- 4.5. The management and implementation of the Dedicated Window[s] shall be based on the principle of alignment of interests between the Parties. As far as the principle of alignment of interests is concerned, the EIF shall comply with the principles set out in Article 12 and Annex 1.
- 4.6. The allocation of Operations shall be based on the criteria set out in the Implementation Strategy. The EIF shall provide to the Managing Authority its Implementation Strategy within [3] months from the signature of this Funding Agreement and shall notify the Managing Authority without undue delay of any change to the Implementation Strategy.
- 4.7. The MS Contribution shall not generate undue advantages, in particular in the form of undue dividends or profits to third parties other than in accordance with this Funding Agreement.

- 4.8. Financial support under the Dedicated Window[s] shall not be granted to any Financial Intermediary or Final Recipient that are in one of the situations referred to in Article 9.4 [such conditions shall be contractually further specified].

Article 5

Objectives and Description of the Dedicated Window[s]

As further specified in Annex 1, the Dedicated Window[s] shall cover the risk of:

- (i) portfolios of New Debt Finance through uncapped guarantees providing capital relief subject to relevant rules on capital requirements covering up to 80 % of each and every loan in the relevant portfolios (**Option 1**) OR
- (ii) [existing portfolios of loans, leasing or guarantees to SMEs and other enterprises with less than 500 employees] OR [portfolios of New Debt Finance] through securitisation, as defined in point (61) of Article 4(1) of Regulation (EU) No 575/2013 (**Option 2**) [with pooling of the MS Contribution with contributions from other Member States (**Option 3**)].

Article 6

Territorial Coverage

The MS Contribution shall be utilised for the purpose of giving rise to New Debt Finance solely to Final Recipients registered and operating within the territory [of [NAME OF MEMBER STATE]], according to the following breakdown: [•] [such conditions shall be contractually further specified]].

Article 7

Minimum Leverage Effect, Milestones and Penalties

- 7.1. The EIF shall ensure that provisions are included in each Operational Agreement requiring that the Financial Intermediaries achieve the following Milestones:
- (i) at the end of the period comprising [•] months after the signature of the Operational Agreement, the Leverage Effect shall be no lower than [•];
 - (ii) as of the earlier between the date of termination of this Agreement and 31 December 2023, the Leverage Effect shall be no lower than [•].
- 7.2. The EIF shall, as part of the report referred to in Article 16.1, notify in writing the Managing Authority of the achievement of a Milestone prior to, or after, the due dates referred to in Article 7.1 and provide the Managing Authority with information relating to the volume of New Debt Finance as further provided herein.
- 7.3. Each Operational Agreement shall provide for Penalties on the Financial Intermediaries for the ultimate benefit of the Managing Authority, indicatively as follows:
- (a) in case the amount of New Debt Finance originated by the Financial Intermediary under the relevant Operational Agreements is lower than [A] % of the amount of the New Debt Finance agreed therein at the relevant Milestone, a Penalty equal to [X] % of difference between the New Debt Finance agreed and the New Debt Finance originated; or
 - (b) in case the amount of New Debt Finance originated by the Financial Intermediary under the relevant Operational Agreements is higher than [A] % but lower than [B] % of the amount of the New Debt Finance agreed therein at the relevant Milestones, a Penalty equal to [Y] % of difference between the New Debt Finance agreed and the New Debt Finance originated.

In addition, for a Dedicated Window(s) under Option 2, in case the Financial Intermediary does not achieve a Leverage Effect equal at least to 1, a Penalty equal to the difference between the relevant MS Contribution Paid allocated to the relevant Operation and the related amount of New Debt Finance originated;

[conditions on the determination and modalities of implementation of Penalties at the level of each Operation shall be contractually specified]

- 7.4. The Managing Authority acknowledges that the Guarantee Agreements and the relevant Operations shall not be affected by a failure by the relevant Financial Intermediary to reach leverage requirements set out pursuant to this Funding Agreement or the relevant Operational Agreement, as the case may be.
- 7.5. The Penalty shall be a one-off amount in relation to each Operation, calculated by the EIF at each Milestone, with the latest calculated amounts referred to in Article 7.3 being payable by the Financial Intermediary to EIF under each Operational Agreement on the earlier of (x) the termination of the Operational Agreement for reasons attributable to the Financial Intermediary or (y) the end of the relevant inclusion period for the origination of New Debt Finance. Such amount shall be paid by the EIF to the Managing Authority upon payment by the relevant Financial Intermediary thereof. *[Further conditions may be contractually specified if necessary]*
- 7.6. [For the avoidance of doubt, the Penalties shall apply without prejudice to other applicable penalties or fees under the [COSME Financial Instruments] OR [H2020 Financial Instruments] Delegation Agreements regarding the respective EU Contribution].

Article 8

Tasks and obligations of the EIF

- 8.1. Following the signature of this Funding Agreement and for the purposes of the implementation of the Operations, the EIF shall endeavour to enter into the first Operational Agreement no later than [X] months after signature of this Funding Agreement.
- 8.2. Without prejudice to other provisions of this Funding Agreement, the EIF shall:
- (a) implement each Dedicated Window under an effective and efficient Internal Control system for the duration of this Funding Agreement;
 - (b) transpose the applicable terms and conditions of this Funding Agreement in the Operational Agreements with Financial Intermediaries and in particular the provisions on the Leverage Effect referred to in Article 7;
 - (c) take all decisions to commit funds for Operations and to decommit funds, when appropriate, and notify the Investors' Board accordingly;
 - (d) negotiate and enter into any and all legal instruments as the EIF in its professional opinion deems appropriate for the implementation, management and, as the case may be, the termination of the Operations;
 - (e) require the Financial Intermediaries to repay any amount unduly paid to them if any, under the Operational Agreements;
 - (f) require that Financial Intermediaries undertake under each Operational Agreement to take appropriate steps in order to recover any amount due from the relevant Final Recipients under the related Transactions;
 - (g) where appropriate and subject to reimbursement of relevant litigation costs under Article 14.9, manage litigation (including, without limitation, commence, conduct, settle and defend) in connection with any Operation;
 - (h) have the Dedicated Window[s] Account[s] opened, maintained and closed, debit and credit the Dedicated Window[s] Account[s] in accordance with the provisions of this Funding Agreement, make all payments provided for in this Funding Agreement and, otherwise, undertake all transactions contemplated by this Funding Agreement in connection with the Dedicated Window[s] Account[s];
 - (i) keep separate accounting ledgers and proper and accurate bookkeeping pertaining to the use of the MS Contribution;
 - (j) take the necessary measures with a view to ensuring protection of personal data in the possession of EIF as required under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾, and subsequent amending acts;
 - (k) ensure that contractual requirements are included in the Operational Agreements on the passing-on to Final Recipients of the interest rate reduction agreed by the Financial Intermediaries and monitor their implementation;
 - (l) take such other action as it may deem necessary for the proper implementation and management of the Dedicated Window[s] within the limits set out in this Funding Agreement.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

- 8.3. The EIF undertakes to perform all its obligations and tasks under this Funding Agreement with the requisite degree of professional care and in particular:
- (a) to apply professional standards and practices not less favourable than those used for its own activities, taking into account the terms of this Funding Agreement;
 - (b) to allocate adequate resources to allow for proper implementation and management of the Dedicated Window[s];
 - (c) to promote the Dedicated Window[s] and assist the Managing Authority in achieving overall visibility of the Union support down the implementation chain to the Final Recipients, as further specified in this Funding Agreement;
 - (d) not to create any charges, liens, pledges or other encumbrances over any funds held on the Dedicated Window[s] Account[s] (other than as implied by law or customary banking practice);
 - (e) to carry out the Treasury Asset Management of any balance on the Dedicated Window[s] Account[s] as set out in Article 13 of this Funding Agreement.
- 8.4. [For the avoidance of doubt, the EIF tasks and obligations under this Funding Agreement shall apply without prejudice to other relevant obligations of EIF under the [COSME] OR [H2020] Delegation Agreement(s)].

Article 9

Selection of Financial Intermediaries and Operational Agreements

- 9.1. The EIF, under its responsibility, shall select one or more Financial Intermediaries to implement the Dedicated Window[s] in accordance with the relevant terms of the [COSME] AND/OR [H2020] Delegation Agreement(s) as applicable. *[Further conditions may be contractually specified if necessary]*
- 9.2. The Financial Intermediaries with whom EIF purports to enter into Operational Agreements, shall be selected on the basis of EIF's policies and procedures with open, transparent, proportionate and non-discriminatory and objective selection procedures, avoiding conflicts of interests, with due account of the nature of the Dedicated Window[s] and the experience and financial capacity of the Financial Intermediary. The selection of such Financial Intermediaries shall be made on a continuous basis and shall be based on a scoring system to prioritise Financial Intermediaries according to specific criteria.
- 9.3. The Operational Agreements concluded by the EIF with Financial Intermediaries shall reflect all applicable obligations of the EIF under this Funding Agreement. In particular, such Operational Agreements shall contain provisions concerning the liability of Financial Intermediaries with regard to Penalties.
- 9.4. The Operational Agreements shall require that for the purpose of the implementation of the Dedicated Window[s], the selected Financial Intermediaries in order to:
- (a) fully cooperate in the protection of the Union's financial interests;
 - (b) provide for the right of the Managing Authority to comprehensively exercise its competences, shall:
 - (c) provide OLAF with all the facilities and the information and documentation on Operations concerned to comprehensively exercise its competences allowing it to carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 ⁽¹⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽²⁾ and Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽³⁾, as may be amended, supplemented or modified from time to time, in order to protect the financial interests of the Union, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with any financing operation subject to the Dedicated Window[s];

⁽¹⁾ OJ L 248, 18.9.2013, p. 1.

⁽²⁾ OJ L 292, 15.11.1996, p. 2.

⁽³⁾ OJ L 312, 23.12.1995, p. 1.

- (d) maintain and be able to produce all the documentation related to the implementation of the Dedicated Window[s] for a period of seven ([7]) years following the end of the Implementation Period or termination of the Operational Agreement or the closure of Operations, whichever period is the longest;
- (e) grant access to the European Court of Auditors to all facilities and provide it with all the information which it considers necessary for the performance of its tasks, pursuant to Article 161 of the Financial Regulation;
- (f) comply with relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and the fight against tax fraud;
- (g) transpose the relevant conditions defined in this Article 9.4 and Article 9.5, with respect to any other intermediaries and final recipients, into their agreements with them, save that with respect to Article 9.5, Financial Intermediaries and Final Recipients shall give representations that they are not in an exclusion situation as set out in Annex 2;
- (h) undertake not to charge any fee to the EIF in relation to the implementation of Operations;
- (i) calculate the gross grant equivalent within the meaning of Article 4(2) of the *de minimis* Regulation for each Transaction according to the formula set out in Annex 1, and report the calculation to the EIF; and
- (j) fully pass on to the Final Recipients the entire portion of state aid of the financial benefit arising from the MS Contribution as further specified in Annex 1.

[Further conditions shall be contractually specified]

9.5. Financial Intermediaries that are in one of the situations set out in Annex 2 shall not be selected.

9.6. The EIF shall, prior to the signature of an Operational Agreement, inform in writing the Managing Authority of the main elements of each Operation as further specified in the Funding Agreement. [Further conditions shall be contractually specified]. The EIF shall, without undue delay, notify in writing the Managing Authority of the signature of an Operational Agreement.

