Financial Instruments – Overview of Delegations' Comments on CPR Regulation

This overview of questions and answers has been drawn up to provide further information for delegations. The clarification provided does not prejudge in any way the final position of the Commission on any of these questions.

Question	Commission answer
General comments and observations	
How will the Commission take into account the remarks made by the Court of auditors?	The Commission has taken note of the comments of the Court of Auditors and considers that where the issues raised are not addressed in the CPR, they can be taken into account in the envisaged delegated and implementing acts.
Could the Commission define the notion of « Financial instruments »? What is the difference with the financial engineering instruments in place during the current period?	Conceptually there are no differences. The Commission proposes to use in the future the expression "financial instruments" for a matter of consistency between all policy areas financed by the EU budget. As indicated in Article 2 a single definition of "financial instruments" will be used, namely that provided by Article 130 of the Financial Regulation.
Could the Commission define the notion of « implementing task »?	"Implementing tasks" are meant to involve all tasks relating to the design, setting-up and actual implementation of the financial instrument.
Could the Commission ensure the MS that the future states aids rules will leave a sufficient room of maneuver for developing financial instruments?	It is not possible in the context of the CPR to anticipate the future State aid framework.
Bulgaria welcomes the proposed extensive implementation and wider scope of innovative financial instruments in the new financial perspective. In our opinion there is a need of clearer definition of financial instruments concerned as well as detailed explanation of the difference with the financial engineering instrument already in place.	The Commission proposes to use in the future the expression "financial instruments" for a matter of consistency between all policy areas financed by the EU budget. As indicated in Article 2 a single definition of "financial instruments" will be used, namely that provided by Article 130 of the Financial Regulation. Conceptually there are no differences in relation to "financial engineering instruments" implemented in CP in the programming period 2007-13.
There are too many delegated act to be developed regarding the implementation of the financial instruments. That fact makes the whole concept not very clear for the MS and can raise too many questions. We claim that the essential elements of the proposal should be included in the regulation itself. Even if the fiche, provided by the Commission is quite detailed on the elements related to a proposed delegated act and implementing act, there are still some questions on substance that need to be clarified.	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments.
The Common provisions regulation does not treat equally FI to be managed at the EU level and the ones to be managed at MS level. Such approach should be avoided since both instruments target the implementation of one and the same policy. Can more clarification be given regarding the	The differentiation is justified as follows: a) payments from programmes to the EU level financial instruments: must be in accordance with the schedule defined in the set up of the EU level instrument to ensure homogeneity between various sources of funding;

rationale behind the different arrangements for FI on national and Union level?	b) co-financing of 100% is necessary to overcome obstacles which may arise in contributing national budget resources to EU level funds which will not be subject to national budgetary control rules. This is without prejudice to the co-investment requirements that will be set for EU level instruments; c) Special provisions on management and control and audit as it would not be possible that managing and audit authorities from all contributing programmes would be exercising such responsibilities on financial instruments managed by the Commission. Taking into consideration these specific characteristics, the Commission will ensure coherence between FI managed at EU level and the other FI referred to in Art 33.
Preamble, Point 26 The amount of the resources paid at any time from the CSF Funds to financial instruments should correspond to the amount necessary to implement planned investments and payments to final recipients, including management costs and fees, determined on the basis of business plans and cash-flow forecasts for a pre-defined period which should not exceed two years. *Comments: Delimitation is insufficient. Some textual additions needed for compatibility with other parts of the regulation and ruling out of ambiguity. CZ will come with textual amendments in the next round.* Bod 41 It is appropriate to exclude actions supported by the ESF and those not entailing productive investment or investment in infrastructure from the general requirement of durability, unless such requirements are derived from applicable State aid rules, and to exclude contributions to or from financial instruments. *Comments: The intention of Commission is unclear. Further explanation needed. See also comment on Art. 61.*	Recital 26 is linked to Article 35(2). In substance it foresees that "advance" payments into funds should not be higher than the forecasted needs in disbursement to final recipients and management costs and fees for the two years ahead. If disbursements are higher than forecasts, additional applications for payment can be made at any time. For the same reasons as those applicable to the current period, as clarified in the COCOF Note 10-0014-04 and in Regulation (EU) 1310/2011 of 13/12/2011 amending Regulation (EC) No 1083/2006, provisions on durability are meant for other types of operations and they should not apply to financial instruments.
Due to the high number and extensive contents of the envisaged delegated act , a comprehensive assessment of the legislative proposals on financial instruments is hardly possible at this stage. Moreover, these comments are without prejudice to further comments we might make after receiving the answers of the Commission to the questions of the Member States. This is especially true for our assessment of cases that should not be regulated by a delegated act. Provisions and criteria for financial instruments discussed in the context of the general and fund-specific regulations of Cohesion policy	The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR regarding non essential provisions on financial instruments. At the time of the preparation of the proposal the Commission took on board the latest developments on the provisions proposed to be included in the Financial Regulation regarding financial instruments. However, as the co-decision process regarding the revision of the Financial Regulation is-ongoing, the Commission is

are necessarily subject to, and cannot prejudice, the provisions for financial instruments in the future Financial Regulation. We should ensure that principles set out in the future Financial Regulation are applicable also to Financial instruments in Cohesion policy.	ready to accept possible adaptations to Title IV of the CPR to take into account the final outcome on the revision of the Financial Regulation, whose Title VIII will cover FI in direct and indirect management.
1. We appreciate the wider scope of the financial instruments for all fields of cohesion policy, especially the possibility for SME-funds to support all stages of the development of a company. The scope of the financial instruments should not be restricted by subsequent regulation.	1. The Commission regards the scope and actions to be supported through financial instruments as proposed in Article 32(1) of the CPR as sufficiently broad, in as much as all potentially economically viable investments which are in line with the objectives of a programme could be supported through financial instruments. As indicated in Fiche no 12, and in line with current guidance, the scope of financial instruments would be maintained but some provisions would specify the type of activities which should not be supported by financial instruments (e.g. firms in difficulties)
2. We welcome the possibility to combine financial instruments with grants or other assistance.	2. MS position is noted
3. It is very important, that from the start and throughout the entire period 2014-2020 the rules for financial instruments are clear, simple, binding and final. It is essential for having legal certainty when using financial instruments in the future period. The exploit of financial instruments must comply with strict conditions: - strict limitation of the budgetary expenditure, potential liabilities for the Union budget must be excluded. Financial instruments shall not imply more financial risk than grants. - Financial instruments must accord to the principles of strict budget discipline as well as a of a balanced EU-budget.	3. The MS observations regarding clear, simple and binding rules are reflected in the Commission's proposal for the CPR and will be complemented with non essential elements to be covered in the envisaged delegated act and further provisions in the implementing act. These proposals combined with the expected provisions to be included in the on-going revision of the Financial Regulation should indeed cover the vast majority if not all of the key elements identified by the MS.
Furthermore we underline the need of a clear definition of conditions which have to be fulfilled by financial instruments, such as - proven added value of EU intervention - compliance with the principle of subsidiarity - existence of market failure, - avoidance of market distortion as well as - a common interest in achieving the policy objectives In this context, we highlight the importance that the revision of the Financial Regulation as well as its delegated act must contain these principles. Each specific financial instrument has to be created and developed in accordance with these principles while ensuring adequate participation of the member states in its creation.	The explicit requirement expressed in Article 32(1) that financial instruments must be based on an "*ex-ante assessment which has identified market failures or suboptimal investment situations and investment needs"* is intended to ensure effective added value and consistency with the objectives of the programme. The points indicated by the Member State are in line with of the points that the Commission intends to specify in the delegated act regarding the *ex-ante* assessment.

4. We do not appreciate the unequal treatment of the certain types of financial instruments. We think it is very important to retain flexibility in selection and use of financial instruments. We have to avoid that customized financial instruments are less attractive because of higher requirements as compared to other financial instruments.	4. The differentiation regarding financial instruments set up at Union level managed directly or indirectly by the Commission is needed in following areas: a) payments from programmes to the financial instruments: must be in accordance with the schedule defined in the set up of the EU level instrument to ensure homogeneity between various sources of funding; b) co-financing of 100% to overcome obstacles which may arise in contributing national budget resources to a EU level funds which will not be subject to national budgetary control rules. This is without prejudice of the co-investment requirements that will be set for EU level instruments; c) Special provisions on management and control and audit as it would not be possible or feasible that managing and audit authorities from all contributing programmes would be exercising such responsibilities on financial instrument managed by the Commission.
5. We are proposed to limiting funding applications for nationally or regionally administered funds to the sum required for a two year period. We don't see the need for this rule (Art. 35 para. 2). The same applies to the high demands in respect to control and reporting duties, also compared to the current period 2007 – 2013 (Art. 40).	5. The provision of Article 35(2) is intended to ensure that the amount of funding paid at any moment to a financial instrument and reimbursed by the EU budget is not excessive and corresponds to the forecast of investments needed over a period of time. This measure is needed to ensure that past practices of paying the full committed amount upfront regardless of the investment needs will not be continued in the future. The two year period is not a limitation in terms of the speed and amount of investments that can be made since requests for payment can be presented at shorter intervals and at any stage when the sums covered by previous payments have been absorbed (or are close to). Regarding reporting requirements under Article 40 these are needed to ensure that there is effective monitoring of financial instruments by managing authorities and that the Commission receives essential information on the use of financial instruments with CSF funding, to allow it to discharge its responsibilities vis à vis control and budgetary authorities.
6. The provisions for the potential re-use of funds as well as the arrangements for revenue and repayments to financial instruments in Articles 37-39 have to be looked at more closely. In any case, we are very critical to these provisions if they should apply to financial instruments under Article 33 para. 3 a), where re-use should be strictly limited in time and revenue and repayments should re-enter the budget as revenue.	6. The provisions of Articles 37 to 39 should apply to all financial instruments implemented with CSF funding. Member States and regions receive CSF allocations through their respective multi-annual programmes and they are free to use those allocations either through grants or through financial instruments, to pursue the objectives of the programmes. If they use such allocations through financial instruments, any resources that revolve or are generated by such instruments should remain in the Member State or region concerned to be used in line with the provisions of Articles 37 to 39.

7. We are very critical in regard to the large number of subsequent legal acts and their depth of detail, especially delegated act. It goes without saying that all delegated act must be in accordance with Article 290 of the Treaty on the Functioning of the EU. Moreover, even if a delegated act is legally admissible, it is more appropriate to use another legal form. Against this backdrop, we are particularly sceptical regarding delegated act in the following cases: a) Combination of support provided to final recipients, Art. 32, para. 1 subpara. 3; b) additional specific rules on eligibility of expenditure and rules specifying the types of activities which shall not be supported through financial instruments, Art. 32, para. 1 sub para. 3; c) specific rules regarding certain types of financial instruments and products, Art. 33 para. 3 a) and b); d) arrangements for management and control, Art 34 para. 3; e) specific rules concerning payments to financial instruments and possible consequences in respect of requests of payment, Art. 35 para. 5; f) rules in respect to cofinancing, to closure of the financial instruments or irregularities.	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The essential elements regarding support from CSF to financial instruments are explicitly addressed in Articles 32 to 40 CPR, such as the basic principles for support to financial instruments, ex-ante assessments, combination of support, types of instruments and implementation options, eligible expenditure for reimbursement by the CSF, financial management rules and reporting requirements. The subsequent legal acts will not change these essential elements but rather define the technical and procedural elements to make possible the effective implementation of the instruments while respecting the essential parameters defined in the CPR.
The Commission proposal includes a new regulatory framework for innovative financial instruments. We do agree with the need of a clear definition of these instruments in order to improve the legal certainty with respect to the current period 2007-2013. However, this proposal goes too much further, and introduces too many new rules and obligations for Member States in the use of these instruments. **Q.** Do you see the need of making this regulation for financial instruments son complicated, while we are constantly defending the simplification principle? ES would like to remark the extensive use of delegated act in the regulation of financial instruments, in particular in articles 32.1, 33.3, 33.4, 33.7, 34.3, 35.5 and 36.4, which gives excessive discretionality to the Commission. **Q.** What is the reason behind making this extensive use of delegated act by the Commission? However, this proposal does not include incentives for the use of the	The Commission proposals contained in Title IV of the CPR build upon the experience gained with the implementation of financial instruments in the programming period 2007-2013. Key elements such ex-ante assessment, possibility to contribute to EU level instruments, phased contributions, as well as clear rules on re-use of resources and reporting are some of the new elements contained in the proposal and which are fully justified in light of the lessons learnt in the current programming period. The new provisions aim at ensuring a flexible, fast and efficient EU intervention complying with the principles of sound financial management. It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial

financial instruments: a complex regulation and increasing reporting requirements make them less attractive to national authorities. **Q.** Do you contemplate any possibility of including some kind of positive incentives for Member States in the use of Financial Instruments, compared to traditional forms of financing investments?	instruments. Nearly all of the issues identified to be covered in the envisaged delegated act were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act will provide legal certainty. The essential elements regarding support from CSF to financial instruments are explicitly addressed in Articles 32 to 40 CPR, such as the basic principles for support to financial instruments, ex-ante assessments, combination of support, types of instruments and implementation options, eligible expenditure for reimbursement by the CSF, financial management rules and reporting requirements. The subsequent legal acts will not change these essential elements but rather define the technical and procedural elements to make possible the effective implementation of the instruments while respecting the essential parameters defined in the CPR. The CPR indeed provide some incentives for Member States and regions to use financial instruments, such as higher co-financing rates regarding ERDF, ESF and CF contributions to financial instruments (Article 110)
There are too many delegated act. All main principles regarding financial instruments should be set in general regulation or in the annex of general regulation not as a delegated act – e.g. eligibility rules, types of activities, rules for management cost and fees, role and responsibility of entities.	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments.
1. In principle, Finland is in favor of the regulation covering the financial instruments. The regulation removes several of the deficiencies that exist in the regulation of the current programming period concerning financial instruments. 2. When looking at the articles concerning financial instruments, their relation to the other content in the regulatory proposal relevant from the viewpoint of financial instruments should be taken into consideration. Such relevant content is, for instance, the definition in Article 2, responsibilities of Member States in Article 63, duties of management and control authorities in Articles 113-116 and financial corrections in Articles 135-139. The regulations concerning the financial instruments need to be in line with the aforementioned articles (coherence of legislation). 3. In a number of matters the regulatory proposal will aim at the adoption of secondary delegated act. Such are proposed, for instance, in Article 32 on ex ante assessment and Article 34 on verifications of operations. The Finnish view is that the proposed regulatory model leaves too much leeway for the delegated act. The basic principles concerning the verifications of financial instruments should be included in the general regulation.	1. MS position is noted 2. MS position is noted. Any potential conflicts and inconsistencies between the provisions of Title IV and other provisions of the CPR, namely as mentioned by the MS should be examined and addressed. It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act

According to Article 290 of the Treaty on the Functioning of the European Union, the Commission can be empowered to adopt acts of general application to supplement or amend certain non-essential elements of the legislative act. Accordingly, the essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.	were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act should provide legal certainty.
There is a great number of delegated act. We would like to see a balance between delegated act and implementing acts; we are more in favour of implementing acts that allows for COM and M-S consultation.	The provisions foreseen to be covered by the envisaged delegated act are of general application intended to supplement certain non-essential elements of the provisions in the CPR. In that sense, they go beyond merely implementing provisions and therefore, their inclusion in a delegated act in line with Article 290 of the TFEU is justified.
Until Commission fiche about the planned content of delegated and implementing acts is not prepared (deadline: 10 February), our mandate about the use of these acts cannot be made. HU shares the concerns announced by the Council Legal Service at the SAWP. We have a reservation in this regard. We have major concerns regarding the use of delegated/implementing acts especially in the following areas: (1) the combination of support, (2) specific rules on eligibility and (3) activities not to be supported through FEI. Forms of support; specific eligibility rules for grants and also for financial instruments (CPR Art 32 para 3); scope of activities not to be supported are addressed in the regulations (CPR and fund specific regulations) – this seems inconsistent to us. Please, be kind enough to clarify!	Fiche no 12 concerning financial instruments was made available to the Council on 17 February 2012. It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act containing non-essential elements needed to implement the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act were already covered in the present programming period through COCOF guidance Notes. Their inclusion in a delegated act should provide legal certainty.
Overall the section on financial instruments in the CRP includes a lot of references to delegated act. It is very difficult to comment and have a meaningful discussion on this section before we have actually seen the real content of the delegated act.	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act should provide legal certainty.
Is it correct that repayable assistance type activities, which are described in Art. 43 a) of Regulation 1083/2006, will be attributable to financial instruments, and therefore provisions regarding implementation of financial instruments will be applied in respect of such activities? If not, will it be possible to implement Art. 43 a) (Regulation 1083/2006) type activities and are there any specific rules that apply?	Title IV covers only financial instruments which according to the expected definition to be provided by the Financial Regulation concerns EU budget support provided by way of loans, guarantees, equity or quasi-equity investments or participations, or other risk-bearing instruments, possibly combined with grants. Repayable assistance as referred to in Article 43a) of Regulation 1083/2006 and Article 56 of the CPR does not fall in this scope.