9.7. The EIF shall inform in writing the Managing Authority without undue delay of the partial cancellation, material amendment or early termination of an Operational Agreement and the reasons for such situation, as further provided in this Funding Agreement. [Further conditions shall be contractually specified]

Article 10

Governance

10.1. The implementation of the Dedicated Window[s] by the EIF shall be supervised by an investors' board (the **Investors' Board**). The Investors' Board consists of [4] duly empowered members appointed by, and representing the Managing Authority, [1] member appointed by the EIF, [1] observer appointed by the EIB and [2] observers appointed by the European Commission.

10.2. The Investors' Board shall:

- (a) approve the Terms of Reference and where necessary of any amendments or revisions thereof and review calls for proposals submitted by the EIF before their publication;
- (b) review the progress in the implementation of the Dedicated Window[s], including achievement of Milestones and pipeline for new Operations;
- (c) review and issue opinions on strategic and policy issues relating to the Dedicated Window[s];
- (d) give guidance on questions of interpretation of eligibility criteria set out in Articles 3.1 to 3.4;
- (e) review the annual reports of the Dedicated Window[s] referred to in Article 16;
- (f) review terms of reference for Evaluations and review Evaluation reports, if any, of the Dedicated Window[s];
- (g) review proposed adjustments of the Dedicated Window[s] following Evaluation reports referred to in Article 18;
- (h) propose amendments to this Funding Agreement, if appropriate;
- (i) [other tasks]. [Further conditions may be contractually specified if necessary]

- 10.3. The Investors' Board shall act by consensus and in no circumstance shall undermine any decision taken on the implementation of the overall strategy of the [COSME Financial Instruments] [AND/OR] [H2020 Financial Instruments] by the relevant steering committee foreseen in the respective Delegation Agreement[s].
- 10.4. The Investors' Board shall elect its Chairperson. The Chairperson shall be a representative of the Managing Authority.
- The Investors' Board shall convene at the request of any of its members, but shall meet at least [●] a year. Meetings of the Investors' Board shall be organised by its Secretariat.
- 10.5. The Investors' Board shall adopt its rules of procedure upon a proposal of the Secretariat.
- 10.6. Attendance to the meetings of the Investors' Board shall not be remunerated. The entity that has nominated the member shall bear all costs incurred by the member in relation to travelling to and attending any meetings of the Investors' Board.
- 10.7. The EIF shall provide the Secretariat in accordance with this Funding Agreement.

The Secretariat shall carry out, inter alia, the following tasks:

- (a) organisation of Investors' Board meetings, including drawing up and distribution of Investors' Board documents, agenda and minutes;
- (b) any other tasks [as defined in this Funding Agreement] or by the Investors' Board.
- (c) communications related to the activities of the Investors' Board shall be channelled through the Secretariat.

Article 11

MS Contribution

- 11.1. The MS Contribution shall be used exclusively in respect of the Dedicated Window[s] and any Operation relating thereto.
- 11.2. The EIF shall provide the Managing Authority no later than [X] of each year with (i) the pipeline of Operations envisaged to be signed in the current year and the proposed amount of MS Contribution to be paid for the current year, (ii) the schedule of payments of the proposed amount of MS Contribution to be paid each year until the end of the Commitment Period, including applicable management fees (iii) any changes deemed necessary for the notified MS Contribution to be committed in the current year.
- The EIF shall provide the Managing Authority by [X] of each year with revised figures regarding the subparagraph above, if necessary.
- 11.3. Following due diligence of the Financial Intermediaries which are envisaged to be selected pursuant to Article 9, the EIF shall send at any time it deems it necessary a payment request to the Managing Authority, in the form of Annex 3 (the '**Payment Request**'). The Payment Request shall include (i) the proposed amount of MS Contribution to cover commitments under Guarantee Agreements expected to be signed within the three months following the date of the Payment Request and (ii) a schedule of payments of MS Contribution to be paid each year until the end of the Commitment Period in relation to the relevant Operations.
- 11.4. A Payment Request may include a proposed amount of MS Contribution of 100 % of the amounts necessary to cover commitments under a Guarantee Agreement.
- 11.5. Upon receipt of a Payment Request and subject to budget availability, the Managing Authority shall deposit without unreasonable delay and in any event before the EIF signs any Guarantee Agreement into the Dedicated Window[s] Account[s] an MS Contribution equal to the amount of MS Contribution specified in the Payment Request and shall inform the EIF thereof.
- 11.6. The Managing Authority may at any time suspend the payment of the MS Contribution by notifying the EIF that its Payment Request cannot be met because:
- (a) it does not comply in any material respect with the provisions of this Funding Agreement; or
 - (b) there is serious doubt about the acceptability of the envisaged underlying expenditure; or

- (c) information comes to the notice of the Managing Authority indicating a significant deficiency in the functioning of the Internal Control system or that the expenditure certified by the EIF is linked to a serious irregularity and has not been corrected. In this case, the Managing Authority may suspend the payment only if it is necessary to prevent significant damage to its financial interests vis-à-vis the budget of the European Union.

Any such suspension shall be duly substantiated by the Managing Authority and shall not be retroactive. The EIF shall be notified as soon as possible of any such suspension, together with the reasons thereof.

Suspension shall take effect on the date when the Managing Authority notifies the EIF thereof. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further checks, including on-the-spot checks, are carried out.

If the suspension exceeds [two] months, the EIF may request the Managing Authority to review whether the suspension is to be continued.

Article 12

EIF Contribution

The EIF shall contribute the EIF Contribution to the Compartment, in line with the terms defined in Annex 1.

Article 13

Dedicated Window[s] Account[s] and Treasury Asset Management

- 13.1. The Treasury Asset Management of the Dedicated Window[s] Account[s] shall be carried out by the EIF or any other entity designated by it upon approval by the Investors Board, in accordance with the Treasury Asset Management guidelines set out in Annex 4.
- 13.2. For each Dedicated Window, the EIF shall open and maintain a Dedicated Window[s] Account [in relation to the resources contributed from the ERDF Operational Programme and a Dedicated Window[s] Account in relation to the resources contributed from the EAFRD rural development programme] and in accordance with the EIF internal policies and procedures.
- 13.3. The MS Contribution to the Dedicated Window[s] shall be paid to the Dedicated Window[s] Account[s] in accordance with Article 11 of this Agreement.
- 13.4. The Dedicated Window[s] Account[s] must at all times and in all respects be used, committed or otherwise disposed of or managed in accounting terms separately from other funds or accounts of EIF. All transactions must bear value date.
- 13.5. The Dedicated Window[s] Account[s] shall be used exclusively in connection with transactions or Operations in accordance with this Funding Agreement.
- 13.6. The treasury assets shall be managed in accordance with EIF policies and procedures, the principle of sound financial management and in accordance with the principles laid down in Annex 4. These assets will be invested at the risk of the Managing Authority (including with respect to negative interest and asset management losses) according to a pre-agreed risk profile and investment strategy and, where applicable, asset management guidelines in the form set out in Annex 4.
- 13.7. The EIF shall charge a fee to the Managing Authority in accordance with Article 14, in consideration of the Treasury Asset Management carried out by the EIF or on its behalf.
- 13.8. For the purpose of operating the Dedicated Window[s] Account[s], the EIF shall open and maintain a Euro Account and, if applicable, a Non-Euro Account for Operations denominated in a currency other than the Euro.
- 13.9. The Dedicated Window[s] Account[s] shall be credited with:
- (a) The MS Contribution Paid;
 - (b) Repayments;
 - (c) Revenues.

- 13.10. The Dedicated Window[s] Account[s] shall be debited with:
- (a) Amounts required in respect of Operations;
 - (b) Amounts due to the EIF under Article 14;
 - (c) Amounts repaid to the Managing Authority within the Exit Policy;
 - (d) Amounts required for the Treasury Asset Management.
- 13.11. The transfer referred to in Article 13.10(c) shall be made to the following bank account of the Managing Authority:
- [Bank] name: [•]
- [Bank] address: [•]
- BIC: [•]
- IBAN: [•]
- Beneficiary name: [•]
- Beneficiary address: [•]
- Beneficiary BIC: [•]
- Reference: Return of amounts concerning the Exit Policy of [insert acronym of the Dedicated Window[s] and possible other reference].
- 13.12. In view of the termination of this Funding Agreement as set out in Article 25, the EIF shall close the Dedicated Window[s] Account[s] and notify without undue delay the Managing Authority of such closure.
- 13.13. The EIF shall use Revenues and Repayments within the purposes of the Dedicated Window[s], including the payment of the Management Costs and Fees and shall maintain records of the use of Revenues and Repayments.
- 13.14. [If appropriate, and in any case after the end of the Commitment Period, and no later than [X] of each year, the EIF shall notify the Managing Authority of the amount of the MS Contribution Committed and not paid to the Dedicated Window[s] Account[s] that is no longer required for the purposes of this Funding Agreement or any Guarantee Agreement, as further provided herein [Further conditions shall be contractually specified].]
- 13.15. [After the end of the Commitment Period and in case of no remaining MS Contribution to be paid, the EIF shall, on an annual basis and no later than [X] of each year, notify the Managing Authority of the amounts no longer required in relation to the Dedicated Window[s] or any Guarantee Agreement. As a consequence, the Managing Authority may issue a debit note to the EIF to recover the corresponding amount back to the Managing Authority budget.]

Article 14

Management Costs and Fees

- 14.1. The Managing Authority shall remunerate the EIF for the EIF Activity through fees comprising (i) an administrative fee, (ii) an incentive fee, (iii) a Treasury Asset Management fee and (iv) a reserve fee to cover unforeseen expenditures (collectively, the **Management Costs and Fees**), as further specified in this Article.
- 14.2. The Management Costs and Fees shall be debited by the EIF from the Dedicated Window[s] Account[s] upon invoicing to, and review by, [to be contractually further specified] the Managing Authority and shall constitute the full compensation for the EIF for the EIF Activity. [Further conditions may be contractually specified if necessary]
- 14.3. The aggregate of the administrative fee and of the incentive fee shall in no case exceed 6 % of the MS Contribution Committed, except in duly justified circumstances. Subject to Articles 14.6 and 14.7, the incentive fee shall not be lower than one third of the aggregate of the administrative fee and the incentive fee.

In addition to the administrative and incentive fees, the Treasury Asset Management fee shall not exceed [1] % [or otherwise specified in the individual funding agreements] of the MS Contribution Committed. Furthermore, the reserve fee shall not exceed [0,5] % [or otherwise specified in the individual funding agreements] of the MS Contribution Committed.

- 14.4. The administrative fee shall constitute the entire compensation for administrative expenses incurred by the EIF in relation to the Dedicated Window[s], including, but not limited to: market research, marketing, product development, awareness-raising activities, negotiation, monitoring, adaptations to IT systems, legal costs, travel expenses, tax advice, bank charges, sub-contracting costs, accounting and reporting, monitoring and controls, the Secretariat, Evaluations (if any), internal and external audit, visibility and publicity. It shall take into account costs charged to Financial Intermediaries. [Further conditions may be contractually specified if necessary]
- 14.5. Subject to the ceilings set out in Article 14.3, the administrative fee shall be paid to the EIF in the following way:
 - (1) The first part of the administrative fee shall be linked to the establishment of the Dedicated Window[s] and shall be equal to [2] % of the MS Contribution Paid. This amount shall be paid to EIF at the signature of the first Operational Agreement. [such conditions shall be contractually further specified]
 - (2) The remaining part of the administrative fee shall be linked to the implementation, management, monitoring and winding down of the Dedicated Window[s] and shall be paid annually in arrears [Further conditions may be contractually specified if necessary].
- 14.6. The incentive fee shall reward the EIF for the achievement of financial and policy-related performance of the Dedicated Window[s].
- 14.7. Subject to the ceiling set out in Article 14.3, the incentive fee shall be paid to the EIF on the basis of achievement of performance indicators, notably the Leverage Effect achieved in accordance with the Milestones set out in Article 7. [Such conditions shall be contractually further specified]. The incentive fee shall be paid semi-annually in arrears.
- 14.8. The Treasury Asset Management fee shall be utilised for treasury management activities.
- 14.9. The reserve fee shall be utilised to cover unforeseen expenditures, e.g. litigation costs. Payment for unforeseen expenditures shall be subject to the prior approval by the Managing Authority. [Further conditions shall be contractually specified].
- 14.10. The Management Costs and Fees shall be covered in the first instance by Revenues and Repayments. If such Revenues and Repayments are insufficient, the shortfall shall be covered by the MS Contribution Paid in accordance with the rules set out in this Article. Notwithstanding the foregoing, the Managing Authority shall remunerate the EIF for the EIF Activity performed after 31 December 2023 through fees separate from the Management Costs and Fees further specified in this Funding Agreement. [Further conditions shall be contractually specified]

Article 15

Accounting

- 15.1. The EIF shall keep separate Dedicated Window[s] Account[s] for the activities related to each Financial Instrument in accordance with the rules and procedures of the EIF.
- 15.2. Financial transaction and financial statements with respect to a Dedicated Window shall be established in accordance with:
 - (a) the rules and procedures of the EIF as applicable to such Dedicated Window;
 - and
 - (b) the accounting rules of the Union set by the Accounting Officer of the European Commission on the basis of the standards set by the Board for International Public Sector Accounting Standards (IPSAS), as may be amended from time to time and communicated in advance by the European Commission to the EIF pursuant to the terms of the Delegation Agreement(s) [Further conditions may be contractually specified if necessary].
- 15.3. The EIF shall keep financial and accounting documents concerning the MS Contribution Paid for a term of seven (7) years following the end of the Implementation Period or termination of this Funding Agreement or the closure of Operations under a Financial Instrument, whichever period is the longest.
- 15.4. The EIF shall submit to the Managing Authority the audited financial statements of a Dedicated Window annually.

Article 16

Operational and financial reporting

- 16.1. The EIF shall report to the Managing Authority in a frequency to be agreed [*Further conditions shall be contractually specified*], the operational aspects of the Dedicated Window[s] in accordance with Annex 5, and namely:
- (a) identification of the Single Dedicated National Programme and of the priority or measure from which MS Contribution is provided;
 - (b) description of the Dedicated Window[s] and implementation arrangements;
 - (c) identification of the Financial Intermediaries;
 - (d) total amount of MS Contribution Paid by priority or measure under the Single Dedicated National Programme;
 - (e) total amount of the New Debt Finance originated in the relevant quarter and to date;
 - (f) total amount of Management Costs and Fees;
 - (g) the performance of the Dedicated Window[s] including progress in their set-up and in selection of Financial Intermediaries;
 - (h) total amount of Repayments and Revenues accrued;
 - (i) progress in achieving the Leverage Effect;
 - (j) contribution of the Dedicated Window[s] to the achievement of the indicators of the priority or measure concerned within the Single Dedicated National Programme;
 - (k) number of Final Recipients (total and by Operation);
 - (l) gross grant equivalent for each Transaction.

[*Further conditions shall be contractually specified*]

- 16.2. The EIF shall report to the Managing Authority in the frequency referred to in Article 16.1 on the financial aspects of the Dedicated Window[s] in accordance with Annex 6. [*Further conditions shall be contractually specified*]
- 16.3. No later than [•] of each year, the EIF shall provide the Managing Authority with an annual report compiling all data gathered on any operational and financial aspects of the Dedicated Window[s] since its establishment. This annual report will be disclosed for review to the Investors' Board without undue delay. [*Further conditions shall be contractually specified*].

The EIF shall communicate to the Managing Authority regular control reports from the external auditors designated in this Funding Agreement in the form of a management letter. [*Further conditions shall be contractually specified*]

In addition, if necessary the Parties may discuss and agree on additional reporting measures relating to the Operations. [*Further conditions may be contractually specified*]

- 16.4. The relevant reporting requirements referred to in Articles 16.1, and 16.2 shall be based on information from time to time obtained by EIF under relevant reporting obligations included in the Operational Agreements between the EIF and the Financial Intermediaries implementing the Dedicated Window[s]. The Operational Agreement shall require the Financial Intermediaries to provide such information to the EIF. [*Further conditions shall be contractually specified*]
- 16.5. Reports to be submitted to the Managing Authority shall be expressed in Euro. These reports may be drawn from financial statements denominated in other currencies as per the EIF's requirements. Where necessary, amounts shall be converted into Euro. Except where provided otherwise in this Funding Agreement, amounts denominated in a currency other than Euro and reported by one Party to the other in Euro shall be converted into Euro at the exchange rate prevailing at the relevant reporting date, as fixed by the European Central Bank.

Article 17

Audits, Controls and Monitoring

- 17.1. In line with the relevant Union law, the Court of Auditors and the European Commission shall have the power of audit of the implementation of the Dedicated Window[s].
- 17.2. The EIF shall carry out controls on the implementation of the Dedicated Window[s] in accordance with its rules, policies and procedures and this Funding Agreement, including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the Dedicated Window[s] are effectively and correctly implemented, and in order, inter alia, to prevent and correct irregularities and fraud.
- 17.3. In case of suspected fraud, corruption or any other illegal activity affecting the financial interests of the Union, the EIF shall inform OLAF without delay and may take, in close cooperation with OLAF, appropriate precautionary measures, including measures for the safeguarding of evidence. In the event of irregularities in respect of the MS Contribution, the EIF shall inform the Managing Authority without delay and undertake all necessary actions, including legal proceedings, to recover any amounts due in accordance with the provisions of the Operational Agreement, in line with Annex 1 and promptly return any recovered amounts to the Dedicated Window[s] Account[s].
- 17.4. The EIF shall monitor the implementation of the Dedicated Window[s] by means of the reporting and/or financial statements provided by the Financial Intermediaries, the internal and external audits available and any controls carried out by them or the EIF, including an analysis of the nature and extent of errors and weaknesses identified in the systems as well as corrective actions taken or planned. The EIF shall report to the Managing Authority on the material results of such activities.
- 17.5. The monitoring of the implementation of the Dedicated Window[s] by the EIF shall be intended to enable the Managing Authority to assess (i) whether the Internal Control system is efficient and effective, (ii) whether the MS Contribution has been used in compliance with the applicable regulatory and contractual provisions and (iii) the progress towards the achievement of policy objectives reflected in the relevant output and result indicators.
- 17.6. The Managing Authority may carry out controls and monitoring on the implementation of the Dedicated Window[s] by means of its participation in the Investors' Board, through the audited financial statements provided by the EIF according to Article 15.4.
- 17.7. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013, Regulation (Euratom, EC) No 2185/96 and Regulation (EC Euratom) No 2988/95, as may be amended, supplemented or modified from time to time, in order to protect the financial interests of the Union, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with any financing Operation subject to the Dedicated Window[s].

Article 18

Evaluation

- 18.1. The Parties may agree on any Evaluations to be performed on the implementation of the Funding Agreement on terms further set out herein. *[Further conditions may be contractually specified]*.
- 18.2. The EIF shall require Financial Intermediaries in each Operational Agreement to provide to the EIF information in their possession and reasonably required for the performance of an evaluation to be carried out by the European Commission pursuant to Article 57(3) of the CPR.

Article 19

Procurement of goods, works and services

- 19.1. The procurement of any goods, works or services by the EIF in the context of the Dedicated Window[s] shall be carried out in accordance with the applicable rules and procedures adopted by the EIF, taking into account the principles of transparency, proportionality, equal treatment, best value for money, avoidance of conflict of interest and non-discrimination in awarding contracts provided that, having due regard to cost and duration, sub-contracting would not lead to increased costs over direct implementation by the EIF itself. For the avoidance of doubt, such sub-contracting does not refer to the selection of Financial Intermediaries pursuant to Article 9.

- 19.2. Candidates and tenderers listed in the central exclusion database set-up and operated by the European Commission under Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database ⁽¹⁾ for the purposes of managing Dedicated Window[s] shall not be retained.

Article 20

Visibility

- 20.1. The EIF shall take all appropriate measures provided in this Funding Agreement to publicise the fact that the Dedicated Window[s] are co-funded by the [ERDF] OR [EAFRD], and, include the provisions requiring that the requirements under this Article are passed through to Financial Intermediaries and to Final Recipients in the relevant contracts. *[Further conditions shall be contractually specified]*
- 20.2. The EIF shall require that the information given to the press, the stakeholders, the Financial Intermediaries and the Final Recipients of the Dedicated Window[s] acknowledge that the Dedicated Window[s] were deployed 'with funding by the European Union' (in the relevant Union language) and shall display in an appropriate way the Union emblem (twelve yellow stars on a blue background) in accordance with the requirements of the Delegation Agreement(s).
- 20.3. The EIF shall require that the Financial Intermediary carry out information, marketing and publicity campaigns set out in this Funding Agreement *[Further conditions shall be contractually specified]* within the territory of [NAME OF MEMBER STATE], aimed at making the Dedicated Window[s] known within such territory ensuring that any documents concerning the support given through the Dedicated Window[s] will contain a statement mentioning that the Transaction benefits from support from the European Union pursuant to the '[SME Initiative], a Dedicated Window[s] with funding by the European Union under [ERDF] OR [EAFRD], [COSME] AND/OR [Horizon 2020]'
- 20.4. The size and prominence of the acknowledgement and Union emblem shall be clearly visible in a manner that shall not create any confusion regarding the identification of the EIF's activity, and the application to the Dedicated Window[s] of the EIF's privileges and immunities.
- 20.5. All publications by the EIF specifically relating to the Dedicated Window[s], in whatever form and whatever medium, shall carry the following or a similar disclaimer in the relevant Union language: 'This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union.'
- 20.6. The Managing Authority shall take all appropriate measures to publicise the fact that the Dedicated Window[s] are co-financed by the EIF and, as the case may be, the EIB. Information given to the press, the stakeholders, the Financial Intermediaries and the Final Recipients, all related publicity material, official notices, reports, publications and internet-based information shall acknowledge that the Dedicated Window[s] was carried out 'with co-funding by the European Investment Fund [and the European Investment Bank]' (in the relevant Union language) and shall display in an appropriate way the EIF's logo and, and as the case may be, the EIB's logo.
- 20.7. Subject to applicable confidentiality requirements, upon the first signature of an Operational Agreement, the EIF shall produce without undue delay after the signature, a press release in English, which shall be posted on the EIF's website. The EIF shall decide on the contents of the press releases.
- 20.8. The Parties shall consult each other on progress and situation reports, publications, press releases and updates relevant to this Funding Agreement before they are issued or published and shall communicate such documents to each other when they are issued.
- 20.9. The EIF shall include in each Operational Agreement the requirements of the relevant Delegation Agreements on the awareness of the Financial Intermediaries for the support provided by the European Union.