Delegated act: in our opinion, the main elements of each section should be defined in regulation, concrete drafting suggestions will be submitted in due course taking into account the Commission answers to the questions raised.	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments.
In general, we think the Commission is proposing too many delegated act. This view is reinforced when reading the Commission's fiche: many of the general principles mentioned can and should be included in the regulation itself. We feel more detailed rules should be in an implementing act, not a delegated act. We have particular problems with the delegated act proposed in art 32.1, art 33.7 (rules on transfer and management) and art 34 (arrangements for management and control). We agree with the Commission's proposal for implementing acts under article 33.3.a ('off the shelve' model for FI) and under article 40.3 (template for monitoring and reporting). <u>Proposed amendment re Recital 22.</u> Recital 22 is somewhat too programmetimistic about the working of financial instruments. We would like to add; *In times of economic downturn financial instruments can be increasingly important due to their leverage effect on CSF Funds, their capacity to combine different forms of public and private resources to support public policy objectives, and because revolving forms of finance make such support more sustainable over the longer term.*	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act should provide legal certainty. The additional text proposed by the MS is in line with the Commission's view.
1.All essential rules and requirements should be included in the primary law. In the Commission's proposal many of them are to be defined in implementing or delegated act – until we see detailed contents of them, all comments are preliminary. 2.We have a reservation on all articles related to Financial Regulation (e.g. in art. 33, sec. 5 in relation to art. 57, 131.1, 131.1 a i 131.3) until the text of the FR is agreed. 3.We strongly programmepose unequal treatment of EU-level and national FI. In many situations only national or regional actors have the know-how	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act should provide legal certainty. 2. The MS position is noted. The differentiation is justified as follows: a) payments from programmes to the EU level financial instruments: must be in

necessary to fine-tune the FI to specific local conditions. The choice of the level at which funds are managed should be the result of a case-by-case assessment by the Member State. Article affected include 34.1, 34.2, 35.1, 35.2, 35.4, 33.3 and 110.7.	accordance with the schedule defined in the set up of the EU level instrument to ensure homogeneity between various sources of funding; b) co-financing of 100% is necessary to overcome obstacles which may arise in contributing national budget resources to EU level funds which will not be subject to national budgetary control rules. This is without prejudice to the co-investment requirements that will be set for EU level instruments; c) Special provisions on management and control and audit as it would not be possible that managing and audit authorities from all contributing programmes would be exercising such responsibilities on financial instruments managed by the Commission.
4.The possibility to declare up-front all expenditure constituted the key incentive to use FI incentives. Restricting it to 2 years especially in the beginning of the FI system functioning may have significant negative impact on attractiveness of FI, in particular for venture capital and equity and regions which until now have little experience with FI. We should explore other, more tailor-made solutions for incentivizing financial discipline, until they are discussed we will keep our reservation.	The two year rule will prevent over-payment of contributions to financial instruments. It reflects the common market practice of drawing contributions from financing sources in accordance with the actual capital requirements of the financial instrument. While the funding agreement will make reference to the total financial commitment of CSF contributions envisaged to be contributed to the financial instrument during the programming period, managing authorities are required to make phased contributions to financial instruments. For the calculation of the phased contributions, the first payment application should take into consideration the capital requirements of the financial instrument over a maximum of two years in line with its business plan. For subsequent payment applications during the programming period, payment applications should take into consideration both the capital requirements of the financial instrument over the next two years (in line with its business plan) and the remaining balance of previously paid but unspent programme support still available at the level of the financial instrument as well as anticipated but unrealised national co-financing. As a result, previously paid but unspent programme support will be deducted from the projected capital requirements of the financial instruments for the next two years and the remaining balance will be requested from the Commission and reimbursed in accordance with the co-financing rate of the relevant priority axis. The period of two years represents a maximum reference period and payment applications can be made at any time, whenever the financial instrument requires additional capital.
5.Continuity of FI which were functioning well in 2007-2013 should be ensured. It is essential to examine all the proposed provisions carefully to avoid event indirect constraints resulting from new definitions, selection	Article 33(3) b) and (4) a) explicitly foresees the possibility of contributing resources from the CSF funds in the programming period 2014-2020 to already

procedures etc.	existing financial instruments. This includes financial instruments set up under the previous programming period. Such contributions must be in line with the objectives of the new programmes and must be justified by the ex-ante assessment foreseen in Article 32(1).
In general, the provisions of the Commission proposal are in accordance with the ones of the current programming period, both in the Regulations from the Council and fthe Commission and from the COCOF guidance note. Changes are found in the less strict provisions related to financial instruments set up with the involvement of the EIB or other Community bodies - Article 34.(1) and (2). In our view, and in what concerns the leverage effect, we can only fully achieve the potential of such instruments, if they can be attractive for private participation in the delivery of aid. This attractiveness is jeopardized when the management and control of such instruments have the same requirements as for the non-repayable aids. The private partners are important in risk management, but they have difficulties with the administrative burden related with validation procedures or expenditure and control mechanisms. They are interested in results, neither in achievements nor in the “legality” or the regularity of the proceedings. So we have to make sure, in this regulation, that the provisions applicable to these instruments, concerning management, monitoring and control, will be tailor made, taking into account their objectives and characteristics, therefore not imposing the same pattern of rules as for other operations. This principle should be a condition of the Council when allowing for a delegate act. In our opinion, the general lines of management and control systems (including the provision of specific rules on this matter regarding financial instruments) should be defined in the general regulation. Assuming that some management and control fundaments can be regulated through a delegated act, this delegation should be restricted to more operational issues. It is also important to recognize that there are significant differences between the financial instruments, such as guarantees, venture capital, mutual guarantees and interest subsidies that must be recognized and incorporated in this Regulation. These differences do not result from who manages the financial instruments (the EIB or MS) but from the specifications of each kind of financial	The Member States' comments are noted. Regarding the specific issues on monitoring and control, while taking into account the Member States' views, the Commission wishes to underline the character of EU public resources provided through the CSF funds which justify that appropriate levels of control and monitoring must be in place, in accordance with sound financial management principles. The Commission intends to address these issues in more detail in the delegated act and implementing act by maintaining the essence of what has been agreed in the COCOF Guidance Note of February 2011.

instrument.	
The Slovak Republic supports broader use of financial instruments in new programming period 2014-2020 as described and justified under recital 22 of the Regulation´s recitals. However, we have a reservation concerning two years period under recital 26). (See also our comment under Article 35 par. 2.)	The two year rule will prevent over-payment of contributions to financial instruments. It reflects the common market practice of drawing contributions from financing sources in accordance with the actual capital requirements of the financial instrument. While the funding agreement will make reference to the total financial commitment of CSF contributions envisaged to be contributed to the financial instrument during the programming period, managing authorities are required to make phased contributions to financial instruments. For the calculation of the phased contributions, the first payment application should take into consideration the capital requirements of the financial instrument over a maximum of two years in line with its business plan. For subsequent payment applications during the programming period, payment applications should take into consideration both the capital requirements of the financial instrument over the next two years (in line with its business plan) and the remaining balance of previously paid but unspent programme support still available at the level of the financial instrument as well as anticipated but unrealised national co-financing. As a result, previously paid but unspent programme support will be deducted from the projected capital requirements of the financial instruments for the next two years and the remaining balance will be requested from the Commission and reimbursed in accordance with the co-financing rate of the relevant priority axis. The period of two years represents a maximum reference period and payment applications can be made at any time, whenever the financial instrument requires additional capital.
The Slovak Republic appreciates a clear distinction for re-use of resources under Article 38 and use of legacy resources Article 39.	
<u>Art. 32 (1), 33 (3), 33 (4), 33 (7), 34 (3), 35 (5), 36 (4)</u> The Slovak Republic has reservation due to lack of information with regard to content and deadline for delegated act. With regard to the discussion on SAWP on 31.1.2012, Slovakia proposes to consider balanced use of delegated and implemented acts as well as to consider an option to regulate issues in concern directly in CRP.	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act should provide legal certainty.
The UK notes the large number of delegated and implementing acts proposed by the Commission within the provisions on financial	It is not the Commission's intention to prepare a multitude of delegated act but rather one single delegated act covering all the non-essential elements needed to complete

instruments. These make it difficult for us to assess the detail of the requirements, in particular Article 32,1 and 33.7. They also risk delaying the implementation of financial instruments which already take much time to design and set up. For clarity, it would be better if as many provisions as possible could be included within the Regulation itself, rather than put in delegated or implementing acts. We welcome the fiche provided by the Commission on 17 February and we will be submitting further comments once we have had the programmeportunity to study this properly. As another general observation, for consistency, it would be helpful to continue to use definitions which have already been used in the current Regulations and which have been further clarified in the COCOF Guidance note (COCOF_10-0014-04-EN). The points made below are without prejudice to the position the UK will take on these Articles during the negotiations.	the provisions of the CPR regarding financial instruments. The non-essential elements identified in Title IV of the CPR need to be regulated to provide a stable and clear legal basis for the implementation of financial instruments. Nearly all of the issues identified to be covered in the delegated act were already covered in the present programming period through COCOF guidance notes. Their inclusion in a delegated act should provide legal certainty. The proposed rules regarding support of financial instruments in the period 2014-2020 reflect a high degree of harmonisation and consistency with the rules being prepared in the context of the revision of the Financial Regulation and related delegated act. To achieve this objective certain concepts used until now in the context of financial instruments supported exclusively through Structural Funds must be adapted. However, for the most part this will be a question of terminology as the essence of the rules applicable to CSF contributions to financial instruments in the period 2014-2020 should not be substantially different from the rules applicable in the programming period 2007-2013.

Art	MS	Question	Commission answer
Article 2: Definitions			
2		**Beneficiary** means a public or private body responsible for initiating or initiating and implementing operations; in the context of State aid, the term 'beneficiary' means the body which receives the aid; in the context of financial instruments, the term 'beneficiary' means the body that implements the financial instrument; *Comments: The definition "beneficiary" in the context of financial instruments is not fully clear. Definitely, it is a profound change compared to the current programming period when the financial instrument alone is considered the "beneficiary". "Beneficiary" is the body that implements the financial instruments. In case of implementation of financial instruments through funds of funds should be both level of implementation of financial instruments "beneficiaries"?* **Completed operation** means an operation, that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution has been paid to the beneficiaries; *Comments: We would like to ask you for clarification of the term „completed operation" in context of financial instruments. Could you explain the difference between the terms physically completed and fully implemented? In refer to FEI is as a completed operation means the establishment and implementing the FEI? In the context of e.g. Art. 131 para. 1 it seems that in financial instruments it will not be possible to consider any operation "completed" until the date of actual programme closure. What is meant here as the financial instrument? An operation or particular projects/actions/ investments supported by the financial instruments?*	"Beneficiary" is the body that implements the financial instruments. Where financial instruments are implemented through funds of funds, the body that implements the fund of funds is the beneficiary (see also explanations contained in Fiche no 12). This definition deviates from the definition of beneficiary in the FR, due to the specific framework for shared management. For financial instruments, the operation is completed when all programme contributions paid to the financial instrument were spent as eligible expenditure in the meaning of Art 36 CPR, or when the financial instrument is wound up before closure (whichever occurs earlier), and the related expenditure is included in the accounts for the purposes of Art 131 CPR.
2		From the viewpoint of financial instruments, Finland is in favor of including specific definitions in the general regulation with the help of which it will be possible to define the special characteristics of financial instruments. The definition of an operation shall be better defined and more clarified when it comes to funding directed through financial instruments. The question is to what extent is this definition applied. Is it applied at the level of financial engineering instrument (beneficiary) or	For "financial instruments" the definition contained in the Financial Regulation applies. In accordance with Article 2(7), in the context of financial instruments, the operation is constituted by the financial contributions from a programme to financial instruments and the subsequent financial support provided by these financial instruments. Final recipients do not form part of the operation (the financial instrument).

		at the level of final recipient or even at both levels. This is important when discussing the scope of verifications and audits and the role of final recipient therein.	
2		2. Art. 2: it is indicated that definitions on financial instruments shall apply as laid down in the Financial Regulation – would it be possible to make a reference here to specific articles of Financial Regulation? It is indicated in the definition of financial instruments (Art. 130 of Financial regulation), that they "may take the form of loans <…>, possibly combined with grants" – does this imply that the rules applicable to financial instruments should be also applied to grants in this case? What type of instruments fall under categories a), b) and c) of Art. 130 (Financial regulation)? 3. Art. 2 definition „beneficiary": it is indicated that in the context of financial instruments „beneficiary" means the body that implements the financial instrument – would this imply that in case of holding fund ("fund of funds" structure) financial intermediaries selected to run specific instruments should also be regarded as beneficiaries? 4. Art. 2 definition „final recipient": how this definition should be applied in the context of energy efficiency schemes for housing, i.e. whether a resident or a housing association should be considered to be final recipient? 5. Art. 2 definition „completed operation": how this definition should be applied in the context of financial instruments?	The definition of financial instruments would refer to Art 130(1) of the Financial Regulation[1]. The exact reference will depend on the final text. Please see answer on page 14. In such cases, the final recipient will be the legal entity or natural person receiving support from the financial instrument (in accordance with the contractual agreements between the body implementing the financial instrument and the final recipient). If housing or homeowner associations are not recognised as a legal entity but rather as a de-facto association of natural persons, then the natural persons but fall under the definition of final recipient. For financial instruments, the operation is completed when all programme contributions paid to the financial instrument were spent as eligible expenditure in the meaning of Art 36 CPR, or when the financial instrument is wound up before closure (whichever occurs earlier), and the related expenditure is included in the accounts for the purposes of Art 131 CPR.
2		Article 2. to respect the horizontal effect of the Financial Regulation, Article 2 should be adapted by deleting the sentence creating the possibility to deviate from the general Financial Regulation; "For the purposes of this Regulation, the definitions and conditions on financial instruments as laid down in the Financial Regulation shall apply to	In principle, for "financial instruments" under the CPR, the definition contained in the Financial Regulation applies. However, exceptions might be necessary to facilitate the specificities of cohesion policy support under shared management principles. Therefore, the Commission does not consider the proposed drafting suggestions as appropriate.

[1] Latest version available is CION NON-PAPER, 9 Feb 2012

		financial instruments supported by the CSF Funds, ~~except where otherwise provided in this Regulation~~."	
2 (7), 2(8)		Please define *subsequent financial support*.	Subsequent financial support means any form of financial support provided by the financial instrument for the benefit of final recipients in accordance with the categories listed in Article 36(1)(a) to (c) CPR.
		Please confirm that any final beneficiary does not implement FI but it is just a receiver of the effects of FI operation being implemented, and as such it is not subject to legal requirements applicable to any operation, e.g. such as audit and control.	The term final beneficiary is not used in the CPR. In accordance with the definition provided under Art 2(7) CPR, final recipients do not form part of the operation and are thus not to be audited from the outset. However, as outlined in Fiche no 12 and in line with the current approach in the latest COCOF guidance note (point 6.1.9), the delegated act is intended to further clarify that audits may be conducted at the level of final recipients only if supporting documents are not be kept by the managing authority or the financial instrument or if there is legitimate doubt regarding the reality of support provided to final recipients.
		The **definition of *a beneficiary*** should be specified for models where there are several levels, in particular for FI organized through funds of funds - it is not clear now who is the beneficiary in such a case (is it only the fund of funds? What is the function of a financial intermediary?).	"Beneficiary" is the body that implements the financial instruments. Where financial instruments are implemented through funds of funds, the body that implements the fund of funds is the beneficiary (see also explanations contained in Fiche no 12).
		Definition of *beneficiary* proposed in EAFRD regulation is different than the one contained in CPR regulation (e.g. it refers to physical or legal bodies). Please confirm that both definitions are coherent and the definition of *beneficiary* according to EAFRD regulation is included in the definition from CPR regulation.	The Commission notes the comment of the MS and will examine the necessity to clarify the definitions. For financial instruments the same concept as for the ERDF has been envisaged for EAFRD.
2(11)		The **definition *of completed operation*** does not take into account specificity of FI and should be clarified. It is necessary in the context of Art. 131 (rolling closure).	Please see answer above on page 15.
2		There is a potential conflict of interest in the case of EIB whose role could be to assist EC in evaluation of future FI (Art. 32.1). When a national institution is chosen as a fund of funds, EIB will assess systems which are competing with solutions in which the role is played by EIB.	Ex-ante assessments foreseen by Art 32(1) may be undertaken by any suitable entity and managing authorities have ample freedom to choose the most appropriate entity for conducting ex-ante assessments.