Article 21

Publication of information on Financial Intermediaries

- 21.1. The EIF shall publish annually the names of the Financial Intermediaries supported under the Dedicated Window[s] in accordance with the provisions of the Delegation Agreement(s).

⁽¹⁾ OJ L 344, 20.12.2008, p. 12.

- 21.2. The criteria for disclosure and the level of detail published shall take into account specificities of the financial sector and the nature of the Dedicated Window[s], as well as in accordance with the specific rules of the ERDF and EAFRD, as applicable.

Article 22

Assignment

The Parties shall not transfer, in whole or in part, any of their rights or obligations under this Funding Agreement to any third parties without the prior written consent of the other Party.

Article 23

Liability

- 23.1. The EIF shall be liable to the Managing Authority for the performance of its duties and obligations under this Funding Agreement with a professional degree of care and diligence and for any loss resulting from its wilful misconduct or gross negligence.
- [23.2. *With regard to the implementation of this Funding Agreement, the Managing Authority and the EIF shall negotiate contractual remedies with regard to losses, damages or injuries sustained by the EIF.*]
- 23.3. A Party faced with Force Majeure shall not be held to be in breach of its obligations under this Funding Agreement if it has been prevented from fulfilling them by Force Majeure.

Article 24

Governing Law and Jurisdiction

- 24.1. This Funding Agreement will be governed by, and construed in accordance with the laws of [*To be contractually specified*], without regard to any applicable principles of conflicts of law.
- 24.2. The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or performance of this Funding Agreement, including its existence, validity or termination.
- 24.3. In default of amicable settlement, the Parties agree that [*competent jurisdiction to be contractually specified*] shall have exclusive jurisdiction to settle any dispute in connection with this Funding Agreement.

Article 25

Effectiveness — Termination

- 25.1. This Funding Agreement shall enter into force upon signature by the Parties and shall remain in force until the earlier of [31 December 2023] or the occurrence of a Termination Event which has not been cured as provided in Article 25.5.
- 25.2. Not later than [6] months prior to [31 December 2023], the Parties shall consult each other regarding the extension of this Funding Agreement for a further term.
- 25.3. In case of one or more Operational Agreements and/or Guarantee Agreements, as applicable, are still in force as of [31 December 2023], this Funding Agreement shall be extended upon agreement between the Parties. In lack of such agreement, this Funding Agreement shall remain in force only in respect of any actual or contingent liability or exposure under any Operation, until any such liability or exposure has been written off or determined to be unrecoverable and any applicable statute of limitation has expired.
- 25.4. During the term of this Funding Agreement, either Party may at any time terminate this Funding Agreement with immediate effect by notifying to the other Party that a Termination Event has occurred.

25.5. The grounds which may give rise to a Termination Event are set out below:

(i) the Managing Authority may notify a Termination Event in case of:

- (a) a failure by the EIF to sign the Operational Agreement related to the amount of MS Contribution included in any Payment Request within the three months following the date of such Payment Request; or
- (b) a failure by the EIF to comply with any of its material obligations under this Agreement;
- (c) a failure by the EIF to sign the first Operational Agreement in the timeframe set out in Article 8.2;

in each case provided that the Managing Authority has sent a warning notice to the EIF stating the occurrence of such potential Termination Event and the EIF has not cured it within a period of (60) days from the date of receipt of the notice; and

(ii) the EIF may notify a Termination Event in case of:

- (a) without prejudice to Article 11, a failure by the Managing Authority to deposit without unreasonable delay into the Dedicated Window[s] Account[s] the MS Contribution equal to the amount of MS Contribution specified in a Payment Request; or
- (b) a failure by the Managing Authority to comply with any of its material obligations under this Funding Agreement,

in each case provided that the EIF has sent a warning notice to the Managing Authority stating the occurrence of such potential Termination Event and the Managing Authority has not cured it within a period of 60 (sixty) days from the date of receipt of the notice.

25.6. Without prejudice to Article 25.9, in case of termination of this Agreement, the EIF shall be released from any obligation to perform the EIF Activity as of the effective date of such termination. The Management Costs and Fees to which the EIF would be entitled concerning periods prior to the effective date of the termination, shall become due and payable as of such date. *[Further conditions may be contractually specified if necessary, including possible adjustments, if any, of the Management Costs and Fees payable upon early termination of this Funding Agreement]*

25.7. Expenses incurred by any Party in connection with a Termination Event shall be borne by the Party liable for the occurrence of such Termination Event.

25.8. Upon expiration or termination of this Funding Agreement, the net balance of the MS Contribution deposited into the Dedicated Window[s] Account[s] shall be returned to the Managing Authority within the Exit Policy. All expenses incurred by the EIF in connection with such transfer shall be borne by the Managing Authority and shall be withheld from the MS Contribution to be returned, unless such transfer occurs upon termination of this Funding Agreement due to a Termination Event notified by the Managing Authority.

25.9. Termination or expiration of this Funding Agreement shall not affect any Party's rights and obligations accrued or existing at the date of such termination or expiration, including, without limitation, any Party's accrued rights and obligations related to payment obligations. Upon termination or expiration of this Agreement, this Funding Agreement shall remain in force in respect of any actual or contingent liability or exposure under any Operation, until any such liability or exposure has been written off or determined to be unrecoverable and any applicable statute of limitation has expired and in particular, EIF shall be entitled to retain such amounts as may be required under this Agreement or any Operation Agreement for the payment of any amount owed thereto or the satisfaction of any accrued or contingent obligations under outstanding Operations.

25.10. Should the EIF, in consultation with the European Commission, determine that the aggregate minimum contribution to the Dedicated Window[s] representing the sum of the contribution of all participating Member States of the European Union is insufficient taking due account of the minimum critical mass defined in the Ex-Ante Assessment, it may notify the Managing Authority that a Termination Event has occurred.

25.11. The provisions of Articles 23 (Liability), 24 (Governing law and jurisdiction), 25 (Effectiveness — Termination) and 26 (Notices and Communication), shall survive termination or expiration of this Funding Agreement.

- 25.12. In case of winding up of the [COSME Financial Instruments] AND/OR [H2020 Financial Instruments], the Parties shall agree on the utilisation of the MS Contribution.

Article 26

Notices and Communications

- 26.1. Notices and communications relating to this Funding Agreement from one Party to the other shall be sent in writing in paper or in electronic form, according to the provisions set out in paragraphs 2 and 3 below, using the following communication details:

For the Managing Authority:

[to be completed].

For the EIF:

European Investment Fund

[Service to be completed]

15, Avenue J.F. Kennedy

2968 Luxembourg (GD Luxembourg)

Contact Person: [to be completed]

Functional e-mail address: [to be completed]

- 26.2. Any change made to the above communication details shall have effect only after it has been notified in writing in paper or electronic form to the other Party.
- 26.3. These notices and communications shall be deemed to have been duly notified when [to be completed].

Article 27

Amendments and miscellaneous

- 27.1. Any amendment, variation or modification of this Funding Agreement shall require an instrument in writing duly signed by each Party and it shall specify the date when it takes effect.
- 27.2. The waiver or forbearance of a Party in insisting in any one or more instances upon the performance of any provision of this Funding Agreement shall not be construed as a waiver of that Party's rights to future performance of such provision and the other Party's obligation in respect of such future performance shall continue in full force and effect.

Article 28

Annexes

The recitals and the following Annexes form an integral part of this Funding Agreement:

Annex 1: Term Sheet for the Dedicated Window[s]

— Uncapped Guarantee Instrument (Option 1)

— Securitisation Instrument (Option 2)

Annex 2: Exclusion criteria for Financial Intermediaries and Final Recipients and eligibility criteria for the EU Contribution [to be provided in part under the specific Funding Agreements]

Annex 3: Payment Request [to be provided under the specific Funding Agreements]

Annex 4: Treasury Asset Management guidelines [to be provided under the specific Funding Agreements]

Annex 5: Reporting on the operational aspects of the Dedicated Window[s] [to be provided under the specific Funding Agreements]

Annex 6: Reporting on the financial aspects of the Dedicated Window[s] [to be provided under the specific Funding Agreements]

ANNEX 1

UNCAPPED GUARANTEE ⁽¹⁾ INSTRUMENT

SME Initiative — option 1

SME INITIATIVE UNCAPPED GUARANTEE INSTRUMENT — OPTION 1

This instrument foresees the utilisation of uncapped guarantees provided by the EIF to cover the credit risk of SME loans, leases or guarantees. The SME Initiative Uncapped Guarantee Instrument is based on risk retained at different levels by EU resources (COSME and/or Horizon 2020), ERDF/EAFRD, together with resources from the EIB Group and potentially alongside national promotional banks and national guarantee schemes.

Under the SME Initiative Uncapped Guarantee instrument, the EIF would provide uncapped guarantees up to agreed maximum amounts. The originating financial institutions shall retain a material interest in their respective guaranteed portfolios, by retaining i.e. 20 % economic exposure on each guaranteed loan, in order to ensure the necessary alignment of interest ('skin in the game').

The Financial Intermediaries will individually receive an uncapped guarantee from the EIF in exchange for the payment of a guarantee fee. The higher risk of the resulting portfolio will be covered by a combination of MS Contribution and COSME or/and Horizon 2020 resources. The lower risk of the resulting portfolio will be retained by a combination of resources from the EIB Group up to agreed maximum amounts and potentially national promotional banks and national guarantee schemes. Such unfunded risk transfer, allowing for the partial transfer of credit risk to third parties without actually removing the portfolio of assets from the balance sheet of the financial institution would provide the opportunity for the originating financial institution to obtain regulatory capital relief, where feasible. Such operation would have to take into consideration the relevant country's regulatory requirements.

The origination, due diligence, documentation and servicing of the portfolio, made of eligible SME loans, leases or guarantees Transactions, shall be performed by the Financial Intermediaries in accordance with their usual origination and servicing procedures. The Financial Intermediary (or Sub-financial Intermediary in the case of counter-guarantees) shall retain the direct client credit relationship with each Final Recipient. The Financial Intermediary will provide information about the portfolio on a regular basis to the EIF and the EIF will accordingly pass on all relevant information to risk takers pursuant to the relevant agreements.

The Financial Intermediary will fully pass on to the SMEs the State Aid Benefit as defined in the indicative terms and according to the formula specified under sections 5 and 6 below. Moreover, it is considered that the implicit costs (reputational risk, financial risk, administrative risk, risk related to implementation of the compartment ⁽²⁾) incurred by the Financial Intermediary offset any advantage related to State resources (i.e. the MS contribution) thus ensuring that the Financial Intermediary does not benefit from undue aid.

⁽¹⁾ 'Uncapped guarantee' is the term used in Article 39 of the CPR.

⁽²⁾ The specific requirements related to the participation in the compartment include:

- (a) Minimum Leverage Effect to achieve a Portfolio with a minimum volume of New Debt Finance, which shall comply with the eligibility requirements for the MS Contribution;
- (b) Minimum volume of New Debt Finance which shall also comply with the parameters for the eligibility under COSME and/or under Horizon 2020;
- (c) Assessment and control of the eligibility criteria;
- (d) Penalties, in case the minimum Leverage Effect is not reached at the milestones and if the State Aid Benefit is not transferred;
- (e) Transfer of benefit undertakings, including the assessment of its mechanism and the reporting to EIF;
- (f) Calculation of the GGE for each and every loan in the portfolio of new debt finance and the reporting to EIF;
- (g) Visibility of the EU support in the contractual documentation with the final recipients and the marketing material;
- (h) Audit and monitoring undertakings in relation to the European Commission and the European Court of Auditors.

The above risks and requirements represent an implicit cost for the Financial Intermediary which receives no remuneration for the management activities of the Transaction, including no administrative fees and no performance fee.

Unless expressly provided for, defined terms in this Annex 1 have the same meanings as the corresponding defined terms under this model Funding Agreement.

Indicative Terms of the Uncapped Guarantees under Option 1

1. Main characteristics	
Scope of the Financial Instrument	<p>The Financial Intermediary originates a portfolio of New Debt Finance (subject to a minimum Leverage Effect) for which it will receive an uncapped portfolio guarantee (in the form of direct, counter- or co-guarantees) from the EIF in exchange for the payment of a Guarantee Fee.</p> <p>The EIF acts as day-to-day manager of the Financial Instrument managing the MS contribution, the EU Contribution (i.e. contributions under [the COSME Regulation] AND/OR [the H2020 Regulation], the EIF Contribution and the credit risk taken by the EIB and possibly national promotional banks.</p>
Guarantee	<p>The Guarantee is provided by the EIF to the Financial Intermediary in exchange of a Guarantee Fee. The Guarantee shall cover a portion (up to the Guarantee Rate) of the credit risk associated with a portfolio of underlying New Debt Finance (the 'Portfolio').</p>
Guarantee Rate	<p>Up to 80 % of each and every Transaction in the Portfolio, so that the Financial Intermediary shall retain a material economic interest in the Portfolio, equal at least to 20 % of the economic exposure on it, in order to ensure alignment of interest.</p>
Structure	<p>The Guarantee shall cover, up to the Guarantee Rate, defaulted amounts incurred by the Financial Intermediary in respect of each defaulted eligible Transactions included in the Portfolio.</p> <p>The MS Contribution will be used to cover the highest risk of the Portfolio, up to a percentage that will be a determined having regard to the multiplier effect for the MS contribution agreed in the Funding agreement. This may typically result in 100 % of such amount being absorbed for the coverage of net losses under the Portfolio.</p> <p>The second riskiest part of the Portfolio will be covered by a combination of resources from the EIF, the EU budget and the Managing Authority. The residual risk of the Portfolio shall be covered using a combination of resources from the EIB Group and potentially national promotional banks and national guarantee schemes.</p> <p>The resources provided by the different risk takers shall be defined at a level such that the risk shall be compatible with the risk tolerance of the EIB Group and any other potential risk taker.</p> <p>Each Portfolio shall have sufficient homogeneity and sufficient pool diversification in order for the EIF to be able to assign a rating according to its risk assessment methodology.</p>
Defaulted Amounts	<p>Relate to unpaid principal and interest incurred by the Financial Intermediary in respect of defaulted Transactions included in the Portfolio.</p>
2. Portfolio	
Availability Period	<p>The EIF and the Financial Intermediary will agree on an availability period (typically up to 3 years) during which Transactions may be included in the Portfolio.</p>
Eligible Final Recipients	<p>The Final Recipients have to fulfil the eligibility requirements as per CPR Articles 37(4) and 39 as well as the specific eligibility requirements set out in ERDF and EAFRD Regulations.</p>

COSME Eligibility Criteria	See Annex 2.
Horizon 2020 Eligibility Criteria	See Annex 2.
Exclusion Process	If a Transaction does not comply with Eligibility Criteria it shall be excluded from the Portfolio (and shall not be covered by the Guarantee). In certain limited circumstances and in implementation of the requirements of Article 39(2)(a) of the CPR, the determination of whether such non-compliance was within the control of the Financial Intermediary may result in continued guarantee cover.
Leverage Effect requirement for MS Contribution	The Leverage Effect is calculated as the total New Debt Finance to eligible Final Recipients divided by the MS Contribution. The minimum Leverage Effect has to be at least [X] times the total MS Contribution.
Minimum leverage requirement for COSME contribution	Given the contribution under the COSME Regulation, if applicable, a volume of New Debt Finance to eligible Final Recipients in line with the leverage requirements as set out in the COSME legal basis and Delegation Agreement has to fulfil also the COSME eligibility criteria.
Minimum leverage requirement for Horizon 2020 contribution	Given the contribution under the H2020 Regulation, if applicable, a volume of New Debt Finance to eligible Final Recipients in line with the leverage requirements as set out in the H2020 legal basis and Delegation Agreement has to fulfil also the Horizon 2020 eligibility criteria.
3. Pricing	
Guarantee Fee	The EIF shall charge to the Financial Intermediary the Guarantee Fee in relation to the Transactions included in the Portfolio. The Guarantee Fee, expressed as [X] % per annum, will be calculated quarterly on the outstanding amount of the Portfolio
Pricing of the MS Contribution	The MS Contribution shall be priced at a level which is commensurate with the relevant risk taken with the exception of the cover of the riskiest part of the Portfolio that shall be priced at zero (i.e. the MS Contribution will be provided free of charge).
4. Miscellaneous	
Penalties	See Article 7.
Reporting	See Annex 5.
Monitoring and Audit	See Article 17.
5. Transfer of benefit	
Transfer of benefit	The EIF shall assess the mechanism of transfer of benefit to the Final Recipients. That mechanism shall be included in the process for the selection of Financial Intermediaries and it shall form part of the EIF final decision on whether or not entering into a guarantee agreement and at what conditions. The transfer of benefit shall be applied for the part of the New Debt Finance covered by the Guarantee to the standard interest rate charged to the Final Recipients through a reduction of the credit risk/guarantee premium. It shall be documented accordingly.

Total Benefit	<p>The Total Benefit shall be defined for the part of the loan covered by the Guarantee as the reduction in the interest rate or the guarantee fee as the case may be as charged by the Financial Intermediary to the Final Recipients, taking into account the underlying credit risk undertaken and the effect and the cost of the Guarantee. As the Financial Intermediary receives no remuneration/funding from the EIF, the assessment of the Total Benefit shall focus only on the credit risk premium. The Financial Intermediary shall take into account the cost of the guarantee (the Guarantee Fee) in the calculation of the new credit risk/guarantee premium for each loan or guarantee.</p> <p>The Total Benefit is given by the following formula: Total Benefit = standard credit/guarantee risk premium — Guarantee Fee</p>
6. State Aid	
State Aid Benefit	<p>The State Aid Benefit for the part of the loan covered by the Guarantee is a portion of the Total Benefit, proportional to the MS Contribution ⁽¹⁾ in the New Debt Finance portfolio, given by the following formula: State Aid Benefit = Total Benefit * % of the MS Contribution in the Guarantee (the guaranteed part of the New Debt Finance portfolio).</p> <p>The State Aid Benefit shall be fully transferred by the Financial Intermediary to the Final Recipient.</p>
Calculation of the GGE	<p>At Final Recipient level, the State Aid Benefit shall be considered as an interest rate subsidy within the meaning of Article 4(2) of the <i>de minimis</i> Regulation.</p> <p>The Gross Grant Equivalent (GGE) shall be calculated according to the following formula: GGE = Guaranteed loan amount ⁽²⁾ * maturity (weighted average life) of the loan (guarantee) ⁽³⁾ * State Aid Benefit</p> <p>The Financial Intermediary shall calculate the GGE for each and every loan (guarantee) ⁽³⁾ in the New Debt Finance portfolio and shall communicate it to the EIF. In all cases the GGE cannot be above the threshold set out in the <i>de minimis</i> Regulation.</p>
State Aid Penalties	<p>The EIF shall charge to the Financial Intermediary a State Aid Penalty in case the State Aid Benefit is not fully transferred to the final beneficiary.</p>

⁽¹⁾ Only the MS Contribution is relevant for state aid considerations. Resources from the Commission and EIB and EIF own resources do not constitute state aid.

⁽²⁾ Guaranteed loan amount = nominal loan amount (nominal guarantee amount) * Guarantee Rate.

⁽³⁾ For the cases of counter guarantees.

SECURITISATION INSTRUMENT

SME initiative — option 2

SME INITIATIVE SECURITISATION INSTRUMENT

This instrument foresees the utilisation of securitisation transactions backed by SME loans, leases or guarantees where EU resources (COSME and/or Horizon 2020), ERDF/EAFRD, together with resources from the EIB Group and potentially alongside national promotional banks, national guarantee schemes and other institutional investors, would subscribe or guarantee certain amounts at different levels of risks.

Under a securitisation instrument, a portfolio of SME eligible financing instruments is used as collateral for tradable securities (tranches), diversified by level of risk.

Unfunded risk transfer arrangements (synthetic securitisation) would also be possible, allowing for the transfer of credit risk to third parties without actually removing the portfolio of assets from the balance sheet of the bank and therefore providing the opportunity for the originating bank to obtain regulatory capital relief. Such operations would have to take into consideration the relevant country's regulatory requirements.

The securitisation instrument will guarantee a significant part of the underlying eligible debt financing portfolio upon an undertaking by the relevant Financial Intermediary to create an additional portfolio also by using resources mobilised as a result of the securitisation transaction for new SME financing.

Under the SME Initiative Securitisation Instrument, the EIF and the EIB (potentially alongside national promotional banks, national guarantee schemes and other institutional investors) would subscribe or guarantee certain tranches up to agreed maximum amounts. The originating financial institutions shall retain a material interest in the transaction, such as an adequate portion (minimum 50 %) of the junior tranche and an adequate exposure to each tranche placed with investors, or similar arrangements, in order to ensure the necessary alignment of interest 'skin in the game') and to comply with the risk retention requirement set out in Directive 2013/36/EU and Regulation (EU) No 575/2013.

The rating of the senior and the mezzanine tranches shall be compatible with the risk tolerance of the EIB Group and potentially national promotional banks, national guarantee schemes and third party institutional investors who may also invest in the senior tranches of such securitisations thus increasing the leverage of committed budgetary resources.

Junior and mezzanine tranches not retained by the originator are subscribed by a combination of ERDF/EAFRD, COSME/Horizon 2020 and EIF's own resources.

Managing Authorities who are willing to participate in the guarantee scheme (via the EIF, but at the risk of the ESI Funds contribution) guarantee/invest up to 50 % of the Junior tranche.

The origination, due diligence, documentation and servicing of the securitised portfolio, made of eligible SME loans, leases or guarantees to SME and companies with less than 500 employees, shall be performed by the Financial Intermediaries in accordance with their usual origination and servicing procedures. The Financial Intermediaries typically retain the direct client credit relationship with each SME. The Financial Intermediaries will provide information about the securitised portfolio as well as the Additional Portfolio (newly originated SME financing) on a quarterly basis to the EIB and EIF respectively until termination of the securitisation transaction.