Art	MS	Question	Commission answer
Article 32: Financial instruments			
32(1)		How will the ex-ante assessment work? Who will be responsible for this assessment?	As outlined in Fiche no 12, the envisaged delegated act would propose criteria and main issues to be covered by the ex-ante assessment which is to be initiated by the managing authority. Prior to the selection of the operation, the Monitoring Committee would examine the ex-ante assessment, in line with Art 100(1)(i) CPR, to enable the Managing Authority to take a well-informed decision.
32(2)		Could the Commission explain why we need separate records for each source of financing? Who will be in charge of them?	Under Art 32(2) CPR, the different forms of support constitute separate operations. Separate records for the different sources of financing (from various priority axis, other programmes or even instruments) are required for monitoring, reporting and audit purposes, including for state aid.
32(3)		Could the Commission clarify the link between ITI and the objective of urban development?	Sustainable urban development is a process based on integrated urban development strategies with a global and comprehensive vision of the city as a whole, conveniently framed within a territorial perspective, which harmoniously promote all dimensions of sustainability (economic, social, environmental and governance). This mix of inter-linked interventions needs support from different priority axes and possibly different programmes. Achievement of this mix is possible by combining financing from different axes and operational programmes in an ITI. ITIs can be established at various territorial levels (city, municipality, region), but they always need to be underpinned by a territorial strategy. To strengthen the urban dimension of cohesion policy, at least 5% of the ERDF resources of each Member State should be invested for integrated action for sustainable urban development through such ITI with the management and implementation delegated to the cities. The decision to set up an ITI does not prejudge the forms of support used. Support under an ITI can thus be provided in the form of grants, or though financial instruments.
32(1)		Please explain how the ex ante evaluation will be performed so that eventual future market failures and suboptimal investment situation are considered and what will be the range of the assessment? Whom it will be reported to?	Please see answer at the beginning of this page.
32(1)		What is considered to be duly justified case when a financial instrument could be combined with other form of support?	The Article does not refer to "duly justified cases".
		We would like to ask for a more detailed explanation on how the set up	Financial instruments at Union level will be subject to the Financial Regulation

		at Union level is foreseen for the implementation of each financial instrument?	and related delegated act. Where the investment strategies of such instruments coincide with the objectives of a programme and the ex-ante assessment (Art 32) has confirmed the efficiency and effectiveness of using such instruments to deliver investments in line with the programme, managing authorities may contribute programme resources to these instruments.
32(1)		1. The CSF Funds may be used to support financial instruments under a programme, including when organized through funds of funds, in order to contribute to the achievement of specific objectives set out under a priority, based on an ex ante assessment which has identified market failures or suboptimal investment situations, and investment needs. *Comments:* *It is not completely clear from the text whether the "fund of funds" is the financial instrument or not. It is then closely linked with who is the beneficiary. For CZ it would be more appropriate to keep the denomination "holding fund", which is used in the current programming period. It is also needed to define the term "financial instrument" in the respective part of the Regulation. Like in the current Regulation No 1083/2006 the role of "fund of funds" should be defined by the text of the Regulation.* Financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies. In this case, separate records must be maintained for each form of financing. *Comments:* *The text is unclear. It combines "financial instrument", i.e. guarantee or holding fund or risk-capital fund as an independent legal body or separated block of account within a financial institution with a guarantee, credit or property interest as a form of support or financial product. The need to clear the situation is underlined by wording of Art. 33 para. 3, last sentence that quotes „products that may be delivered through such instruments". Terminology clarification highly needed.* *The text is narrowed compared to pt 4.3.1.COCOF Note as of 21 February 2011. In the second sentence a possibility of other forms of support expressed by "and equivalent measures" is missing.*	The definition of financial instruments would refer to Art 130(1) of the Financial Regulation[2]. The exact reference will depend on the final text. Conceptually, there are no differences between "holding fund" and "fund of funds". The Commission proposes to use in future the expression "fund of funds" for a matter of consistency between all policy areas financed by the EU budget. The role of fund of funds would be further specified in the envisaged delegated act. The comments are not clear and the Commission is unable to respond.

[2] Latest version available is CION NON-PAPER, 9 Feb 2012

		Last word of the para „financing“ should be replaced by another word e.g. „ expenses“. The meaning and the way how “interest subsidy” or “guarantee fee subsidy” is used is completely dissimilar from how it is possible to use grant, which is the only option for direct financing of „project/investment“. The Commission shall be empowered to adopt delegated act in accordance with Article 142 laying down detailed rules concerning the ex ante assessment of financial instruments, the combination of support provided to final recipients through grants, interest rate subsidies, guarantee fee subsidies and financial instruments, additional specific rules on eligibility of expenditure and rules specifying the types of activities which shall not be supported through financial instruments. *Comments:* *We would like to ask the Commission on the idea of benefits coming from combination of grants and financial instruments. What should be value added of this combination within integrated territorial investment? We understand the need to maintain separate records for each form of financing but in the spirit of simplification of the rules for final recipients we recommend to specify how to run couple of actions each financed in different way.* *Could you clarify the text “additional specific rules on eligibility of expenditure and rules specifying the types of activities which shall not be supported through financial instruments”. This text foresees some limits for implementation of FEI, will be the scope of supported activities the similar or same as in the current programming period? Inappropriate use of the term “financial instrument”, see also comment to the previous paragraph.*	A well-conceived combination of grants and financial instruments allows for the design and implementation of well-tailored support schemes that take into account regional as well as sectorial specificities, while maximising the effectiveness of public support. As outlined in Fiche no 12, the delegated act would contain further rules concerning the combination of support to both maximise the synergies between the different forms of support and to prevent inappropriate practices. Separate records for the different sources of financing (from various priority axis, other programmes or even instruments) are required for monitoring, reporting and audit purposes, including for state aid. As outlined in Fiche no 12, the envisaged delegated act would include additional specific rules on eligibility of expenditure and rules specifying the types of activities which shall not be supported through financial instruments (e.g. non-eligibility of firms in difficulty or the re-financing of projects already completed). The approach developed in the latest COCOF guidance note will be maintained.
32(2)		2. Final recipients supported by financial instruments may also receive grants or other assistance from a programme or from another instrument supported by the budget of the Union. In this case, separate records must be maintained for each source of financing. *Comments:* *From the viewpoint of the experience we gained so far from implementation of financial instruments it seems to us that the*	The combination of support at the level of final recipients was already foreseen by Art 43(6) of Reg 1828/2006 and further clarified in the latest COCOF guidance note. The Commission is of the opinion that specific rules concerning the

		intention of the Commission is distinct from what the text is all about. We may only guess that the intention of the Commission was to set up a rule for possible combinations of various forms of support for one project not for one Final recipient. The text, though, does not correspond to the intention. It would be necessary so as the Commission expressed what is the real intention of the text. If two different projects implemented by the same "final recipient" are in question, this condition is fulfilled automatically and therefore it is pointless to provide for it in the Regulation.	combination of financial instruments and other forms of support should be reflected in the CPR to provide legal certainty.
32 in conj with 33		Differentiation of the term „financial instrument" to the term „financial engineering instrument", of the regulation (EC) 1083/2006; especially clarification of the relation between repayable assistance in the form of credit lines and the financial instruments consisting solely of loans or guarantees, Art. 33, para. 4, c). Rationale: Legal clarity and legal certainty; on the one hand in regard to the term „repayable assistance" (currently: Art. 56) apparently changing its meaning compared to the current period; on the other hand necessary for the continuation of financial instruments, for which in the current period rules for credit lines are applied.	Conceptually, there is no difference. The Commission proposes to use in the future the expression "financial instruments" for a matter of consistency between all policy areas financed by the EU budget. As indicated in Article 2, a single definition of "financial instruments" will be used, namely that provided by Article 130 of the Financial Regulation. Under the CPR, assistance in the form of loans provided by the managing authority or intermediate bodies under a loan agreement with the final recipient would fall under Art 33(4)(c). Where loans are provided through financial intermediaries which do not represent intermediate bodies, under a loan agreement between the financial intermediary and the final recipient, they would fall under Art 33(4)(a) or (b) as appropriate.
32(1)		Is it sufficient, that the ex-ante evaluation provides evidence for the need of the financial instruments?	The ex-ante assessment must demonstrate at least market failures or sub-optimal investment situations and investment needs. As outlined in Fiche no 12, the envisaged delegated act would propose criteria and main issues to be covered by the ex-ante assessment which is to be initiated by the managing authority. Prior to the selection of the operation, the Monitoring Committee would examine the ex-ante assessment, in line with Art 100(1)(i) CPR, to enable the Managing Authority to take a well-informed decision.
32(3)		Please give an example of application of this paragraph. Are the contributions in kind invested in the financial instrument? Please clarify.	Art 32(3) offers the possibility to make in-kind contributions in the form of land or real estate to financial instruments providing support to final recipients for activities falling under Art 7(1) of the ERDF regulation. Provided that the land or real estate declared as in-kind contributions is linked to the support provided from the financial instrument (i.e. forms part of the actual investment project supported by the financial instrument), their value could be counted / contributed as national co-financing in accordance with the co-financing modalities of Article 110(2) CPR. As indicated in Fiche no 12, the delegated act would include minimum requirements for making such in-kind contributions.
32		The key provisions on financial instruments are to be defined in	The definition of financial instruments would refer to Art 130(1) of the Financial

		delegated act by the Commission. Finland considers that, in line with the current practice, the article should include a definition of financial instruments and their main purpose. The matter cannot be transferred to a delegated act to be established at a later stage. The Finnish view is that the requirement for ex ante assessment is reasonable. However, key elements of the ex ante evaluation should be described in the general regulation. The assessment should however not place an excessive administrative burden on the system. Finland is interested in knowing whether an assessment is necessary if, for instance, a notified state aid scheme is in place.	Regulation[3]. The exact reference will depend on the text agreed as a result of ongoing negotiations. As indicated in Art 32(1) and confirmed by Fiche no 12, the delegated act would only lay down rules concerning the ex-ante assessment, the combination of support, specific rules on eligibility of expenditure and activities which shall not be supported by financial instruments. Please see answer on Art 32(1) provided on page 20. In such cases, an ex-ante assessment would still be necessary to address issues that may not be covered under the state aid scheme.
32(1) 32(3)		Question à la Commission : pourquoi précise-t-elle qu'il est possible de cumuler subventions et instruments financiers ? Cette possibilité pourrait-elle s'appliquer à un organisme d'ingénierie (versement du fonds de fonds à l'instrument sous forme de prêt ou de subvention) ou à une entreprise bénéficiaire ? Question à la Commission : A quelles fins la Commission entend-elle soumettre les instruments financiers à une évaluation ex-ante alors que les autres types d'intervention n'y sont pas soumis ? Cela ne risque-t-il pas de rendre plus contraignant le cofinancement de ces instruments par les fonds structurels ? Question à la Commission : A quelles situations concrètes la Commission fait-elle référence dans ce cadre ?	The experiences of the current programming period have demonstrated that there is a need to specify the possibility of combining grants with loans, guarantees or equities as part of the same operation (example: grants for energy audits combined with a loan for energy efficiency intervention). Both streams of funding, for a matter of efficiency, should be managed by the financial instrument in a single operation. A different situation is foreseen by 32(2), where the different forms of support are provided through separate operations for the benefit of the same final recipient. Financial instruments should constitute additional forms of support and should not aim at replacing existing MS and EU assistance, or existing market instruments. A justification of their need is necessary to avoid crowding out but also to ensure sustainability. Experience has shown that financial instruments set up without an ex-ante assessment could lead to sub-optimal use of funds. Art 32(3) offers the possibility to make in-kind contributions in the form of land or real estate to financial instruments providing support to final recipients for activities falling under Art 7(1) of the ERDF regulation.
32(1)		Should "any form of support" as referred to in Fiche 12, consist a separate operation?	As indicated in Fiche no 12, the envisaged delegated act would contain more detailed explanations concerning the combination of different forms of support for the benefit of final recipients. Financial instruments can be combined with grants either in a single operation (Art 32(1)CPR) or through separate operations (Art 32(2)CPR).

[3] Latest version available is CION NON-PAPER, 9 Feb 2012

32(2)		We would like to receive detailed clarifications regarding the level at which the "separate records" should be kept.	Separate records for each operation should be kept either at the level of the managing authority or at the level of the financial instrument (to be specified in the relevant funding agreement). As outlined in Fiche no 12 , the delegated act would contain further guidance in this respect.
32(1)		According to Art 32 para 1 "The CSF Funds may be used to support financial instruments under a programme, including when organised through funds of funds, in order to contribute to the achievement of specific objectives set out under a priority, based on an ex ante assessment which has identified market failures or suboptimal investment situations, and investment needs." Do we understand well that Member States can create and develop financial engineering instruments - even it is not linked to establishment or expansion of an enterprise, or associated more widely to strengthening of the general activity of an enterprise - that do not exist or do not programmeerate adequately in the market and thus fill in gaps in the financial market?	Based on the findings of ex-ante assessments foreseen under Art 32(1), financial instruments may support the full range of objectives covered by the programme. As indicated in Fiche no 12, the delegated act would contain more detailed explanations concerning the eligibility of expenditure for certain types of activities which shall not be supported through financial instruments.
32(2)		Question to the COM (clarification needed regarding Article 32.2 in relation to the Article 55.8): is it possible to combine financial instruments with grant scheme for the same eligible costs, provided that the total amount of support does not exceed the maximum allowed intensity according to state aid rules? The article should clearly state that financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies for the same eligible costs if state aid rules are complied.	It is possible to cumulate assistance from CSF Funds for financial instruments and grants, provided the following conditions are fulfilled: 1) two forms of funding fall within two operations selected by the managing authority, and 2) separate accounts and records for each stream of financing for each operation are maintained, and 3) the same expenditure shall not receive double financing, and 4) the two forms of support shall not be used to pre-finance or reimburse one another; and 5) the combination of the two forms of support shall not result in an over-financing of the item; and 6) state aid rules are respected. As indicated in Fiche no 12, the delegated act would contain specific rules concerning the combination of support, including a reference to relevant state aid rules.
		Additionally, we consider that rules concerning the ex-ante assessment of financial instruments, the combination of support provided to final recipients through grants, interest rate subsidies, guarantee fee subsidies and financial instruments, additional specific rules on eligibility of expenditure and rules specifying the types of activities which shall not be supported through financial instruments are essential and should be stated in the Article 32.	The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments. The essential elements regarding support from CSF to financial instruments are explicitly addressed in Articles 32 to 40 CPR, such as the basic principles for support to financial instruments, ex-ante assessments, combination of support, types of instruments and implementation options, eligible expenditure for reimbursement by the CSF,

			financial management rules and reporting requirements. The subsequent legal acts will not change these essential elements but rather define the technical and procedural elements to make possible the effective implementation of the instruments while respecting the essential parameters defined in the CPR.
32(3)		Question to the COM: what is the reason for not allowing in-kind contributions [Art.32.3.]?	Art 32(3) offers the possibility to make in-kind contributions in the form of land or real estate to financial instruments providing support to final recipients for activities falling under Art 7(1) of the ERDF regulation. The situation of sustainable urban development is very specific. Allowing for in-kind contributions in the context of financial instruments for other areas would not be compatible with the market base on which such instruments are implemented.
32(1)		The structures of financial instrument implementation are not specified – would it mean then that any structure of the implementation of financial engineering instruments could be possible, i.e. the manager of "fund of funds" may himself directly manage one of financial instruments?	The CPR offers flexibility in setting-up appropriate delivery structures concerning financial instruments, provided that applicable EU and national rules are respected. The situation mentioned by the Member State would require further explanation.
32(1)		**<u>Elements which should be in the regulation, not in a delegated act:</u>** Art 32.1 ex ante assessment, combination of support, additional specific rules on eligibility, rules specifying type of activities which shall not be supported. For the ex ante ex ante assessment, we would like to add "must contain measurable and objective criteria" in the regulation itself. The implementing act may specify the nature and exact details of these criteria. The rules on combination of support are an essential element of the rules for FI and should be included in the regulation itself. This view is reinforced when reading the Commission's fiche: the elements mentioned about the combination of support can and should be included in the regulation itself. With regard to 'Additional specific rules on eligibility and Rules specifying type of activities which shall not be supported', we feel the general rules should be included in the regulation itself. General rules on the eligibility of purchase of land, not supporting firms in difficulty etc are already included for in the regulation for grants. In the regulation itself, it should be made clear whether those rules for grants apply to FI as well, and if not, what general rules apply to FI. More detailed rules should be in an implementing act, not a delegated	The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments. As outlined in Fiche no 12, the delegated act would propose criteria and main issues to be covered by the ex-ante assessment which is to be initiated by the managing authority. Prior to the selection of the operation, the Monitoring Committee would examine the ex-ante assessment, in line with Art 100(1)(i) CPR, to enable the Managing Authority to take a well-informed decision. The Commission takes note of the Member State's proposal and will consider reflecting "measurable and objective criteria" in the delegated act. While the CPR enables the combination of support, the Commission considers the specific rules concerning combination of support as non-essential and therefore proposes to regulate this matter by way of Delegated act. The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments. The essential elements regarding support from CSF to financial instruments are explicitly addressed in Articles 32 to 40 CPR, such as the basic principles for support to financial instruments, ex-ante assessments, combination of support, types of instruments and implementation options, eligible expenditure for reimbursement by the CSF,

32(1)		act. **<u>The Netherlands can only accept the use of Financial Instruments when these instruments fulfill the following conditions:</u>** <u>1. Restricting budgetary risks by limiting share within the EU-budget</u> This can be reached by limiting the policy areas for which Financial instruments can be used, like in the current period, or by other limitations such as a limitation on the amount of beneficiaries. The Netherlands proposes to use the same policy areas as in the current period: (a) enterprises, primarily small and medium-sized ones, (b) urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development; (c) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing. In addition, the Netherlands would propose to add 'transport' and 'innovation', since the risk of market distortion is the smallest in these kind of sectors (and justification for the use of FEI is best demonstrated) - Add to ***Article 32 para 1*** " […] based on an *ex ante* assessment which has identified market failures or sub-optimal investment situations, and investment needs, in the following areas [see above]: a) enterprises, primarily small and medium-sized ones, (b) urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development; (c) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing; (d) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for transport; (e) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments for innovation and research. <u>2. No Market distortion:</u> For the Netherlands it is important that Financial instruments will only be implemented in the case of market failure. This is covered by ***Art 32 para 1*** ;" […] based on an *ex ante*	financial management rules and reporting requirements. The subsequent legal acts will not change these essential elements but rather define the technical and procedural elements to make possible the effective implementation of the instruments while respecting the essential parameters defined in the CPR. First discussed by the "High Level Group Reflecting On Future Cohesion Policy" at its 10th meeting on 16 May 2011, the widened scope of financial instruments found widespread support among all cohesion policy stakeholders. Where viable and verified through ex-ante assessments, support through financial instruments will increase the efficiency and effectiveness of CSF support. The Commission is determined to offer a flexible toolkit for investing resources from CSF Funds (through grants or financial instruments where viable) and the CPR contains a number of safeguards to mitigate budgetary risks, including ex-ante assessments, phased payments to financial instruments and a set of minimum requirements to be laid down in funding agreements between managing authorities and bodies that implement financial instruments. The delivery of any form of CSF support is subject to the rules on state aid which aim at preventing market distortion.

		assessment which has identified market failures or sub-optimal investment situations, and investment needs." However, it is important that such assessment is based on measurable and objective criteria, and checked by an independent auditor. We would like to add : "The ex ante assessment must contain measurable and objective criteria." The delegated act may specify the nature and exact details of these criteria, but it is necessary to include this line in the Regulation first.	Concerning the proposed amendment, please see first answer to MS question in this section.
32(1)		1. Member State should prepare ex-ante assessment of the FI as the part of an ex-ante evaluation of the programme which next shall be followed (in a later stage) by a specific assessment of the needs (analysis which usually constitutes a part of investment strategy of such instrument). 2. Could you provide us with all typical examples of market failure and sub-optimal investment situations for the ESF? 3. Who would conduct ex ante assessment of instruments implemented on the level of EC? 4. There is no need for a delegated act describing such an assessment in a more detailed way. PL has already started its analysis and we do not want to be surprised by additional requirements to be set in the end. Therefore, we propose that the assessment could be based on the well functioning national standards and practices (as an alternative solution).	The ex-ante evaluation of the programme covers the areas identified by Art 48 and supports the intervention logic of the programme. The ex-ante assessment for FIs referred to under Art 32(1) is to be undertaken during the programming period and prior to the selection of an operation comprising a financial instrument. As outlined in Fiche no 12, the delegated act would propose criteria and main issues to be covered by the ex-ante assessment which is to be initiated by the managing authority. Prior to the selection of the operation, the Monitoring Committee would examine the ex-ante assessment, in line with Art 100(1)(i) CPR, to enable the Managing Authority to take a well-informed decision. It is not possible to list all typical market failures or sub-optimal investment situations for the ESF. Generally speaking they will relate to high transaction costs and high risks associated to the number and type of final recipients usually targeted by the ESF. For financial instruments at Union-level, the conduct of ex-ante assessments for the set-up of these financial instruments is subject to the Financial Regulation and the related delegated act. The ex-ante assessment under Art 32(1) is to be initiated by the managing authority during the programming period in order to determine, among other things, the need for a financial instrument and the most appropriate implementation option (i.e. Art 33(1)(a) or (b)). The ex-ante evaluation of the programme covers the areas identified by Art 48 and supports the intervention logic of the programme. The ex-ante assessment for FIs referred to under Art 32(1) is to be undertaken during the programming period and prior to the selection of an operation comprising a financial instrument. The Commission is of the opinion that minimum requirements and main issues to be covered by ex-ante assessments under Art 32(1) will safeguard the interests of all managing authorities and will enable a coherent approach in implementing financial instruments. Moreover, minimum requirements at EU level to be proposed in the delegated act will not prevent managing authorities from

			considering national standards and practices when undertaking the ex-ante assessment.
32(1) para 2 32(2)		1. In the context of possible combining FI with grants and taking into account the issues of state aid accumulation does the wording of Art. 32.1 par. 2 and Art. 32.2 mean that the same item of expenditure could be supported from a grant and IF or two different types of IF? In particular, please confirm that the following models are possible:	Please see answer on Art 32(2) provided on page 22.
		- project's part of expenditure is financed with the use of FI - loan and equity investment, part from grants; additionally resources come from different programmes/different funds,	In theory, such a scenario may be feasible, provided that separate records and audit trails are maintained, and state aid rules respected.
		- a body implements a project financed by loan granted within JEREMIE initiative and guaranteed by the guarantee fund of EIF within CIP. A concrete illustrative example would be welcome.	The situation described by the Member State does not represent acceptable practice in as much as both the guarantee and the loan would be simultaneously covered by the EU budget for the same cost. It is not justified that EU budget resources are used to cover the risk of a loan provided from EU budget resources.
		2. We believe that actual combining different forms of financing shall be allowed provided that the co-financing ceilings are not exceeded.	Please see response on (1)
		3. Please provide examples on what kind of documents will be expected for verification of expenditure.	The question is not clear. The Commission proposal does not introduce specific requirements concerning the types of documents used to verify expenditure.
		4. Controls and audits should not concern the level of final recipients (products offered by FI).	As outlined in Fiche no 12, and in accordance with the latest COCOF guidance note (point 6.1.9), the envisaged delegated act is intended to further specify that audits may be conducted at the level of final recipients only if supporting documents are not be kept by the managing authority or the financial instrument, or if there is legitimate doubt regarding the reality of support provided to final recipients.
32(1) par3		Specifying the types of activities which cannot be supported through financial instruments in a delegated act is not justified. Any such restrictions should be fine-tuned to specific local conditions and should be established as part of a specific assessment of the needs (conducted to support the investment strategy of a FI).	The specification of types of activities which cannot be supported through financial instruments would reflect the overall policy principles of cohesion policy and reflect the restrictions contained in recently agreed COCOF guidance (COCOF 0014-05). As outlined in Fiche no 12, the delegated act would include additional specific rules on eligibility of expenditure and rules specifying the types of activities which shall not be supported through financial instruments (e.g. non-eligibility of firms in difficulty or the re-financing of projects already completed). According to Art 55 CPR, rules on eligibility of expenditure shall be

			determined on the basis of national rules.
32(1),(2)		The Slovak Republic invites COM to clarify a difference on how financial instrument can be combined with grant based on these two paragraphs. It is not clear.	Art 32(1) explicitly refers to combination with grants in a single operation (e.g. grant for energy audit offered together with loan for energy efficiency intervention). In the case of Art 32(2), grants and financial instruments are combined in separate operations for the benefit of the final recipient (e.g. tangible assets financed through financial instrument, combined with training financed through grants). As indicated in Fiche no 12, the envisaged delegated act would contain more detailed provisions concerning the combination of different forms of support.
32(1)		32.1 helpfully clarifies the positions with regard to cumulation of measures but, there should be an explicit provision that this is permissible only where state aid rules are respected, notwithstanding Article 6.	For all forms of cohesion policy support, state aid rules apply. This includes the combination of support. As indicated in Fiche no 12, the envisaged delegated act would set out more detailed provisions concerning the combination of support (e.g. that state aid rules concerning the cumulation of aid should be respected). The Commission does not see the need to repeat the provisions of Art 6 CPR.
		In 32.1 at what level does the ex ante assessment need to be done? Can it be conducted as part of the ex ante evaluation for the programme as a whole (set out in Article 24) or does it need to be done separately, and specifically for financial instruments.	Please see answer on Art 32(1) provided on page 20.
32(2)		In 32.2 can the Commission confirm that It would be useful to confirm that this would allow the match funding for a grant from a scheme co-financed by EAFRD or ESF to be match funded from a FEI fund co-financed by ERDF.	The requirements for national co-financing have to be met at the level of the relevant priority axes of the programmes. Co-financing (match funding) constitutes resources that are additional to the EU resources as part of the programme. Therefore, one type of EU resource under one programme cannot be considered match funding under another programme.
32(3)		In 32.3, does “urban development or regeneration” refer to generic urban development or the specific provisions of the Common Provisions Regulation and ERDF Regulations (for example, 5% ring-fence, list of cities in Partnership Agreement, ITIs etc)	"Urban development or regeneration" refers to financial instruments providing support to final recipients for activities falling under sustainable urban development.
		What is the rationale for a 10 per cent limit on land (as set out in Article 59) in the context of a capital investment fund?	Art 32(3) refers to in-kind contributions for which the rules of Art 59(1) apply. The limits on the purchase of land as set out in Article 59 (3) (b) reflect the provisions of the current programming period and apply to both grants and financial instruments.
		32.3 seems to be stating that the Commission would permit inclusion of land in a financial instrument only where the land is contributed at the level of the project. Is that so?	Art 32(3) refers to contributions in-kind which are possible in the context of financial instruments providing support to final recipients for activities falling under Art 7(1) of the ERDF regulation. Provided that the land or real estate

			declared as in-kind contributions is directly linked to the support provided from the financial instrument (i.e. they form part of the actual investment projects supported by the financial instrument), their value could be counted / contributed as national co-financing in accordance with the co-financing modalities of Article 110(2) CPR. In such cases, the in-kind contribution can be provided at the level of the financial instrument or at the level of the final recipient. As indicated in Fiche no 12, the delegated act would include minimum requirements for making such in-kind contributions.

Art	MS	Question	Commission answer
Article 33: Implementation of financial instruments			
33(1)		Could the Commission explain how the financial instruments set up at Union level will work? What could be their link with existing national instruments?	Financial instruments at Union level will be subject to the Financial Regulation and the related delegated act. Where the investment strategies of such instruments coincide with the objectives of an operational programme and the ex-ante assessment (Art 32) has confirmed the efficiency and effectiveness of using such instruments to deliver investments in line with the programme, managing authorities may decide to contribute programme resources to these instruments. Contributions from programmes to Union-level instruments will be subject to ensuring that CSF contributions to Union-level instruments are ring-fenced for investments in the region covered by the programme, in line with the objectives of the programme. Where the ex-ante assessment concludes that existing national/regional instruments are more efficient, CSF support should target these instruments.
33(2)		Where should separate accounts be registered?	The opening of separate accounts will fall under the responsibility of the entity implementing the financial instrument at Union-level.
33(4)(a)		Could the Commission clarify the different options laid down in this article and their consequences?	This option enables investments to be made in the capital of existing or newly created legal entities (such as investment funds) which are dedicated to undertaking implementation tasks and investments in accordance with the objectives of CSF Funds. In such cases, the managing authority would become a shareholder in this entity (as proposed to Art 33(4)(b), where the listed entities would be entrusted with implementation tasks and CSF Funds would be kept by these entities on a separate fiduciary account (Art 33(6) and there would be a clear separation of these assets from the assets of the entity).
33(6)		What are the open fiduciary accounts?	In line with the previous explanation, the purpose of this article is to specify that the entities listed under Art 33(4)(b), and entrusted by the MA with the implementation of a financial instrument, should open fiduciary accounts in their name and on behalf of the MA. CSF contributions would be paid into these accounts and managed by the listed entities (as proposed to Art 33(4)a where CSF contributions would be invested in the capital of the listed entities). The CPR will deploy the relevant provisions concerning fiduciary accounts as referred to under the Financial Regulation.
33(3)		It is not clear if the provision under art. 33.3.a is exclusive with regard to the provision set out in art.33.3.b or the two are mutually	Articles 33(3)(a) and (b) represent two basic implementation routes under shared management. On the basis of the ex-ante assessment, the MA can decide to

		applicable. Even if the fiche gives some explanation on the implementing act, it is still not very clear what the relationship between the two is.	implement financial instruments under 33(3)(a) or 33(3)(b), or a combination thereof.
33(5)		The reference to "open, transparent, proportionate and non-discriminatory procedures" for the selection of financial intermediaries needs to be further specified.	The CPR employs same terminology as Art 130 of the revised Financial Regulation. This reflects the fact that public procurement rules may not apply in the case of some institutions referred to under Art 33(4)(b)(ii).
33(1)		1. In implementing Article 32, managing authorities may provide a financial contribution to the following financial instruments: (a) financial instruments set up at Union level, managed directly or indirectly by the Commission; *Comments:* *In case of setting up a financial instrument at Union level we recommend further specification how to ensure usage of recourses in specific region. Does the member state have influence on decisions of EU in relation to managing financial instruments?*	Please see answer on Art 33(1) provided on page 29.
33(4)		(b) financial instruments set up at national, regional, transnational or cross border level, managed by or under the responsibility of the managing authority. 4. When supporting financial instruments referred to in paragraph 1(b) the managing authority may: (a) invest in the capital of existing or newly created legal entities, including those financed from other CSF Funds, dedicated to implementing financial instruments consistent with the objectives of the respective CSF Funds, which will undertake implementations tasks; the support to such investments shall be limited to the amounts necessary to implement new financial instruments consistent with the objectives of this Regulation; or (b) entrust implementation tasks to: (i) the European Investment Bank; (ii) international financial institutions in which a Member State is a shareholder, or financial institutions established in a Member State aiming at the achievement of public interest under the control of a public authority, selected in accordance with applicable Union and national rules; *Comments:* *Subpara (ii) is quite illogical in the proposed wording, both generally and especially in relation para a), which allows putting financial*	Art 33(4)(a) enables investments to be made in the capital of existing or newly created legal entities (such as investment funds) which are dedicated to

		resources into any (incl. Private) legal entity without any procurement procedure, conditioned that this legal entity wil be focused exclusively on playing the role of financial instrument.	undertaking implementation tasks and investments in accordance with the objectives of CSF Funds. In such cases, the managing authority would become a shareholder in this entity (as proposed to Art 33(4)(b), where the listed entities would be entrusted with implementation tasks and CSF Funds would be kept by these entities on a separate fiduciary account (Art 33(6) and there would be a clear separation of these assets from the assets of the entity). Therefore, this implementation option would not fall under rules for the public procurement of services.
		Regulation should allow for running of already existing specialised financial institutions in the area of EU and apply the model of finacial instrument as a block of accounts within a financial institution.	The CPR foresees this scenario by way of opening a fiduciary account (Art 33(4)(b) in conjunction with Art 33(6). The expression "separate block of accounts" will no longer be used in next programming period, even though the basic concept has not changed.
		At the same time it should be clearly specified, what is meant under the requirement that the given national institution was "under the control of a public autority".	The text in the CPR corresponds to established jurisprudence regarding entities which are entities to which public authorities can entrust services without applying public procurement rules.
33(5)		(iii) a body governed by public or private law selected in accordance with applicable Union and national rules. (c) undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. *Comments:* *It ´s not clear whether the MA can delegate these activities (provision of guarantees, loans) to an intermediate body, or these activities must be only performed directly by the managing authority.*	These activities can be delegated to an intermediate body in the meaning of Art 2(15) CPR.
		5. The entities referred to in paragraph 4(b)(i) and (ii), when implementing financial instruments through funds of funds, may further entrust part of the implementation to financial intermediaries provided that these entities ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles 57 and 131 (1), (1a) and (3) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interests. *Comments:* *Please clarify the meaning of "fund of funds". For the selection of financial intermediaries can be also used exception from the rules for*	From a Commission perspective, it seems desirable to replace the term "holding fund" by "fund of funds" as this term represents commonly used terminology in