Indicative Terms of the Securitisation

1. General Terms	
Scope of the Financial Instrument	<p>By securitising assets, Financial Intermediaries aim at releasing regulatory and economic capital and/or obtain new funding sources allowing the Financial Intermediary to originate New Debt Finance to eligible Final Recipients (to build an Additional Portfolio).</p> <p>The Financial Intermediary will receive a guarantee/investment from the EIF to cover the Securitised Portfolio in exchange for the payment of a Fee and commit to originate a portfolio of New Debt Finance (subject to a minimum Leverage Effect).</p> <p>The EIF acts as day-to-day manager of the Financial Instrument managing the MS contribution, the EU Contribution (i.e. contributions under [the COSME Regulation] AND/OR [the H2020 Regulation], the EIF Contribution and the credit risk taken from the EIB and possibly national promotional banks.</p>
Transaction structure	<p>Either cash ('true sale') or synthetic ('unfunded') securitisations are allowed.</p> <p>A cash securitisation is a transaction in connection with which an originator (the Financial Intermediary) securitises assets by pooling them into the Securitised Portfolio and selling the Securitised Portfolio to a special purpose entity (the 'SPE'). The SPE finances the purchase of the Securitised Portfolio through the issuance of notes secured by such assets (Asset-Backed Securities — 'ABS'). The proceeds from the issuance of these notes are used by the SPE to pay the purchase price of the Securitised Portfolio to the Financial Intermediary.</p> <p>In a synthetic securitisation, the Financial Intermediary retains the relevant assets on its balance sheet and the EIF covers part of the risk on the Securitised Portfolio. This potentially results into capital relief for the Financial Intermediary.</p> <p>The EIF shall tranche the Securitised Portfolio according to the risk of the underlying transactions.</p>

	<p>The Junior Tranche shall consist of the riskiest part of the Securitised Portfolio up to a predefined percentage, taking into consideration the characteristic of the portfolio, the credit enhancement requirements and the Leverage Effect requirement for MS Contribution. The MS Contribution will cover up to 50 % of the Junior Tranche, while the residual portion of the Junior Tranche shall be retained by the Financial Intermediary. This may typically result in 100 % of such amount being absorbed for the coverage of net losses under the Portfolio.</p> <p>The Mezzanine Tranche shall consist of the second riskiest part of the Securitised Portfolio and comprise three sub-tranches using a combination of resources from the EIF, the EU budget and the Managing Authority. In particular, the MS Contribution shall cover the risk of the Lower Mezzanine Tranche. The contribution under [the COSME Regulation] and/or [the H2020 Regulation] shall cover the risk of the Middle Mezzanine Tranche. The EIF Contribution shall cover the risk of the Upper Mezzanine Tranche.</p> <p>The size of the Mezzanine will be determined by EIF taking into consideration the characteristics of the portfolio, the credit enhancement requirements and Leverage Effect requirement for MS Contribution.</p> <p>The Lower Mezzanine and the Middle Mezzanine Tranches shall be up to [predetermined percentages of the Securitised Portfolio.</p> <p>The Senior Tranche shall consist of the residual risk of the Securitised Portfolio and be funded/retained by using a combination of resources from the EIB Group up to an agreed maximum amount and potentially national promotional banks and national guarantee schemes and other investors.</p> <p>The Senior and the Upper Mezzanine Tranches shall be defined at a level such that the risk shall be compatible with the risk tolerance of the EIB Group and any other participating risk takers.</p>
2. Reference Portfolio (Securitised Portfolio)	
Securitised Portfolio	<p>The Securitised Portfolio might include existing assets (debt finance to SMEs and other enterprises with less than 500 employees) as well as portfolios of new debt finance to SMEs.</p> <p>Each Securitised Portfolio shall have sufficient homogeneity and sufficient pool diversification in order for the EIF to be able to assign a rating according to its risk assessment methodology.</p> <p>Existing portfolios shall not be included in the Securitised Portfolio after the Commitment Period.</p>
3. Additional Portfolio	
The Additional Portfolio	<p>Each Financial Intermediary will be contractually required to provide New Debt Finance to eligible Final Recipients (Additional Portfolio).</p> <p>The breach by the Financial Intermediary of any of the requirements specified in the relevant Operational Agreement shall not affect the guarantee issued in relation to the Securitised Portfolio.</p>
Leverage Effect requirement for MS Contribution	<p>The Leverage Effect is calculated as the total New Debt Finance to eligible Final Recipients divided by the MS Contribution. The minimum Leverage Effect has to be at least [X] times the total MS Contribution.</p>
Availability Period	<p>The EIF and the Financial Intermediary will agree on an availability period (typically up to [3] years) during which Transactions shall be included in the Additional Portfolio.</p>
Eligible Final Recipients	<p>The Final Recipients have to fulfil the eligibility requirements as per CPR Articles 37(4) and 39 as well as the specific eligibility requirements set out in ERDF and EAFRD Regulations.</p>

COSME Eligibility Criteria	See the COSME Regulation.
Horizon 2020 Eligibility Criteria	See the H2020 Regulation.
Minimum leverage requirement for COSME contribution	Given the contribution under the COSME Regulation, if applicable, a volume of New Debt Finance to eligible Final Recipients in line with the leverage requirements as set out in the COSME legal basis and Delegation Agreement has to fulfil also the COSME eligibility criteria.
Minimum leverage requirement for Horizon 2020 contribution	Given the contribution under the H2020 Regulation, if applicable, a volume of New Debt Finance to eligible Final Recipients in line with the leverage requirements as set out in the H2020 legal basis and Delegation Agreement has to fulfil also the Horizon 2020 eligibility criteria.
4. Pricing	
Fee	The Fee shall be established on the basis of the pricing by each of the Financial Instrument risk takers for their respective tranches (see pricing below). The EIF shall charge to the Financial Intermediary [X] % per annum in relation to the covered part of the Securitised Portfolio.
Pricing of the Senior Tranche	It shall be set to a predefined percentage per annum by the EIB and other potential risk takers in accordance with their pricing policy.
Pricing of the Mezzanine Tranche	The Mezzanine Tranche shall be set to [X] % per annum by the EIF in accordance with its pricing policy. The Middle and Lower Mezzanine Tranches shall be priced to sustain the risk in relation to the expected losses of the respective tranches. In duly justified cases, the pricing can also be further reduced to attract Financial Intermediaries.
Pricing of the Junior Tranche	It shall be equal to zero (i.e. the Junior Tranche other than the tranche retained by the originator will be provided free of charge).
5. Miscellaneous	
Penalties	See Article 7.
Reporting	See Annex 5.
Monitoring and Audit	See Article 17.
6. Transfer of benefit	
Transfer of benefit	The EIF shall assess the mechanism of transfer of benefit from the Financial Intermediary to the Final Recipients in the Additional Portfolio. That mechanism shall be included in the scoring system for the purpose of selecting Financial Intermediaries and it shall form part of the EIF final decision on whether or not entering into a guarantee or investment agreement and at what conditions. The transfer of benefit shall be applied to the standard interest rate charged to the Final Recipients under New Debt Finance in the Additional Portfolio through a reduction of the credit risk premium. The mechanism of transfer of benefit shall be documented accordingly.

Total Benefit	<p>The Total Benefit shall take into account the benefit provided to the Financial Intermediary, in each tranche of the Securitised Portfolio.</p> <p>The Total Benefit shall be calculated as the difference between the market price and the price charged by the EIF on each tranche with the same level of risk. The risk level of each tranche shall be defined by the internal rating methodology of the EIF.</p> <p>In the absence of a market price, the EIF shall apply the safe-harbour premium for an equivalent risk level for guarantees laid down in the Commission notice on the application of Articles 87 and 88 of the EC Treaty to state of aid in the form of guarantees (OJ C 155, 20.6.2008, p. 25). The safe-harbour premium for the Junior tranche amounts to up to 10 % per annum.</p> <p>The Total Benefit is given by the following formula: Total Benefit = Sum of Benefits of Individual Tranches</p> <p>The Benefit of Individual Tranche is calculated as follows: Benefit of Individual Tranche = (market price of the tranche – Fee) * Total EUR amount of tranche * maturity of the tranche (weighted average life)</p>
7. State Aid	
State Aid Benefit	<p>The Total State Aid Benefit is a portion of the Total Benefit, proportional to the MS Contribution ⁽¹⁾ in the Securitised Portfolio.</p> <p>The Total State Aid Benefit provided to a Financial Intermediary shall be calculated according to the following formula: Total State Aid Benefit (in EUR) = Sum of (Benefit of Individual Tranche * the % of the MS Contribution in the tranche).</p> <p>The Total State Aid Benefit shall be fully transferred by the Financial Intermediary to all the Final Recipients included in the Additional Portfolio.</p> <p>The State Aid Benefit for each Final Recipient shall be calculated according to the following formula: State Aid Benefit (interest rate subsidy in bps) = (Total State Aid Benefit/New Debt Finance in the Additional Portfolio)/Maturity of Additional Portfolio (weighted average life)</p>
Calculation of the GGE	<p>The State Aid Benefit provided to Final Recipients in the Additional Portfolio, shall be considered as an interest rate subsidy within the meaning of Article 4(2) of the <i>de minimis</i> Regulation.</p> <p>The Gross Grant Equivalent (GGE) shall be calculated according to the following formula: GGE = nominal loan amount * maturity (weighted average life) of the loan * State Aid Benefit</p> <p>The Financial Intermediary shall calculate the GGE for each and every loan in the Additional Portfolio and shall communicate it to the EIF. In all cases the GGE cannot be above the threshold set out in the <i>de minimis</i> Regulation.</p>
No additional benefit on capital relief	<p>In application of the relevant national rules on capital requirements, the volume of New Debt Finance shall not be set at a level lower than the volume of debt finance to SMEs which could be expected to be generated by the Financial Intermediaries using the capital freed up as a result of the MS Contribution.</p>
State Aid Penalties	<p>The EIF shall charge to the Financial Intermediary a State Aid Penalty in case the State Aid Benefit is not fully transferred to the final beneficiary.</p>

⁽¹⁾ Only the MS Contribution to the EIF for the securitised portfolio is relevant for state aid considerations. Resources from the Commission and EIB and EIF own resources do not constitute state aid

ANNEX 2

Exclusion criteria for Financial Intermediaries and Final Recipients and eligibility Criteria for the EU contribution

1. EXCLUSION CRITERIA FOR FINANCIAL INTERMEDIARIES

Financial Intermediaries that are in one of the situations below, provided that such situation would, in the professional opinion of EIF, affect their ability to implement a Financial Instrument, shall not be selected:

1. they are bankrupt or being wound up, are having their affairs administered by the courts, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
2. they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*, which would affect their ability to implement a Transaction;
3. they have been the subject of a judgment which has force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity, in each case where detrimental to the Union's financial interests;
4. they are guilty of material misrepresentation in supplying information required for selection as a Financial Intermediary;
5. they are listed in the central exclusion database referred to in Article 9.5(e);
6. they are incorporated in territories whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standard, or their tax practices do not follow the principles of the Commission Recommendation of 6 December 2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters (C(2012) 8805);
7. their business activity does not comply with the EIF policy in relation to restricted sectors.

Points 2 and 3 shall not apply, where the Financial Intermediaries can demonstrate to EIF's satisfaction that adequate measures have been adopted against the persons having power of representation, decision-making or control over them, who are subject to a judgement as referred to in Points 2 and 3.