		public procurement, if it is justified. In this respect, it is necessary to clarify meaning "open, transparent, proportionate and non-discriminatory procedure" and whether this procedure does not exclude the possibility of application exception to the rules of public procurement.	the area of finance, reflecting the agreed principles of the current programming period. The CPR employs the same terminology as Art 130 of the revised Financial Regulation. This reflects the fact that public procurement rules may not apply in the case of some institutions referred to under Art 33(4)(b)(ii).
		Reference to Articles 57 and 131 (1), (1a) and (3) of the Financial Regulation appears to be mistaken as these articles refer to using of EU budget resources in "centralised basis" regime. Implementation of CSF funds will be in the regime of "shared management"(Art. 53 para. 3)	Art 57 of the Financial Regulation refers, among others, to the principles of sound financial management and proportionality which are to be respected by entities implementing EU budget resources also under shared management principles (reference to Art 55 FR). The principles stipulated in Art 131 (1), (1)(a) and (3) of the FR refer to financial instruments as defined under Art 130(1) of the FR and this definition includes all "Union measures of financial support provided from the (EU) budget" and thus also financial instruments under shared management. As a result, the references to Articles 57 and 131 (1), (1a) and (3) of the Financial Regulation are justified.
33(7)		*This article changes the concept of "fund of funds" so as it was defined in the current programming period according to Art. 44 second subpara. In the concept based on use of "financial intermediary" the investment is evidently not made from "fund of funds" into a financial instrument (fund), but there is only provision of credit or guarantee for "financial intermediary", which effectively changes the "fund of funds" into an "ordinary fund". Regulation should provide a clear answer on the nature of "fund of funds", including whether the regime which stems from the concept of „fund of funds" so as it is stipulated in the current period general Regulation is admissible. The text of proposed General Regulation is to be explained so that such an implementation approach is not allowed.*	The question concerning the "changed concept of fund of funds" is not clear. As pointed out above, the basic concept has not changed and a definition as well as a reference to the role of fund of funds would be included in the envisaged delegated act, reflecting the agreed principles of the current programming period.
		7. The Commission shall be empowered to adopt delegated act in accordance with Article 142 laying down detailed rules concerning specific requirements regarding the transfer and management of assets managed by the entities to which implementation tasks are entrusted, as well as conversion of assets between euro and national currencies. *Comments:* *It seems to be redundant. Contributions to financial instruments are done in the member state currency.*	The question of conversion of assets was addressed in the latest COCOF guidance note and the Commission intends to maintain this line and to reflect the

			agreed principles in the envisaged delegated act.
33(3)(a)		Which standard terms and conditions does the text refer to? How does the Commission make sure that with new financial instruments the risk for the EU budget is restricted to the share of the budget applied for these instruments?	To facilitate the timely launch and sound functioning of financial instruments at national, regional or cross-border level, and to build on the implementation experiences of the current programming period, the Commission will propose standard terms and conditions which could be used by Member States and managing authorities for the set-up, implementation and governance of financial instruments. While applicable EU rules, in particular as regards the use of CSF Funds and public procurement, will serve as a foundation for these standard terms and conditions, they are also intended to reflect existing State aid rules so as to catalyse the roll-out of these instruments. The risk to the EU budget is limited to the EU contribution to the financial instruments and that must be reflected in the agreements between the managing authorities and the bodies implementing financial instruments.
33(3)(b)		Does the term „already existing“ financial instruments refer to instruments from the current period? Which „specific rules“ with regard to these instruments in point b) the commission wants to lay down. What is meant by the term “products”? Do the “specific rules” refer to already existing instruments? Can these instruments be continued without changing them? Will transition rules be set for the existing instruments of the period 2007-2013?	The term „already existing“ financial instruments refers to instruments supported from operational programmes in the current or previous period or to instruments that already exist in the market and could be supported in order to achieve the objectives of the operational programmes. There is no intention to create "specific rules". Rather, the contribution under CPR to these funds should be subject to such contributions being compliant with applicable EU and national rules. The term "products" refers to the different types of support that may be provided from financial instruments to final recipients (e.g. loans, guarantees, equity). There is no intention to create "specific rules". Rather, the contribution under CPR to these funds should be subject to such contributions being compliant with applicable EU and national rules. The rules will apply to all instruments supported under the CPR. For contributions under the CPR, existing instruments (2007-2013) will have to be adapted in order to receive new funding under CPR in the new programming period. Transition rules for existing instruments are not foreseen. Existing instruments established under Art 44 of the General Regulation will continue on the basis of the current legal framework until 31 December 2015.
33(3)		Why do the rules applied to financial instruments set up at member state level not refer to basic principles of the Financial Regulation, such as Article 131 in Part 1 of the Financial Regulation, as proposed	This provision clarifies that the rules of the CPR do not apply to the financial instruments set-up at EU level. They are multi-policy instruments and subject to the Financial Regulation. The Financial Regulation itself foresees that financial

		to financial instruments set up at Union level, Article 33, para. 2, first sentence?	instruments under shared management principles are subject to the specific regulations covering the CSF Funds (reference: Art 130(4), Presidency proposal and the Commission non-paper of 9 Feb 2012).
33(4)(a)		Last sentence: What is meant by „amounts necessary“?	"Amounts necessary" means that investments from CSF contributions should be limited to those amounts necessary in order to enable investments to achieve the objectives foreseen by the programme.
33(4)(c)		Which instruments are referred to? Does it include the repayable assistance (“grants”)? Where lies the difference between „repayable assistance” (“grants”) and the financial instruments consisting solely of loans or guarantees?	This provision does not include grants. Investments under Art 33(4)(c) are limited to loans and guarantees. Both in financial and accounting terms, repayable grants have a different nature than loans. As a result, they fall under the general provisions for grants and are not covered by Articles 32 to 40 CPR.
33		Finland requests a further clarification on the paragraph explaining that the Commission “shall adopt delegated act (…) laying down the specific rules regarding certain types of financial instruments referred to in point (3b), as well as the products that may be delivered through such instruments”. What kind of acts does this concern?	Fiche no 12 provides further explanation concerning elements that would be covered by way of the envisaged delegated act or implementing act. The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments.
33(4)(a)		Proposition d’amendement : Dans l’état actuel de la législation française, l’état ne peut pas prendre de participation dans le capital des organisations. En outre, certaines structures n’ont pas de capital (ex : associations).	The provision of Art 33(4)(a) contemplates contributions to independent legal entities as done in the current programming period (e.g. Region Languedoc-Roussillon).
33(4)(b)		Questions à la Commission : La Commission peut-elle confirmer ce que recouvrent les « tâches d’exécution » ? S’agit-il bien de la gestion du fonds d’ingénierie financière ?	Yes, this comprises the responsibilities for the set-up and management of the financial instrument.
		Point i) Cela inclut-il le FEI ? (Le FEI est une filiale de la BEI et pourrait être implicitement concerné, mais le règlement général actuel 1083/2006 le mentionne explicitement) ;	Art 2(21) contains a definition of EIB which also includes the EIF.
		Point ii) et iii) La formulation « choisi conformément aux règles de l’Union et aux règles nationales applicables » est vague. La Commission entend-elle ainsi proroger la règle de non mise en concurrence pour la BEI/FEI applicable sur la période 2007-2013? Si c’est le cas, il serait programmeportun de reprendre la formulation de	The CPR employs the same terminology as Art 130 and Art 55(1) of the revised Financial Regulation. This reflects the fact that public procurement rules may not apply in the case of some institutions referred to under Art 33(4)(b). The selection of a financial intermediary will have to be made on a transparent and objective basis. As already stated in the existing legislation (Art 44(b)(ii) of

		l'article 44 b) du règlement 1083/2006 la formulation du règlement actuel : « lorsque l'accord n'est pas un contrat public de service au sens de la législation applicable en matière de marché publics, l'octroi d'une subvention, définie à cet effet comme contribution financière directe par voie de donation : i) à la BEI ou au FEI ; ii) à une institution financière sans appel à proposition, si cela est fait conformément à une loi nationale compatible avec le Traité »	Regulation 1083/2006), public procurement law does not necessarily apply
33(1)		We would like more information regarding the provision of financial contribution from the Managing Authorities to financial instruments. The MA should allocate resources in advance? Is the MA the one that decides on the issue or there should be clear provision while drafting the relevant programme?	The operational programmes will include, for each priority axis, a statement on the planned use of financial instruments. This will be notably necessary to make use of the incentives offered by the CPR (i.e. higher co-financing rates) for using financial instruments.
33(1)(b)		Regarding the financial instruments set up at transnational level, there is a need for additional clarification concerning the following: the law that will be applied, the location of the instrument and its manager in case they are an independent legal entity; more details regarding the type of instruments foreseen at this level; whether there should be specific reference to such instruments in the programmes, or they can be created afterwards, during the implementation period without modifying the programme. It should be noted that Art.7.2.c.(i) of the ETC Regulation, as proposed to be amended by the Danish Presidency, the reference of various financial instruments concerning synergies of SF and EIB is optional.	During the programming period, ex-ante assessments under Art 32(1) will have to establish the rationale for CSF support to financial instruments. Even though the scope of the financial instrument may be trans-national and contributions may be received from various Member States, the financial instrument will have to be established under applicable EU rules and the rules of one of the Member States contributing to such instruments.
33(3)		The delegated act generally remove the possibility of any negotiation between COM and the M-S. We would like to have less delegated act on behalf of COM. Furthermore, concerning the products that may be delivered through such instruments, every M-S should have the ability to design its own, according to its special needs.	The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments. The term "products" refers to the different types of support that may be provided from financial instruments to final recipients (e.g. loans, guarantees, equity). As indicated in Fiche no 12, the envisaged delegated act would contain a set of minimum requirements for specific products. They would apply to all instruments supported from CSF Funds under the CPR and will build on the guidance and principles agreed during the current programming period.
33(4)(b)		We would like more details regarding the Funding Agreement at the	More details would be provided by the envisaged delegated act. In case a

		two different levels, as described in Fiche 12. Is there a need for more than one level?	managing authority decides to implement financial instruments through a fund of funds (and subsequent financial intermediaries), funding agreements are required at two levels: between the MA and the body implementing the FoF, and between the body implementing the FoF and the body implementing the financial instrument.
33(4)(c)		There is needed clarification concerning the reason why the managing authority may undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. Why the same provision cannot be applied in the case of interest rate subsidies or other instruments?	This corresponds to practice that exists in some Member States, whereby managing authorities provide direct loans or guarantees to final recipients on a case by case basis, without setting up a delivery structure for that purpose.
33(1)(a)		Issues related to financial instruments to be set up at Union level are discussed also in connection with the COM proposal concerning risk sharing instruments. It is advisable to discuss the future financial instruments to be set up at Union level, only after the compromise text on risk sharing instruments will be finalized. Until that time we have a reservation on points related to financial instruments set up at Union level.	The Commission takes note of the Member State's observation. Financial instruments at Union level will be subject to the Financial Regulation and the related delegated act.
33(4)		It is unclear how exactly would the relationship between the MS and the EU level financial instruments work in practice. How would the MA be actually able to „manage" this funding transferred to the EU level instruments?	Financial instruments at Union level will be subject to the Financial Regulation and the related delegated act. The managing authority would have to conclude a funding agreement with the body implementing the EU-level instrument. Other than that, no specific management responsibilities are foreseen.
		As regards international financial instruments mentioned within Article 33.4. (b) (ii), then it is necessary clearly describe relations between COM and the Member State.	Art 33(4) refers to financial instruments under shared management. Art 33(4)(b)(ii) lists financial institutions to which implementation tasks concerning financial instruments under Art 33(1)(b) may be entrusted. The relationship between the managing authority and these institutions will be subject to the provisions of the relevant funding agreement.
33(5)		Article 33.5 should include reference to the Article 33.4 (b) (iii).	This point will be further considered.
		Question to the COM: why should the EC level financial instruments get a preferential treatment regarding audits and payment flow? Could the COM provide a justification for this?	Audits and payment flows for financial instruments at Union level cannot be regulated by the CPR as these instruments are centrally managed and are subject to the Financial Regulation. However, based on current experiences, Union level instruments may also envisage phased payments (e.g. LGTT in the current programming period). The difference in treatment is thus not a question of incentives but resulting from different regulatory frameworks for FIs under

			central management and FIs under shared management.
33(6)		Question to the COM: what exactly is meant by "sound financial management" and "appropriate liquidity" within the Article 33.6. Proposal: We suggest deleting this sentence unless it has a clear added meaning on top of the general principles of sound financial management.	The principles of sound financial management are referred to in chapter 7 of the Financial Regulation (revised Presidency Proposal). Appropriate liquidity means that assets held on fiduciary accounts should be managed in such a way, that they are available and transferrable at the moment investments are due.
33(1)(b)		How the financial instruments set up at trans-national or cross-border level could be implemented – will it be possible that a few countries run a single instrument and therefore several managing authorities are involved?	Yes, this would be possible. Even though the scope of the financial instrument may be trans-national and contributions may be received from various Member States, the financial instrument will have to be established under applicable EU rules and the rules of one of the Member States contributing to such instruments. As indicated in Fiche no 12, where contributions from several programmes are involved, a single managing authority and a single audit authority must be designated.
33(4)(b)(ii)		We would like to suggest that Member State may entrust the implementation tasks to non-financial institutions also.	Entrusting implementation tasks to a non-financial institution is possible under Art 33(4)(b)(iii).
33(4)(c)		In case Managing Authority undertakes implementation tasks directly, as referred here, is it possible that implementation tasks are delegated to another institution and will this institution be able to receive management fee/have the management costs reimbursed?	Under this Article, financial instruments consisting solely of loans or guarantees can be implemented directly by the managing authority or an intermediate body. Management costs and fees cannot be charged in such cases.
33(5)		Is it correct that following provisions of this article there is no need to apply public procurement procedure for selection of financial intermediaries?	Public procurement procedures apply as a general principle. The institutions entrusted with the implementation tasks under Art 33(4)(b)(i) and (ii) must apply public procurement rules unless such rules foresee exemptions as is the case for IFIs and EIB. The selection of a financial intermediary will have to be made on a transparent and objective basis. As already stated in the existing legislation (Art 44(b)(ii) of Regulation 1083/2006), public procurement law does not necessarily apply. The decision will have to be made on the basis of the nature of the activity the intermediary will have to carry out.
33(6)		It is indicated that assets held on fiduciary accounts shall have appropriate liquidity – how this aspect should be measured?	Appropriate liquidity means that assets held on fiduciary accounts should be managed in such a way, that they are available and transferrable at the moment investments are due.
33(3)		<u>Elements which should be in the regulation, not in a delegated act:</u> Art 33.3 specific rules regarding certain types of financial instruments referred to in point (b), as well as the products that may be delivered through such instruments..	The fiche provided by the Commission clarified the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments. The essential elements regarding

		The general principles mentioned in the Commission's fiche should be included in the regulation itself. More detailed rules should be in an implementing act, not a delegated act.	support from CSF to financial instruments are explicitly addressed in Articles 32 to 40 CPR, such as the basic principles for support to financial instruments, ex-ante assessments, combination of support, types of instruments and implementation options, eligible expenditure for reimbursement by the CSF, financial management rules and reporting requirements. The subsequent legal acts will not change these essential elements but rather define the technical and procedural elements to make possible the effective implementation of the instruments while respecting the essential parameters defined in the CPR. Therefore, the Commission is of the opinion that the elements referred to under Art 33(3) last paragraph constitute non-essential elements.
33(4)		Art 33.4 The Commission shall be empowered to adopt delegated act in accordance with Article 142 laying down rules concerning funding agreements, the role and responsibility of the entities to which the implementation tasks are entrusted, as well as management costs and fees. We would prefer to include the general principles in the regulation and detailed rules in an implementing act. But we could also agree with the Commission's proposal if a majority of member states can agree to it.	Please see answer above.
33(7)		Art 33.7 detailed rules concerning specific requirements regarding the transfer and management of assets managed by the entities to which implementation tasks are entrusted, as well as conversion of assets between euro and national currencies. The rules on transfer and management are an essential element of the rules for FI and should be included in the regulation itself. This view is reinforced when reading the Commission's fiche: the elements mentioned about the combination of support can and should be included in the regulation itself. For the conversion to euro, we can agree with an implementing act or delegating act.	Please see answer above.
		The Netherlands can only accept the use of Financial Instruments when these instruments fulfill the following conditions: <u>5. Exit</u> The Netherlands is of the opinion that Financial instruments should have a clear end date. Apart from an ex-ante assessment, a clear exit is necessary. Preceeding any liquidation decision, or decision to continue the instrument, an evaluation is needed before the end of the	The Commission is of the opinion that "the end date of" or "exit from" financial instruments cannot be and should not be determined as the operational life of financial instruments depends on a variety of factors, including the technical nature of the products to be offered to final recipients (long-term loans vs equity

33(3)		MFF period. We would like to add in article 33.3: "before the end of 2014 an independent full evaluation shall be conducted on effectiveness with an analysis whether market uptake is satisfactory and whether alternative sources of long-term debt financing become sufficiently available. On the basis of this evaluation the Member state shall provide a motivation on whether or not to continue to contribute to an existing financial instrument, and include the motivation in the operational Programme." The delegated act will specify any matter relating to liquidation of financial instruments."	investments), the target sectors (support to long-term urban development projects vs. short-term support to SMEs), the underlying market circumstances and the specific promotional strategy pursued in the context of an operational programme. Provisions regarding the re-use of CSF contributions during the programming period as well as related legacy requirements are included in the CPR and can be considered as appropriate safeguards.
33.1(a) 33(2)		1. Please, explain the mechanism of this option in an additional information fiche containing the answers to the following questions:	The complementarity and consistency between financial instruments supported through different EU policy areas, including cohesion policy, was developed in the Commission Communication referring to the EU debt and equity platforms. The mechanisms for financial instruments under Art 33(1)(a) will be further developed by the Financial Regulation and the related delegated act . The Commission wishes to underline that contributions to EU-level instruments are optional and that managing authorities will have ample freedom to choose the most appropriate implementation option, taking into consideration the findings of the ex-ante assessment under Art 32(1) CPR.
		A. Does the decision about entrusting the EC with a task of establishing FI at EU level mean the need to include this choice in the operational programme?	Financial instruments at Union level will be subject to the Financial Regulation and the related delegated act . Where the investment strategies of such instruments coincide with the objectives of an operational programme and the ex-ante assessment (Art 32) has confirmed the efficiency and effectiveness of using such instruments to deliver investments in line with the programme, managing authorities may contribute programme resources to these instruments. The programme will include, for each priority axis, a mention of the planned use of financial instruments. Reflecting in the programme, possibly through a separate priority axis, the envisaged contributions to financial instruments under Art 33(1)(a) will allow for making use of the incentives offered by the CPR (i.e. higher co-financing rates in accordance with Art 110(7)).
		B. Does a MS have to sign with EC or a body indicated by EC a co-financing contract? What is the status of such a contract?	A funding agreement covering operational programme contributions would be signed between the managing authority and the body entrusted with implementation tasks concerning financial instruments at Union-level.
		C. Is EC or a body indicated by EC as FI manager considered as	The bodies implementing financial instruments at Union-level would be

		beneficiaries of such an operation/project? What is the EC status, in particular in the context of Art. 34 which prevents MA of the programme from conducting control and audit activities in relation to this model established by EC?	considered the beneficiary. The need to provide relevant control reports to managing authorities will be reflected in the appropriate rules and contractual documents setting up the Union-level instruments.
		D. Does the decision about setting up FI at EC level and securing by MS contribution mean reservation of part of the allocation without cash flow/paying of resources?	Where the investment strategies of such instruments coincide with the objectives of an operational programme and the ex-ante assessment (Art 32) has confirmed the efficiency and effectiveness of using such EU level instruments to deliver investments in line with the programme, managing authorities may contribute programme resources to Union-level instruments. A Union-level instrument would not be set-up to implement a specific compartment of programme resources received from a Member State, but where EU instruments were already set up or will be set-up as decided by the Commission, Member States may contribute programme resources provided that such instruments would deliver to implement programme objectives.
33(2) 33(5)		E. Or rather the decision about setting up FI at EC level and securing by MS contribution means actual transfer of resources to the EC account or an account indicated by the EC, on the basis of this the payment application will be issued as the basis for certification of the whole amount in advance?	The amount of operational programme resources transferred from the managing authority to separate accounts indicated by financial instruments at Union-level (in accordance with the relevant agreements and payment schedules) can be included in a payment request.
33(3)		F. When expenditures are certified for the IF set up at EU level (e.g. at the stage of setting up the fund, transfer of money, other)? If the implementation tasks are entrusted to the EBI, does the body play a role of a fund of funds and is it then a beneficiary of the operation?	The bodies entrusted with implementation tasks concerning financial instruments at Union-level would be considered the beneficiary. A funding agreement covering operational programme contributions would be signed between the managing authority and the body entrusted with implementation tasks concerning financial instruments at Union-level. The amount of operational programme resources transferred from the managing authority to separate accounts indicated by financial instruments at Union-level (in accordance with the relevant agreements and payment schedules) can be included in a payment request. The term fund of funds as referred to in the CPR is only applied in the context of FIs under shared management.
33(4)		It is necessary to review all references to Financial Regulation after the FR is agreed. If provisions regarding financial instruments approved in the FR will be unfavourable from the perspective of CPR funds implementation and FR will provide a possibility to regulate those issues under specific policy regulations then all the issues have to be regulated under CPR.	The Commission agrees with this point.

33(4)(a)		There is no justification for introduction of limits as regards the products offered by FI in a delegated act.	The term "products" refers to the different types of support that may be provided from financial instruments to final recipients (e.g. loans, guarantees, equity). As indicated in Fiche no 12, the envisaged delegated act would contain a set of minimum requirements for specific products. They would apply to all instruments supported from CSF Funds under the CPR and will build on the guidance and principles agreed during the current programming period (e.g. existing multiplier requirement for guarantee products).
		Please provide detailed explanation of mechanisms of implementation of FI presented in point 4. 1. Please, explain the expression “invest in the capital” – should it be understood as permanent or temporary transfer of capital to bodies mentioned in this article?	Art 33(4)(a) concerns the contribution to financial instruments in the form of investing in the capital of existing or newly created legal entities and corresponds to the current implementation option regarding setting up financial instruments as independent legal entities as foreseen in Art 43(2) of Regulation 1828/2006. The duration of an investment in the capital of existing or newly created legal entities is subject to the relevant funding agreement, which should also include winding-up and exit provisions.
		2. Does investment in the capital mean transfer of resources into founding capital and thereby an increase of shares in such financial body?	Yes.
		3. Does the investment in the capital mean apportion of resources as an aim capital managed on behalf and in aid of MA which entrusted such capital?	The aim is not only to apportion additional resources to the legal entity but rather to enable that entity to implement a financial instrument which caries out investments consistent with the objectives of the regulation and the priorities of the programme.
		4. Does the investment in the capital mean that this body receives resources in a form of grant? Is it still a pool of repayable resources only in disposal of a body implementing repayable instruments, until the project is completed or agreement is concluded?	No, it refers to participation in the capital of a legal entity with all associated rights and obligations. Such resources are part of the capital base of the legal entity and must be used to carry out investments which ultimately become eligible expenditure at closure as provided for under Art 36 CPR.
		5. What does the term "implementation tasks" mean?	It means that the respective body or entity would be responsible for setting-up and implementing the financial instrument in line with programme objectives and applicable EU and national rules.
33(4)(b)(i)		6. How should the term "legal entities" be understood? As financial intermediaries or a fund of funds?	Legal entity means a body acting in accordance with its statutes and pursuing objectives in line with these statutes. CSF contributions should extend these objectives in line with the objectives of the programme, by distinction from the bodies referred to under paragraph (b) which act on behalf of the managing

			authority and manage respective fiduciary accounts.
		7. Please confirm that in point a) MA on its own selects financial intermediaries, whereas in point c) undertaking implementation tasks by MA means that MA directly implements investments on the market loans, guarantees.	Under Art 33(4)(a), the MA invests in the capital of existing or newly created legal entities. Under Art 33(4)(b), the MA entrusts implementation tasks to any of the bodies listed under (i), (ii) and (iii), and these bodies will have to set up fiduciary accounts on behalf of the MA. Under Art 33(4)(c), the MA or intermediate bodies undertake the implementation tasks directly in the case of loans and guarantees.
33(4)(b) (ii)(iii)		8. We suggest replacing the word “invest” by e.g. “transfer resources” in already existing funds. MAs either at the national or regional level may use a different method than investment activities.	The term "invest" is understood to mean that the managing authority or an intermediate body will have participation in the equity base of legal entities referred to under Art 33(4)(a), with all associated rights and obligations.
		1. Is EIB considered as a beneficiary of such an operation?	When implementing financial instruments under Article 33(4)(b)(i) CPR, the EIB is considered a beneficiary.
33(4)(c)		2. In this context, what kind of agreement should be signed between EIB and MA/MS? We have experience that the requirements of typical financial agreements between beneficiary and MA are different than EIB standards (if we consider EIB as a beneficiary).	All funding agreements between MAs and beneficiaries need to satisfy at least the minimum requirements which would be included in the delegated act (as indicated in Fiche no 12).
		The wording is too general - it refers only to the “applicable Union and national rules”. Taking into account interpretation difficulties of Art. 44 of regulation 1083/2006 in the present financial perspective, it would be advisable to explain in detail the modes and restrictions concerning organisation of repayable financing by a fund of funds, in particular selecting mode of financial intermediaries (public procurement or call for proposals)?	The envisaged delegated act would further specify rules concerning funding agreements, the roles and responsibilities of entities to which implementation tasks are entrusted, etc..
		1. Does the direct undertaking of implementation tasks mean granting a loan or a guarantee by MA?	Yes, by the managing authority or an intermediate body.
		2. Please confirm that MA can entrust the implementation tasks to an intermediate body (IB)?	In the case of FI implemented under provision of Art 33(4)(c), MA can entrust implementation tasks to an intermediate body in the meaning of Art 2(15) CPR.
		3. Is it possible for MA to entrust the implementation tasks to IB e.g. a financial institution which will directly transfer FI support (without financial intermediaries). If this is the case, then there is no basis for limiting such activities only to loans and guarantees?	In cases where the MA decide to undertake implementation tasks directly in the case of financial instruments consisting solely of loans or guarantees, the MA can entrust implementation tasks to an intermediate body. This corresponds to practice that exists in some Member States, whereby managing authorities

			provide direct loans or guarantees to final recipients on a case by case basis, without setting up a delivery structure for that purpose.
33(5)		4. What is the relation of point c) to repayable assistance introduced as a form of support in art 57 GR? EC should explain in detail what differences might be between repayable assistance provided by MA as lump sum in amount of 100 000 euro and a loan granted by MA in the same amount. Both forms of support seem to be the same whereas the regulation introduces two terms.	This provision does not include grants. Investments under Art 33(4)(c) are limited to loans and guarantees. Both in financial and accounting terms, repayable grants have a different nature than loans. As a result, they fall under the general provisions for grants and are not covered by Articles 32 to 40 CPR.
		1. Why only bodies indicated in art. 33.4.b (i) or (ii) may entrust some of the implementation tasks conducted by themselves to financial intermediaries? What is the reason of excluding institutions enlisted in 4.b (iii)?	This point will be further considered.
		2. Please explain in more detail and provide typical examples of application of the term proportionate. The example which presents what kind of verification should be applied to avoid conflicts of interests would be welcome as well.	The CPR employs the same terminology as Art 130 of the revised Financial Regulation.
		The criteria mentioned in Art. 57 and 131,1, 131.1a, 131.3 of FR should not be applied for bodies from 4 b) (ii).	Art 57 of the Financial Regulation refers, among others, to the principles of sound financial management and proportionality which are to be respected by entities implementing EU budget resources also under shared management principles (reference to Art 55 FR). The principles stipulated in Art 131 (1), (1)(a) and (3) of the FR refer to financial instruments as defined under Art 130(1) of the FR and this definition includes all "Union measures of financial support provided from the (EU) budget" and thus also financial instruments under shared management. As a result, the references to Articles 57 and 131 (1), (1a) and (3) of the Financial Regulation are justified.
33(7)		Does EC has the authority to regulate in delegated act activities connected with assets transfer and assets management of bodies which were entrusted with implementation tasks?	Fiche no 12 provided by the Commission clarifies the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments.
33		The Slovak Republic, in general, welcomes huge possibilities and number of options available for creation of new, or addition to existing, national or EU wide financial engineering structures. It will ensure added value in the process of choosing the right implementation model for a given market environment. However, we	This point will be further considered.

		are not sure why the option in par.5 (to delegate and implement through financial intermediaries) is left open only for entities described in par. 4 b) i) and ii). If structures comprising fund of funds entities and intermediaries are seen beneficial as such, they shall be open to all institutions that have been entrusted with the implementation of FEI, not only to certain type of international players.	
33(4)(a)		The Slovak Republic invites COM to provide a definition on „financial instruments“ in the proposal while the only definition of financial instruments is in Financial Regulation Please, explain „new financial instrument“ particularly in case when the managing authority invests in the capital of existing legal entity already implementing financial Instruments from this programming period. (e. g. guarantee and VC Instruments.)	The CPR will refer to the definition of financial instruments as provided in the Financial Regulation. The point concerning "new financial instruments" is meant to imply that the contribution to the capital of existing legal entities should be exclusively used to implement new investments consistent with the objectives of the CPR.
33(7)		The Slovak Republic proposes that delegated act would describe the details for ownership of funds, accounting and consolidation of assets at EU level and national level.	As indicated in Fiche no 12, the envisaged delegated act would contain further details concerning management and control requirements. The question concerning the ownership of funds and the consolidation of assets is unclear.
33(3)		In 33.3, can the Commission confirm whether, for existing financial instruments, the reference to Union law means compliance with the Commons Provisions Regulation when adopted, and any delegated or implementing acts that the Commission may introduce under it?	For CSF contributions to existing financial instruments under the CPR, the reference to Union law includes compliance with the CPR and any delegated or implementing act related to the CPR. Transition rules for existing instruments are not foreseen. Existing instruments established under Art 44 of the General Regulation will continue on the basis of the current legal framework until 31 December 2015. The CPR will repeal previous regulations and therefore, existing financial instruments must comply with the CPR and related delegated or implementing acts to receive CSF contributions in the new programming period.
33(4)(a)		In 33.4a, is there a difference for N+2 purposes between transmission of resources into a fund or into a holding fund?	Under the CPR, the term "holding fund" will be replaced by the term "fund of funds". No difference is made between a fund or fund of funds for the purpose of n+2 purposes.
33(4)		Also in 33.4, can the Commission say what would happen if through a delegated act they made a new ruling on eligible management costs when the fund management had already been procured and contracted?	Please see first answer.

33(6)		In 33.6, can the Commission explain what is meant by “appropriate liquidity”, if the instrument has been created purely to deliver the fund.	Appropriate liquidity means that assets held on fiduciary accounts should be managed in such a way, that they are available and transferrable at the moment investments are due.

Art	MS	Question	Commission answer
Article 34: Implementation of certain financial instruments			
34(1)		Who will control the actions set up at Union level?	The control provisions and relevant responsibilities concerning financial instruments set up at Union level will be laid down in the Financial Regulation and the related delegated act.
34		1. The bodies accredited in accordance with Article 64 shall not carry out on-the spot verifications of operations comprising financial instruments implemented under Article 33(1)(a). They shall receive regular control reports from the bodies entrusted with the implementation of these financial instruments. 2. The bodies responsible for the audit of programmes shall not carry out audits of operations comprising financial instruments implemented under Article 33(1)(a) and of management and control systems relating to these instruments. They shall receive regular control reports from the auditors designated in the agreements setting up of these financial instruments. 3. The Commission shall be empowered to adopt delegated act in accordance with Article 142 concerning the arrangements for management and control of financial instruments implemented under Articles 33(1)(a) and 33(4)(b)(i), (ii) and (iii). *Comments:* *In response to the requirements on the spot verifications we would mention disproportion to other types of financial instruments (33(1)). This may be perceived as unequal access in the implementation of financial instruments. This fact is also reflected in Article 35, in which are placed different requirements for the content of applications for payment in relation to the type of financial instrument in accordance with Article 33 (1).*	Audit and control provisions for financial instruments at Union level cannot be regulated by the CPR as these instruments are centrally managed and are subject to the Financial Regulation. Since such instruments will be set up primarily with contributions from EU budget lines in different policy areas, the rules on audit and control applicable to those instruments must be uniform. It would not be feasible to impose on national managing authorities and audit authorities the obligations and responsibilities of management verification and control on audit for Union-level instruments receiving CSF contributions. The difference in treatment is thus not a question of favouring a particular implementation option (i.e. 33(1)(a) over 33(1(b)) but resulting from different regulatory frameworks for FIs under central management and FIs under shared management.
34		Finland does not think that it is sufficient to adopt a delegated act concerning the arrangements for management and control of financial instruments. The key aspects of the control of financial instruments should be included in the general regulation.	Fiche no 12 provided by the Commission clarifies the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments.