2. EXCLUSION CRITERIA FOR FINAL RECIPIENTS

Final Recipients may not be selected by Financial Intermediaries if they meet one or more of the requirements set out below:

1. they are not potentially economically viable;
2. they are incorporated in territories whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standard, or their tax practices do not follow the Commission Recommendation of 6.12.2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters (C(2012)8805);
3. they are bankrupt or being wound up, are having their affairs administered by the courts, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
4. they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*, which would affect their ability to pursue their business activity;
5. they have been the subject of a judgment which has force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity, in each case where detrimental to the Union's financial interests;
6. they are guilty of misrepresentation in supplying information required for selection as a Final Recipient;

7. they are listed in the central exclusion database set up and operated by the Commission under Regulation (EC, Euratom) No 1302/2008;
8. their business activity consists of one or more of the following:
 - (a) an illegal economic activity (i.e. any production, trade or other activity, which is illegal under the laws or regulations applicable to the Financial Intermediary or the relevant Final Recipient, including without limitation, human cloning for reproduction purposes);
 - (b) the production of and trade in tobacco and distilled alcoholic beverages and related products;
 - (c) the financing of the production of and trade in weapons and ammunition of any kind or military operations of any kind;
 - (d) casinos and equivalent enterprises;
 - (e) internet gambling and online casinos;
 - (f) pornography and prostitution;
 - (g) nuclear energy;
 - (h) activities referred to in Article 19 of H2020 Regulation;
 - (i) the research, development or technical applications relating to electronic data programs or solutions, which aim specifically at supporting any activity referred to under items (a) to (h) above or are intended to enable to illegally enter into electronic data networks or download electronic data.
9. their business activity does not comply with the EIF policy in relation to restricted sectors;
10. they received New Debt Finance which does not respect the cumulation rules laid down in the relevant *de minimis* Regulation;
11. they received aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
12. they received aid contingent upon the use of domestic over imported goods.

3. ELIGIBILITY CRITERIA FOR THE EU CONTRIBUTION

- 3.1. **Eligibility criteria for the EU Contribution to the COSME Financial Instruments [to be provided under the specific Funding Agreements, subject to agreement between the Commission and the EIF, in the Delegation Agreement for COSME].**
 - 3.2. **Eligibility criteria for the EU Contribution to the H2020 Financial Instruments [to be provided under the specific Funding Agreements, subject to agreement between the Commission and the EIF, in the Delegation Agreement for H2020].**
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RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 10 September 2014

on the monitoring of the presence of 2 and 3-monochloropropane-1,2-diol (2 and 3-MCPD), 2- and 3-MCPD fatty acid esters and glycidyl fatty acid esters in food

(Text with EEA relevance)

(2014/661/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) 3-Monochloropropane-1,2-diol (3-MCPD) is a food processing contaminant classified as a possible human carcinogen for which a tolerable daily intake (TDI) of 2 µg/kg b.w. has been established ⁽¹⁾. A maximum level of 20 µg/kg for hydrolysed vegetable protein (HVP) and soy sauce has been established by Commission Regulation (EC) No 1881/2006 ⁽²⁾ for liquid products containing 40 % dry matter, corresponding to a maximum of 50 µg/kg in the dry matter.
- (2) Esters of 2- and 3-monochloropropane-1,2-diol (MCPD) and glycidyl esters are important contaminants of processed edible oils used as foods or food ingredients. The European Food Safety Authority (EFSA) Panel on Contaminants in the Food Chain (CONTAM) agreed with the estimate of 100 % release of 3-MCPD from its esters in humans ⁽³⁾.
- (3) Glycidyl fatty acid esters (GE) are process contaminants generated during the deodorisation step of edible oil refining. The toxicological relevance of glycidyl fatty acid esters has not yet been fully elucidated. Glycidol itself is categorised as probably carcinogenic to humans. Latest scientific studies indicate an (almost) entire release of glycidol from fatty acid esters within the human digestive tract.
- (4) On 20 September 2013, EFSA has published a scientific report on the analysis of occurrence of 3-monochloropropane-1,2-diol (3-MCPD) in food in Europe in the years 2009-2011 and preliminary exposure assessment ⁽⁴⁾.
- (5) More occurrence data on the presence of the MCPD fatty acid esters and glycidyl fatty acid esters are necessary to enable a more accurate exposure assessment.
- (6) Therefore it is appropriate to recommend the monitoring of the presence of MCPD, MCPD-esters and glycidyl esters in vegetable oils and fats, derived foods and foods containing vegetable oils and fats.

⁽¹⁾ Opinion of the Scientific Committee on Food on 3-monochloropropane-1,2-diol (3-MCPD) updating the SCF opinion of 1994 (adopted on 30 May 2001) http://ec.europa.eu/food/fs/sc/scf/out91_en.pdf

⁽²⁾ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJL 364, 20.12.2006, p. 5).

⁽³⁾ Statement of the Scientific Panel on Contaminants in the Food chain (CONTAM) on a request from the European Commission related to 3-MCPD esters <http://www.efsa.europa.eu/en/efsajournal/doc/1048.pdf>

⁽⁴⁾ European Food Safety Authority, 2013 Analysis of occurrence of 3-monochloropropane-1,2-diol (3-MCPD) in food in Europe in the years 2009-2011 and preliminary exposure assessment. EFSA Journal 2013;11(9):3381, 45 pp. doi:10.2903/j.efsa.2013.3381 Available online: www.efsa.europa.eu/efsajournal

HAS ADOPTED THIS RECOMMENDATION:

1. Member States should, with the active involvement of feed and food business operators, perform monitoring for the presence of 2 and 3-MCPD, 2 and 3-MCPD fatty acid esters and glycidyl fatty acid esters in food, and particularly in:
 - (a) vegetable oils and fats and derived products such as margarine and similar products,
 - (b) foods for particular nutritional uses as defined in Directive 2009/39/EC of the European Parliament and of the Council ⁽¹⁾ and intended for infants and young children, including infant- and follow on formulae as defined in Commission Directive 2006/141/EC ⁽²⁾ and dietary foods for special medical purposes as defined in Commission Directive 1999/21/EC ⁽³⁾ intended for use by infants,
 - (c) fine bakery wares, bread and rolls,
 - (d) canned meat (smoked) and canned fish (smoked),
 - (e) potato- or cereal-based snacks, other fried potato-based products,
 - (f) vegetable oil containing foods and foods prepared/produced with vegetable oils.

It is recognised that the analysis of 2 and 3-MCPD, 2 and 3-MCPD fatty acid esters and glycidyl fatty acid esters in foods mentioned in points (b) to (f) is very challenging and no methods of analysis, which have been validated by a collaborative study, are yet available. Therefore particular attention has to be paid when analysing foods mentioned in points (b) to (f) in order to ensure that the generated data are reliable.

Therefore, Member States which intend to analyse the presence of 2 and 3-MCPD, 2 and 3-MCPD fatty acid esters and glycidyl fatty acid esters in foods mentioned in points (b) to (f) may request, if appropriate and needed, the technical assistance of the Commission's Joint Research Centre, Institute for Reference Materials and Measurements (IRMM), Unit Standards for Food Bioscience.

2. In order to ensure that the samples are representative for the sampled lot, Member States should follow the sampling procedures laid down in Part B of the Annex to the Commission Regulation (EC) No 333/2007 ⁽⁴⁾.
3. In order to determine ester bound MCPD and glycidol, it is recommended to use the American Oil Chemists' Society standard methods. These methods are Gas-Chromatography Mass Spectrometry methods (GC-MS) which have been validated by a collaborative study for vegetable oils and fats and are available at www.aocs.org.

The Limit of Quantification (LOQ) should not be higher than 100 µg/kg for the analysis of MCPD and glycidol bound to fatty acid esters in edible oils and fats. For other foods containing more than 10 % fat, the LOQ should preferably be not higher when related to the fat content of the food, i.e. the LOQ for the analysis of fatty acid esters of MCPD and glycidol in food containing 20 % fat should not be higher than 20 µg/kg on whole weight basis. For foods containing less than 10 % fat, the LOQ should be not higher than 10 µg/kg on whole weight basis.

4. Laboratories should have quality control procedures in place to avoid the transformation of glycidyl esters into MCPD esters and vice versa during the analysis. Furthermore unambiguous specification of the measurand and separate reporting is necessary of the free 2- and 3- MCPD present in the analysed matrix from the 2- and 3-MCPD fatty acid esters, as both are measured as 3-MCPD. Following measurands should be reported separately:
 - 2-MCPD
 - 3-MCPD
 - 2-MCPD esters
 - 3-MCPD esters
 - glycidyl esters.

⁽¹⁾ Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses (OJ L 124, 20.5.2009, p. 21).

⁽²⁾ Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC (OJ L 401, 30.12.2006, p. 1).

⁽³⁾ Commission Directive 1999/21/EC of 25 March 1999 on dietary foods for special medical purposes (OJ L 91, 7.4.1999, p. 29).

⁽⁴⁾ Commission Regulation (EC) No 333/2007 of 28 March 2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and polycyclic aromatic hydrocarbons in foodstuffs (OJ L 88, 29.3.2007, p. 29).

There is no evidence for the time being of the presence of free glycidol in foods referred to in Point (1). However in case where free glycidol would be analysed, this should be reported separately.

5. Member States should ensure that the analytical results are provided on a regular basis (every six months) to EFSA in the EFSA data submission format in line with the requirements of EFSA's Guidance on Standard Sample Description (SSD) for Food and Feed ⁽¹⁾ and the additional EFSA's specific reporting requirements.

A simplified format, with fewer mandatory fields to be completed, will be made available to ensure maximum submission of useful available monitoring data.

6. A guidance note will be elaborated to ensure uniform application of this Recommendation and to ensure comparable reporting of results.

Done at Brussels, 10 September 2014.

For the Commission
Tonio BORG
Member of the Commission

⁽¹⁾ <http://www.efsa.europa.eu/en/datex/datexsubmitdata.htm>

COMMISSION RECOMMENDATION**of 10 September 2014****on good practices to prevent and to reduce the presence of opium alkaloids in poppy seeds and poppy seed products****(Text with EEA relevance)**

(2014/662/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Poppy seeds are obtained from the opium poppy (*Papaver somniferum* L.). They are used in bakery products, on top of dishes, in fillings of cakes and in desserts and to produce edible oil. The opium poppy plant contains narcotic alkaloids such as morphine and codeine. Poppy seeds do not contain the opium alkaloids or contain only very low levels, but can become contaminated with alkaloids as a result of insect damage, or through external contamination of the seeds during harvesting, when particles of dust from the straw (including capsule wall) adhere to the seeds.
- (2) The Scientific Panel on Contaminants in the Food Chain (Contam) of the European Food Safety Authority (EFSA) has provided a scientific opinion on the risks for public health related to the presence of opium alkaloids in poppy seeds intended for human consumption ⁽¹⁾.
- (3) Estimates of dietary exposure to morphine from foods containing poppy seed demonstrate that the Acute Reference Dose (ARFD) can be exceeded during a single serving by some consumers, particularly children, across the Union.
- (4) It is therefore appropriate that good practices are applied to prevent and to reduce the presence of opium alkaloids in poppy seeds and poppy seed products,

HAS ADOPTED THIS RECOMMENDATION:

Member States are recommended to take the necessary measures to ensure that the good practices for preventing and reducing the presence of opium alkaloids in poppy seeds and poppy seed products, as described in the Annex to this Recommendation, are implemented by all operators involved in the production and processing of poppy seeds.