		The acts on control should mainly concern a fund and they should not as a general rule be extended to concern the final recipient (target company). The ambiguity in the definition of an operation in Article 2 makes it difficult to grasp the nature of the control and audit authority in relation to the final recipient.	In accordance with definition provided under Art 2(7), final recipients do not form part of the operation and are thus not to be audited from the outset. However, as outlined in Fiche no 12 and specified by latest COCOF guidance (item 6.1.9), the envisaged delegated act is intended to further clarify that audits may be conducted at the level of final recipients only if supporting documents are not be kept by the managing authority or the financial instrument or if there is legitimate doubt regarding the reality of support provided to final recipients. As regards the EAFRD, for operations involving support from programmes to financial instruments under the EAFRD in accordance with Articles 33(1)(b) of the CPR Regulation the control obligations will be set out in the Commission Delegated act/implementing act on EAGF/EAFRD control.
34(1)		"1.Les organismes accrédités conformément à l'article 64 n'effectuent pas de vérifications sur place des programmeérations comprenant des instruments financiers mis en oeuvre en vertu de l'article 33, paragraphe 1, point a). Ils reçoivent ~~régulièrement~~ sur une base a minima trimestrielle des rapports de contrôle des organismes chargés de la mise en oeuvre de ces instruments financiers." Le terme « régulièrement » est trop imprécis alors que la question du reporting sur les instruments financiers (IF) est reconnue cruciale, surtout au démarrage, tant pour la visibilité des autorités de gestion et des élus sur ces dispositifs avec lesquels ils sont peu familiers, que pour le pilotage et le suivi de ces instruments dans la durée (réalisations, impact,…). Nous proposons que ce reporting obligatoire par les organismes gestionnaires soit a minima trimestriel et que le règlement détaille dans l'article ou dans une annexe les types d'informations attendus a minima (types d'aides accordées, montants des versements, nature des entreprises et des projets soutenus, etc) dans un souci de standardisation des informations.	Please see answer concerning Art 34 provided on page 46.
34(3)		We would like to have additional information regarding who bares the cost of control from an independent firm under a common framework contract.	Respective costs would have to be borne by the managing authority.
34		Elements which should be in the regulation, not in a delegated act: Art 34 arrangements for management and control of financial instruments implemented under Articles 33(1)(a) and 33(4)(b)(i), (ii) and (iii). We feel these rules should be included in the regulation itself since they are essential to the management and control and essential to the administrative burden on managing authorities, audit authorities, fund	Fiche no 12 provided by the Commission clarifies the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments.

		managers and final beneficiaries. .More detailed rules should be in an implementing act, not a delegated act. Art 34 specific rules concerning payments and withdrawal of payments to financial instruments and possible consequences in respect of requests of payments. We would prefer to include the general principles in the regulation and detailed rules in an implementing act. But we could also agree with the Commission's proposal if a majority of member states can agree to it.	We assume the Member State refers to Art 35(5) CPR. Fiche no 12 provided by the Commission clarifies the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments.
34(3)		**The Netherlands can only accept the use of Financial Instruments when these instruments fulfill the following conditions:** <u>3. Guarantees on management and audit</u> amend *article 34.3*: "for operations comprising financial instruments implemented under article 33(1)(a) the Commission shall satisfy itself that the management, control and audit obligations are fulfilled and assume the resulting responsibilities as laid down in the Financial Regulation and fund specific rules	Please see answer concerning Art 34 provided on page 46.
34		1. What is the rationale for proposing so differentiated conditions of organization of the FI implementation system by EC and MS? We have a strong objection to unequal treatment of instruments created on the level of MS. 2. How a MS, as a party without possibility of verification of the operation implemented by EC, should be made responsible for the results connected with activities performed by EC and influencing the implementation or ensuring regularity of implementation e.g. milestones, audit trail, etc.?	Please see answer concerning Art 34 provided on page 46. We welcome the MS comment. The Commission proposed the provisions under Art 34(1) and (2) establish a specific regime for EU-level instruments. The CPR foresees that the managing authority and audit authority shall discharge their responsibilities on the basis of audited information received from the bodies implementing EU-level instruments.

Art	MS	Question	Commission answer
Article 35: Requests for payment including expenditure for financial instruments			
35		Could the Commission explain the differentiation of rules between 35.1 and 35.2? Why do we need it?	Payment flows for financial instruments at Union level cannot be regulated by the CPR as these instruments are centrally managed and are subject to the Financial Regulation. However, based on current experiences, Union level instruments may also envisage phased payments (e.g. LGTT in the current programming period). The difference in treatment is thus not a question of incentives but resulting from different regulatory frameworks for FIs under central management and FIs under shared management.
		Could the Commission explain the reasoning behind introducing the 2 years rule for the instrument set up at national level? Could the Commission explain the modalities of this rule?	The two year rule will prevent over-payment of contributions to financial instruments. It reflects the common market practice of drawing contributions from financing sources in accordance with the actual capital requirements of the financial instrument. While the funding agreement will make reference to the total financial commitment of CSF contributions envisaged to be contributed to the financial instrument during the programming period, managing authorities are required to make phased contributions to financial instruments. For the calculation of the phased contributions, the first payment application should take into consideration the capital requirements of the financial instrument over a maximum of two years in line with its business plan. For subsequent payment applications during the programming period, payment applications should take into consideration both the capital requirements of the financial instrument over the next two years (in line with its business plan) and the remaining balance of previously paid but unspent programme support still available at the level of the financial instrument as well as anticipated but unrealised national co-financing. As a result, previously paid but unspent programme support will be deducted from the projected capital requirements of the financial instruments for the next two years and the remaining balance will be requested from the Commission and reimbursed in accordance with the co-financing rate of the relevant priority axis. The period of two years represents a maximum reference period and payment applications can be made at any time, whenever the financial instrument requires additional capital. Managing authorities will have the possibility to include in the payment declaration the contribution from the CSF Funds and the anticipated national

			contributions which are to be mobilised at the level of the financial instrument or at the level of final recipients for the corresponding two-year period. (e.g. in the form of co-investments made at the level of final recipients). In this way, the managing authority is guaranteed to be reimbursed the total amount of support attributable to the CSF Funds contributions paid to the financial instrument, regardless of the level and timing at which national contributions were paid.
35(2)		The proposed 2 years period in article 35.2 is too short and can lead to investments in bad quality projects or underinvestment. The current arrangement regarding the period for FI investments in the final beneficiaries/recipients is acceptable and should be followed also during the new programming period. Moreover, it should be taken into account that the market trends where the FI will programmeerate are very dynamic and the market maturity for such instruments is different in the different MS. That is why it may happen that the proposed 2 years period can squeeze the FI liquidity and lead to cash shortages in a case too many projects need timely financing. The whole logic of the FI should be to have „ready-to-use money" to be invested when good programmeportunities arise. Can the two years period be revised? Is it possible if an urgent investment should be done a time limit for proceeding of the request for payment by the EC to be set?	The two years rule will prevent over-payment of contributions to financial instruments. It reflects the common market practice of drawing contributions from financing sources in accordance with the actual capital requirements of the financial instrument. The Commission is of the opinion that phased payments will not impact negatively on the proper functioning of the financial instrument. It will be the responsibility of the managing authority and the body implementing the financial instrument, including bodies implementing funds of funds where applicable, to request additional programme contributions in time and to ensure sufficient liquidity at the level of the financial instrument in line with the business plan and projected capital needs. For further details, please see previous explanations in this section (BE question).
35(1) 35(2), (3)		1. As regards financial instruments referred to in Article 33(1)(a), the request for payment shall include and separately disclose the total amount of support paid to the financial instrument. *Comments:* *Terminology seems to be misleading. Instead of the usual "contribution to financial instrument" here we run across a new wording, where predominantly use of the word "support" is confusing. The term „contribution" has already been used in the text of proposed General Regulation see e.g. Art. 2 para 7.* 2. As regards financial instruments referred to in Article 33(1)(b) implemented in accordance with Article 33(4)(a) and (b), the total eligible expenditure presented in the request for payment shall include and separately disclose the total amount of support paid or expected to be paid to the financial instrument for investments in final recipients to be made over a pre-defined period of maximum two years, including management costs or fees. 3. The amount determined in accordance with paragraph 2 shall be adjusted in subsequent requests for payment, to take account of the	The term "support" used in this section of the CPR is used in the context of payments and conform to other provisions of the CPR, e.g. Art 36(3) or Art 104 of the CPR.

		difference between the amount of support previously paid to the financial instrument concerned, and the amounts effectively invested in final recipients, plus management costs and fees paid. These amounts shall be separately disclosed in the payment request. *Comments to paras 2 and 3:* *The wording here seems to be similar to the Commission proposal, which was rejected by Member States in the amendment of General Regulation No 1083/2006. The outcome of para 3 will lead to the necessity to invest into financial instruments in the least possible tranches, so as the entrepreneurs have the possibility to finish their projects. It might have negative impacts on functioning of guarantee instruments and will increase the systemic risk of non-certification of part of the expenditures.* *It is not clear whether also "interest fee, guarantee fee subsidy a other equivalent measures" should be incorporated.* *Again the possibly confusing word „ support" is being used.*	Please see answer provided on page 49.
35(2) and (3)		Does this rule also apply to guarantees? If so how can the period of at most two years be applied?	For guarantees, there is no difference between the procedures of the current programming period and the proposed two-years rule. Under the two years rule, sufficient liquidity concerning the projected capital needs of the FI over a maximum of two years can be provided and respective resources for guarantee contracts can be blocked accordingly.
35(2)		This article establishes that the total eligible expenditure presented in the request for payment will be paid to the final recipients in a maximum period of two years. This condition introduces a new rigidity that does not consider the specific character of theses instruments: for example, their dependence on demand from potential beneficiaries, which brings a high uncertainty as regards their use. Consequently, when a fund is provided for this purpose, National Authorities will be assuming the future risk of their utilisation. Until now, the time limit was set at the end of the programming period, while the risk in this proposal shall be annual. This time scheme is too tight, and these deadlines will add pressure to the managing authorities, thus reducing the incentive to make an effective selection of projects. **Q.** What is the added value of including this condition?.	The two year rule will prevent over-payment of support to financial instruments. It reflects the common market practice of drawing contributions from financing sources in accordance with the actual capital requirements of the financial instrument. The two-year rule does not establish a new eligibility period, but facilitates phased payments into funds, taking into consideration the capital requirements of the financial instrument over a maximum of two years in line with its business plan. Contributions paid to the financial instrument will have to be invested by 31 December 2022 in order to be considered eligible in accordance with Art 36 CPR, regardless of the time at which such contributions were paid to the financial instrument. The period of two years represents a maximum reference period and payment applications can be made at any time, whenever the financial instrument requires additional capital.
35(2)		"2. En ce qui concerne les instruments financiers visés à l'article 33, paragraphe 1, point b), et mis en oeuvre conformément à l'article 33,	The French text may be misleading. The two-year rule does not establish a new eligibility period, but facilitates phased payments into funds, taking into

		paragraphe 4, points a) et b), la dépense totale éligible mentionnée dans la demande de paiement comprend, en le distinguant, le montant total du soutien versé ou devant être versé à l'instrument financier en vue d'être investi dans des bénéficiaires finaux ~~au cours d'une période prédéfinie de deux ans au maximum~~, ce montant total représentant au minimum 50% du montant versé à l'instrument financier au cours d'une période prédéfinie de 3 ans y compris les coûts ou frais de gestion." 35.2 - c'est le point dur de ce nouveau règlement sur les IF. Nous ne demandons pas sa suppression, car il est légitime que la COM veuille éviter, comme on l'a parfois constaté au cours de cette période que les fonds alloués à des IF « dorment », mais l'assouplissement de cette règle est indispensable. En l'état, cette règle des deux ans aurait des effets pervers évidents au moment où la COM entend favoriser l'usage des IF, en particulier : • Elle favoriserait une forte aversion au risque : en poussant les autorités de gestion (AG) et les élus, surtout en début de programmation, à une prudence excessive se traduisant par à un abondement au « compte-goutte » d'instruments financiers, par nature risqués, mais en plus susceptibles de leur faire perdre des crédits dans un délai court. • Elle conduirait à un fractionnement excessif des versements : les AG seraient en effet tentées de fractionner les versements pour limiter le risque de dégagement d'office, mais ce faisant cela réduirait l'effet-levier attendu du soutien communautaire dans le démarrage et le fonctionnement de ces instruments. • Elle aurait un effet désincitatif sur les partenaires financiers: elle réduirait en effet nettement l'attractivité de ce types d'instruments vis-à-vis de partenaires financiers privés potentiels, dans la mesure où le premier « tour de table », c'est-à-dire le montant total du capital initial réuni par la structure et qui lui donne une assise financière suffisamment solide pour être lancée dans de bonnes conditions, est déterminant dans la décision des partenaires public ou privé de s'engager dans un IF et à y trouver leur intérêt. Cet enjeu de la masse critique est encore plus crucial pour les fonds de fonds.	consideration the capital requirements of the financial instrument over a maximum of two years in line with its business plan. Contributions paid to the financial instrument will have to be invested by 31 December 2022 in order to be considered eligible in accordance with Art 36 CPR, regardless of the time at which such contributions were paid to the financial instrument. The period of two years represents a maximum reference period and payment applications can be made at any time, whenever the financial instrument requires additional capital. Please see previous answers provided on Art 35 in this section.

35(2) 35(5)		The time limit of two years should be removed, as is the case for financial instruments at Union level. Regarding the justification provided in Fiche 12 for Art 35 point 5, we prefer the M-S and the MA to have more flexibility concerning the withdrawal of payments.	Please see previous answers provided on Art 35 in this section. The CPR does not provide ruling on this matter. The line proposed in Fiche no 12 ensures continuity on the basis of principles agreed in the latest COCOF Guidance Note.
35(2),(3)		The proposed deadline for investment in final recipients reduces the flexibility of financial engineering instruments. Flexibility is an important factor that encourages the MSs for using these innovative methods – the flexibility to be abolished now was even used by the Commission as a motivational tool for the use of FEI. A similar discussion took place during the amendment of the current regulation, when several MSs were against this change. There are again similar uncertainties in the proposal: it is still unclear based on the text what would happen with the support not paid to final recipients within two years (could decommitment be a possible consequence?)? We clearly have doubts about this modification. As in case of financial instruments referred to in Article 33(1)(a) the use of this deadline is not necessary and we do not see major differences in this regard between financial instruments referred to in Article 33(1)(a) and those referred to in Article 33(1)(b), HU proposes to cancel this restriction from the regulation. Question: What would happen with the support not paid to final recipients within two years (could decommitment be a possible consequence?)? What happens if the Member State fails to achieve the expected payment due to reasons not attributable to it and to the financial intermediaries e.g. the negative changes in the economic environment? Can the Member States transfer this amount to another financial engineering instrument before the end of the second year if it is foreseen that it will not be paid to final recipients?	Please see previous answers provided on Art 35 in this section. As indicated in Fiche no 12, the delegated act would clarify that Member States and managing authorities could only withdraw contributions from operational programmes to financial instruments if such contributions were not already reimbursed by the Commission on the basis of a payment request or if the declaration of expenditure is subsequently modified to withdraw or replace the expenditure in question (e.g. for contribution to other financial instruments). The line proposed in Fiche no 12 ensures continuity on the basis of principles agreed in the latest COCOF Guidance Note.
35(2) 35(5)		Reservation against maximum 2 years for the support paid or expected to be paid to the financial instrument for investments in final recipients as defined within Article 35.2. Question to the COM: What is meant by “possible consequences” in the Article.35.5? More clarity is needed at this point, before LV can agree to empower the Commission with legislative powers regarding this.	Please see previous answers provided on Art 35 in this section. Please see previous answers provided on Art 35 in this section.