Done at Brussels, 10 September 2014.

For the Commission

Tonio BORG

Member of the Commission

⁽¹⁾ EFSA Panel on Contaminants in the Food Chain (Contam); Scientific Opinion on the risks for public health related to the presence of opium alkaloids in poppy seeds. EFSA Journal 2011;9(11):2405. (150 pp.) doi:10.2903/j.efsa.2011.2405. Available online: www.efsa.europa.eu/efsajournal

ANNEX

I. Good agricultural practices to prevent the presence of opium alkaloids during growing, harvesting and storage

The presence of morphine and other alkaloid compounds is mainly due to external contamination especially through inappropriate plant protection and harvesting-cleaning procedures. Other factors influencing the alkaloid contamination of poppy seeds and products are, e.g. the variety of poppy plant and growth conditions like drought and fungi as stress factors. In addition, insects play a major role in the contamination of poppy seeds.

Choice of poppy plant variety

Poppy plant varieties can be grouped into two categories:

- (a) poppy plant varieties which are cultivated for the production of poppy seeds for food use only. These varieties contain a low level of opium alkaloids;
- (b) poppy plant varieties which are cultivated for pharmaceutical purposes but of which the seeds, as by-product, are used for food. Compared to the pod and straw, the poppy seeds contain relatively low levels of opium alkaloids.

Adequate pest and disease control

Not all pests and diseases referred to in this section do occur in all production regions in the Union. Therefore the control measures for those pests and diseases are only relevant for the production regions where they occur.

There are two important diseases of poppy plants: *Peronospora arboresces* (downy mildew) and *Pleospora papaveracea*. The mycelium of those fungi penetrates the capsules, thus leading to a poor quality crop which results in prematurely ripened dark to black seed. The diseases also cause deterioration of sensory properties of poppy, i.e. taste and colour, and this mouldy seed, different in colour, cannot be completely separated by the cleaning line.

Substantial decrease in food quality is also brought about by poppy pests attacking the poppy growth at later development stages. Most often it concerns the capsule weevil (*Neoglyciamus maculalba*) and capsule midge (*Dasineura papaveris*). The capsule weevil lays eggs inside the young green capsules. The larvae hatched inside poppy heads feed on the inside of capsules (developing poppy seeds) and make the inside of capsules dirty, damage poppy seed and finally leave the capsule through the gnawed out holes. This hole is used by capsule midge to lay eggs. The ripe capsule contains up to 50 orange larvae which ultimately complete the destruction of the capsule. The seeds are black, underdeveloped and inedible.

More relevant is the fact that the penetration by the mycelium and weevils means the 'poppy tears' and the milky latex released contaminates the seeds. Those problems are inherent to all poppy plant production.

Therefore it is recommended to control those diseases and pests adequately in case they occur.

Prevention of bad harvesting conditions caused by lodging of plants

Lodging can be avoided by a large extent when sowing of poppy plants at an appropriate density.

In the period of elongation growth, the growth regulators can be used in poppy for food use to reduce stem elongation. Growth regulators are generally not used in the production of poppy for pharmaceutical use as their use changes the biosynthetic pathway of the alkaloid. Growth regulation ensures not only stem shortening, but also strengthening of the lower part of stem. Short and robust plants are lodging-resistant, especially during the period of green capsules and their ripening.

Lodging causes an uneven ripening and leads to a contamination with alkaloids at harvest. The lodged plants mostly start branching again. The capsules on these young branches ripen later. When poppy is harvested, the process of ripening should be regulated since immature poppy capsules contain latex. When harvested, these capsules are crushed and the latex is oozing out from lactiferous vessels causing direct contamination of poppy seed surface by opium alkaloids which later dry up on seed surface. Also the seed from immature capsules, which is of rusty colour, degrades the quality of poppy, its appearance and sensory properties in particular.

A desiccant can be applied in accordance with national rules on authorisation of plant protection products and their conditions of use to ensure that all capsules are full senesced when harvested.

Harvesting

The poppy for food use is harvested at the moisture of not more than 10 %. The seed moisture at harvest usually ranges around 6-10 %. If for climatic reasons the poppy seed cannot be harvested under the conditions mentioned above, the poppy should be harvested with poppy straw and immediately air-dried with heat no more than 40 °C. Under these circumstances, however, any delay gives rise to a risk which can have an adverse effect on seed quality, both in terms of its sensory properties and physical, chemical and microbiological parameters of seed as foodstuff for human consumption.

Poppy grown for pharmaceutical use is sometimes harvested at higher moisture content levels but immediately dried after harvest and, more importantly, cooled. After drying and cooling the seed contains about 8-9 % moisture.

The poppy for food use is harvested using combine harvesters which are adjusted to harvesting small seeds. The poppy requires special adjustment of individual parts of machinery since the poppy seed is extremely vulnerable to mechanical damage. The food poppy seed contains 45-50 % of oil. When poppy seed is damaged, the surface of the seed is stained with oil which attracts the dust from crushed capsules. The adhered dust increases the concentration of opium alkaloids on poppy seed. Moreover, the poppy oil has short durability and oxidises very quickly. The damaged seed thus considerably decreases both the sensory quality of food poppy and its durability along with causing contamination and increasing opium alkaloid levels.

For the harvest of poppy for pharmaceutical use it is essential that only the pod and some straw are collected. Therefore a forage harvester with a specially adapted header which only harvests the top of the plant should be used for the harvest. The use of the forage harvester means that only the necessary part of the plant is harvested therefore lessening the chance of contamination.

Post-harvest conditioning

Poppy seeds do not or contain relatively low levels of opium alkaloids. When reference is made to opium alkaloid levels on poppy seed, this refers to tiny particles of dust from the straw (capsule wall). Therefore post-harvest cleaning or processing is essential, irrespective of whether this dust is high or low in opium alkaloids.

After the harvest, and before the use of poppy seed for food, the seed should be cleaned, dust particles should be removed by an aspirator and any other impurities should be removed, finally achieving a purity of more than 99,8 %.

Storage

Where the poppy seed is to be stored before final conditioning, it should be harvested with poppy straw and the harvested mix should be appropriately aired on grids with active ventilation, to ensure that the moisture content does not exceed 8 % to 10 %.

For long-term storage with ventilation, the untreated air, i.e. the air that has not been pre-heated, should be used. Poppy seed that has been treated in this manner can be easily stored for the period of 12 months with no substantial change in quality.

Once the poppy seed is cleaned, it should be stored in ventilated containers, or big-bags or bags certified for packaging of bulk foodstuffs, with no direct contact with the floor of the storage place.

Labelling

In case the poppy seeds need to undergo an additional treatment to reduce the presence of opium alkaloids before human consumption or use as an ingredient in foodstuffs, those poppy seeds should be labelled in an appropriate way indicating the need to subject the poppy seeds to a physical treatment to reduce the opium alkaloid content before human consumption or use as an ingredient in foodstuffs.

II. Good practices to prevent the presence of opium alkaloids during processing

The opium alkaloid content of poppy seeds can be reduced by several means of pretreatment and food processing. It has been shown that during the processing of food, the alkaloid content may decrease by up to about 90 % and with pretreatment and heat processes combined even almost totally.

The most effective methods include washing and soaking, heat treatments using temperatures at least above 135 °C, but preferably above 200 °C, lower temperatures (e.g. 100 °C) in combination with moisture or washing as well as grinding and combinations of the multiple treatments.

Poppy-seed-containing foods usually go through several processes before being served.

In the case of bread and rolls, often whole, untreated poppy seeds are used mainly as decoration and no other treatment than baking takes place.

In other foods, poppy seeds are commonly ground before adding on top of a dish or before using in bakery products. Poppy seeds are also used as poppy seed filling, which is a combination of ground poppy seeds, sugar, liquid (water or milk) and possible additional ingredients and spices. The poppy seed filling is usually heat treated before use in the food preparation. In certain cuisine traditions, poppy seeds are used raw, whole or ground, without any heat treatment as important part of the meal.

Thus, poppy seeds in foods often go through a combination of different processing steps including grinding, mixing with liquid, heat treatment and sometimes even with several heat treatment steps. Although a single processing step may not have a major reducing effect on the poppy seed alkaloid content, a combination of pretreatment (e.g. processing of the poppy seed filling) followed by heat treatment (e.g. baking) may reduce the poppy seed alkaloid content to non-detectable quantities. By the combination of washing and drying on a technical scale, reductions of morphine concentrations were achieved also in highly contaminated batches of raw poppy seeds (original concentration varying from 50 up to 220 mg morphine/kg) down to concentrations below 4 mg morphine/kg without loss of quality and organoleptic properties.

The recommended pretreatments and processing methods reducing the alkaloid content of poppy seeds and poppy seed products are shown in the table below.

However the following observations need to be made:

- heat treatment before final food processing is not to be recommended because it contributes to the destruction of fats and can cause rancidity and loss of the typical poppy seed flavour,
- if the washing or soaking with water is required to reduce the alkaloid content of poppy seeds, it should be carried out shortly after the harvest. However it should be taken into account that this might reduce the quality and/or shelf-life of the poppy seeds.

Table

Recommended pretreatments and processing methods reducing the alkaloid content of poppy seeds and poppy seed products

Pretreatments and processing methods	Additional conditions	Effect	Quantity of effect
Washing or soaking with water	Time (5 min) Increased time and temperature (30 s — 2 min — 30 min) in water of	Reduction in alkaloid content	46 % ↓
	15 °C 60 °C 100 °C		60 % -75 % ↓ 80 % -95 % ↓ 80 % -100 % ↓
	Single washing, slightly acidic conditions		40 % ↓

Pretreatments and processing methods	Additional conditions	Effect	Quantity of effect
Temperature/heat treatment	Bread baking 135 °C 220 °C 200 °C + grinding	Reduction in alkaloid content	~10-50 % ↓ ~30 % ↓ ~80-90 % ↓ ~90 % ↓
Grinding	Oxygen (large active surface) Increased pH	Accelerated degradation rate of morphine, formation of pseudomorphine, improved aroma of the product	~25-34 % ↓
Light		Minor influence on the degradation rate	
Combined pretreatment	Washing, 100 °C, 1min + roasting 200 °C, 20 min Washing, 100 °C, 1min + drying (90 °C, 120 min) Moisture with steam 100 °C, 10 min + drying (90 °C, 120 min) Moisture 100 °C, 10min + grinding + drying (90 °C, 120 min)	Reduction in alkaloid content	98-100 % ↓ 99 % ↓ 50-75 % ↓ 90-98 % ↓
Pretreatment + baking	Grinding + baking Combined steam pretreatment + grinding + baking Combined washing pretreatment + grinding + baking	Major reduction in alkaloid content with combination of moisture and heat pretreatment followed by dry heat treatment	80-95 % ↓ 90-95 % ↓ 100 % ↓

CORRIGENDA

Corrigendum to Council Decision 2014/451/EU of 26 May 2014 on the signing and conclusion of the Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya)

(Official Journal of the European Union L 205 of 12 July 2014)

On page 2, in the title:

for:

‘COUNCIL DECISION

of 26 May 2014

on the signing and conclusion of the Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya)

(2014/451/EU),

read:

‘COUNCIL DECISION 2014/451/CFSP

of 26 May 2014

**on the signing and conclusion of the Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya)’.
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