35(2) 35		How the expected to be paid amounts for investments in final recipients should be justified? How the actual yearly percentage of management fees/costs should be calculated taking into consideration that only the amount necessary for the implementation of financial engineering operation during upcoming 2-years would be transferred to funds? Will it be any yearly/overall maximum limit for management fees/costs in 2014-2020 and how it will be calculated?	As indicated in Fiche no 12, the delegated act would contain further guidance concerning national public and private co-financing contributions at the level of the final recipients under programmes for the ERDF, ESF and Cohesion Fund. As indicated in Fiche no 12, the delegated act would contain provisions regarding the calculation of management costs and fees. It would for example establish annual ceilings (to be applied pro rata temporis) and breakdown of management costs and fees in separate components. The two-year period for the phased payments as referred to under Art 35(2) CPR should have no impact on the formula for the calculation of management costs and fees, but should contribute to incentivise performance.
35(1) 35(2)		1. We would like to know the justification for regarding the model set up at the EU level as more credible and less risky than national/regional FI models. It should be underlined that in the present financial perspective all the FIs: those managed by MA and through a holding fund run by EIB/EIF as well as national financial institutions had delays. 2. What are the reasons for proposed differentiation in certification of contributions made to FI? 3. Does the EC have any analysis indicating bigger efficiency of EC's procedures, project implementation by EC or programmes directly managed by EC than similar activities organized and managed by MSs? 1. The proposed condition limiting declaration of expenditure to resources planned for transfer to final recipients within 2 years (Art 35.2) and actually transferred (art 35.4) requires more analysis and better adjustment to the system established by MS and the diversity of FI. The pace of initiation, the process of organisation and preparation of investment strategies, mechanisms of granting financial support, criteria and procedures for selecting particular undertakings of final recipients are very differentiated for every kind of FI. The draft regulations do not take into consideration specificity of products such as venture capital and equity in case of which the selection of undertakings to invest in includes, among other factors, due diligence, risk analysis, assessment of potential market, etc. Negotiation of conditions of equity support are multistage and time consuming processes. Moreover, in case of venture capital it is difficult to estimate	Payment flows for financial instruments at Union level cannot be regulated by the CPR as these instruments are centrally managed and are subject to the Financial Regulation. However, based on current experiences, Union level instruments may also envisage phased payments (e.g. LGTT in the current programming period). The difference in treatment is thus not a question of incentives but resulting from different regulatory frameworks for FIs under central management and FIs under shared management. Phased payments foreseen for instruments under shared management should further an acceleration of implementation. This analysis cannot be made as the instruments are not comparable. Both implementation possibilities are offered as options to the managing authorities who are free to decide on the most effective way to set-up financial instruments on the basis of the findings of the ex-ante assessment under Art 32(1) CPR. Please see previous answers provided on Art 35 in this section.

		precisely in advance the number of planned investments or amount of resources which will be transferred to final recipients (pace and scale of undertaking capital entry by funds depends, among other factors, on a market situation, investors disposition towards risk, current demand for innovative ideas providing possibility of adequate rate of return). It is not proper to impose the same kind of requirements in case of so different instruments, such as loans or guarantees or capital investments – more complicated in terms of legal, financial or organisational issues.	
		2. The EC should explain the method and rules for making adjustments in the successive payment applications, after certification of the amount of the support which paid or expected to be paid to the FI for investments in final recipients to be made over pre-defined period of maximum 2 years.	The Commission takes note of this proposal and intends to present examples.
		3. The status of resources that will not be invested in 2 years time by a fund of funds requires explanation from the EC. Will it be possible to include them in the payment application sent to the EC as support for the same fund of funds for another 2 years or is the amount that was not invested within 2 years deducted from the fund's support? It is essential to clarify what shall be done with the amount of support not used within 2 years in the context of n+2 rule.	Please see previous answers provided on Art 35 in this section.
		4. Please explain the status of resources included according to Art 35.2 in applications for interim payments to the EC in the context of rules for preparing annual accounts and procedures of imposing financial corrections by the EC.	For the purpose of Art 128 CPR, only the eligible expenditure in the meaning of Art 36 CPR should be included.
		5. We suggest that the EC prepares an example of application of Art. 35. 2-3 in case of a project lasting several years (e.g. 7 years); this example should be made using the model of payment application together with a description /justification/explanation of particular activities, including examples of amount of resources divided into years taking into account 2-year cycles of settlements. Moreover, taking into consideration the templates of payment applications that have been so far presented by the EC, the condition included in Art 35.3-4 : These amounts shall be separately disclosed in the payment request requires explanation.	The Commission takes note of this proposal and intends to present examples.

		6. Due to complicated character of the provisions of the Art. 35, an additional information fiche should be prepared which would include detailed analysis of the rationale of the differences set out in the certification of contributions made in financial instruments between the model set up at the level of EC and MS and procedures and rules of preparing requests for payment. 7. As an alternative to the suggested 2-year rule we suggest to introduce other effectiveness mechanisms, e.g. a deadline determined in advanced for a fund of funds/financial intermediary for the creation of portfolio of financial products to be offered; an award for creation of the portfolio before the deadline; no payment of management costs and fees in case of significant delays in preparation of portfolio and bonus for higher than established efficiency of expenditure.	At this stage, the Commission cannot provide an example of how it will work for Union-level instruments. For instruments under shared management, please see previous replies. All proposals made by the Member State can be included in the relevant Funding Agreements.
35 35(2) 35(3)		Why does Article 35 provide different ways to ensure spending depending on the types of instruments created with or without assistance from the EIB? In several paragraphs of the same article it is unclear what information is required to be indicated “separately”. What is the rationale for the procedure contained in Article 35-2 in which payment requests shall include the total amount of support “expected to be paid” to the financial instrument for investments in final recipients? What will be reimbursed by the Commission: the amounts that were actually paid or, in addition to those, also the amounts that were approved but not yet paid to the instrument? In Article 35-3 what is the amount that “shall be adjust in subsequent requests for payment”?	A differentiation is made between support to financial instruments under shared management (Art 33(1)(b)) and support to FIs set up at EU level in line with the Financial Regulation (Art 33(1)(a)). The differentiation is in no way related to the role of EIB. "Separately" means that the amounts in questions need to be identifiable. For this purpose, the Commission will propose a specific template for FIs to be annexed to the statement of expenditure (as indicated in Fiche no 12). Please see previous answers provided on Art 35 in this section. Please see previous answers provided on Art 35 in this section.
35(2)		The Slovak Republic raises a reservation concerning two year period even though we appreciate COM explanation on SAWP on 31.1.2012. We do not recommend the approach to specify expected contributions to FEI over a period of max 2 years and prepare requests for payment accordingly. Why has this 2 year mark been chosen? Some instruments	Please see previous answers provided on Art 35 in this section.

		require substantial initial investment/ commitment, which will be disbursed to final recipients during a time period that is much longer than 2 years. In our opinion, current reading of the regulation will only complicate the process leading to inaccurate requests and subsequent complicated adjustments. It is also not clear when the relevant two year period will start to lapse.	
35(2)		In 35.2, the UK believes the two-year rule could programmeerate as an unreasonable constraint on the ability of MAs and national authorities to imbue funds with sufficient scale to be sufficiently credible to incentivise potential investors. Furthermore, it would be very difficult for any financial instrument, operating in what will be a commercial (albeit imperfect) marketplace to predict with any certainty the flow of resources to final beneficiaries of a two year period. Furthermore, in terms of co-financing and co-investment, 35.2 does not appear to clarify what is permissible and what is not. Finally, can the Commission explain why the provisions in 35.2, including the two-year rule, do not apply to funds managed at the Union level?	Please see previous answers provided on Art 35 in this section.
35(3)		In 35.3, when and how often?	Adjustments (i.e. the offset of projected capital requirements of the financial instruments for a period of max. two years against previously paid but unspent support) would be required for any payment declaration after the first reimbursement received from the Commission. Payment declarations should refer to FI capital requirements over a period of max. two years (in line with the business plan of the FI), but can be made at any time, whenever the financial instrument requires additional capital.

Art	MS	Question	Commission answer
Article 36: Eligible expenditure at closure			
36(4)		Could the Commission explain the system of capitalization?	As explained in Fiche 12 capitalisation means discounted payment obligations for the purposes and periods laid down in the CPR, based on the outstanding portfolio under management (and ceilings for management costs and fees where applicable)
36(1)		1. At closure of a programme, the eligible expenditure of the financial instrument shall be the total amount effectively paid or, in the case of guarantee funds committed, by the financial instrument within the eligibility period indicated in Article 55(2), corresponding to: (a) payments to final recipients; (b) resources committed for guarantee contracts~~, whether outstanding or already come to maturity, in order~~ to honour possible guarantee calls for losses, calculated according to a prudent ex ante risk assessment~~, covering a multiple amount of underlying new loans or other risk-bearing instruments for new investments in final recipients~~; *Comments: The text should be corrected according to the proposal above. In the current wording the text allows for ambiguous interpretations and the economic nature of a given type of expenditure is not sufficiently obvious.*	The Commission considers that removing proposed parts would make the text unclear. For guarantee contracts both the outstanding and already realised guarantees should be covered. The reference to underlying new loans and new investments is crucial in order to ensure that FI finance new interventions.
		(c) capitalised interest rate subsidies or guarantee fee subsidies, due to be paid for a period not exceeding 10 years after the eligibility period laid down in Article 55(2), used in combination with financial instruments, paid into an escrow account specifically set up for that purpose, for effective disbursement after the eligibility period laid down in Article 55(2), but in respect of loans or other risk-bearing instruments disbursed for investments in final recipients within the eligibility period laid down in Article 55(2); *Comments: The indicated text should be supplemented, in order to remove possible ambiguities: "… used in combination with loans, guarantees or other risk-bearing instruments provided from financial instruments."*	The text as proposed in the regulation is sufficiently clear and reflects the definition of financial instrument as provided for in the Financial Regulation. Further details on combination of support and on the capitalised interest subsidies and guarantee fee subsidies will be provided in the delegated act.
36(2)		2. In the case of equity-based instruments and micro-credit, capitalised	

		management costs or fees due to be paid for a period not exceeding 5 years after the eligibility period laid down in Article 55(2), in respect of investments in final recipients which occurred within that eligibility period and which cannot be covered by Articles 37 and 38, may be considered as eligible expenditure when paid into an escrow account specifically set up for that purpose. *Comments: The proposal from unknown reasons does not include in credit products micro-credits up to EUR 25 000. It also does not solve the question of paying management fee for remaining types of credits neither for guarantees. If the intention was that costs of administration of credit and guarantee would be financed through the contribution on interest settlement or contribution to the price of guarantee after the date of programme closure, it could be an acceptable solution for us. It would be better to word it clearly in the text of General Regulation.*	The general line on the eligibility of management costs and fees reflects the current (2007-2013) provisions where the management cost and fees can be declared only until the end of eligibility period. The management fees and costs after the eligibility period can be financed from: the interests generated by support from CSF funds to financial instruments covered by Article 37, capital resources paid back or gains covered by Article 38). However, for the next programming period the Commission proposed more flexible approach for two types of instruments, namely equity based and micro-credit. Equity investments are long-term investments where capital resources or gains may not come within programming period. This significantly limits the possibility of using capital resources or gains to cover management costs and fees in the first years after closure. High risk of defaults of micro-credits limits the possibility of using returned capital resources or gains to cover management costs and fees.
36(1)(b)		Delete „a multiple amount of“ Rationale: The results of the ex-ante-evaluation provided in article 32, para. 1, should not be prejudiced in the CPR.	The ex-ante evaluation under article 32 provides the analysis of the market failures and suboptimal investment situation and gives justification for particular financial instrument. The ex-ante risk assessment under Article 36.1)b) refers to the assessment of appropriate ratio between the contribution from the CSF funds to the guarantee and the total value of underlying new loans. The value of the resources committed for guarantee contract (covering expected and unexpected losses) will be significantly lower than the value of underlying loans, otherwise the financial intermediary should provide loans and not guarantees.
36(1)(c)		Which cases are meant, when under certain circumstances expenditure due to be paid for a period not exceeding 10 years after the eligibility period can be entered in the final payment request (term 31.12.2022). Which conditions have to be fulfilled?	This applies only to interest rate subsidies and guarantee fee subsidies which are used in combination with financial instrument and which are due to be paid after the end of eligibility period in relation to loans or other risk bearing instruments disbursed for investments in final recipients within the eligibility period but coming to maturity only after the eligibility period. Escrow account specifically set up for this purpose must be established.
36(2) and (3)		The contract period of equity-based instruments is usually long. For which reasons do you choose a period of five years at most? Do you	Article 36.2) does not limit the period of investment in equity based instruments. It gives extra 5 years for eligibility of management costs and fees. It concerns

		have empirical value as a basis for this period of five years at most? Does para. 2 include follow-up investments within the period of at most 5 years? Is it right, that capitalised management costs or fees – contrary to the period 2007-2013 – are eligible expenditure when they are due within 5 years and may be included in the final payment request, if they occur in respect of investments in final recipients within the eligibility period? Why is this rule restricted to equity based instruments and micro-credit?	only the management costs and fees in respect of investments in final recipients which occurred within eligibility period but which remain under management beyond that period and for which related management costs and fees cannot be covered by Articles 37 and 38 CPR. This implies that management costs and fees for follow-up investments are not covered by this provision. Yes. The Commission proposes more flexible approach for two types of instruments, namely equity based and micro-credit. Equity investments are long-term investments where capital resources or gains may not come within programming period. This significantly limits the possibility of using capital resources or gains to cover management costs and fees in the first years after closure. High risk of defaults of micro-credits limits the possibility of using returned capital resources or gains to cover management costs and fees. As regards other types of instruments they should revolve already within the programming period. Before an instrument is set up a business plan analyses a priori the sustainability of the instrument in respect to its future costs.
36(1)(c)		Remarque à la Commission européenne : il semble y avoir une erreur dans la traduction française, les « bonifications d'intérêt » ne correspondant pas aux « capitalised interest rate subsidies » de la version anglaise Questions à la Commission européenne : - Quel est l'objectif de la Commission lorsqu'el demande que les bonifications d'intérêt ou contributions aux primes de garanties capitalisées soient versés sur un compte bloqué ? - Pourquoi fixer une période maximale de 10 ans ?	Translation issue noted. A separate account (escrow account) has to be set up to ensure that the resources declared as eligible expenditure are used exclusively for the intended purposes. Capitalised interest rate subsidies and guarantee fee subsidies will be drawn from escrow account only for the intended purposes and as required and in line with the provisions of article 36.1).c) For reasons of accountability, a period needs to be defined and the period of 10 years seems to facilitate loans and other risk-bearing instruments disbursed within the eligibility period to be fully paid back by the final recipients.

36(2)		Ten years is a very long period for a financial instrument to keep the exact same purposes. We suggest some flexibility in the definition of purposes after the closure of the programme, whilst maintaining legacy.	This comment relates to Article 39 CPR.
36		Reservation. LV is of opinion that all the eligibility conditions of the financial instruments, as well as norms on recovery of ineligible expenditure should be clearly included in the Article 36 of CPR.	The eligibility conditions are set out under Article 36 CPR. Fiche no 12 provided by the Commission clarifies the scope of the (one) delegated and (one) implementing act foreseen to complement the CPR with non-essential provisions regarding financial instruments.
36(2)		Question to the COM: What is meant by "capitalized management costs or fees" within the context of Article 36.2. Why it is only considered in the case on equity-based instruments and micro-credits? It should also include loan and guarantee instruments.	Capitalised management costs and fees mean total amount of discounted future management costs and fees in relation to investments in final recipients which occurred within eligibility period and which cannot be covered by Articles 37 and 38 CPR. The Commission proposes a more flexible approach for two types of instruments, namely equity based and micro-credit. Equity investments are long-term investments where capital resources or gains may not be returned to the operation within the programming period. This significantly limits the possibility of using capital resources or gains to cover management costs and fees in the first years after closure. High risk of defaults of micro-credits limits the possibility of using returned capital resources or gains to cover management costs and fees. As regards other types of instruments they should revolve already in the programming period. Before an instrument is set up a business plan analyses a priori the sustainability of the instrument in respect to its future costs.
36(1)		Clarification is needed what constitutes eligibility within the context of Article. 36.1.	Article 36.1 mirrors the current provisions under Article 78(6) of the Regulation 1083/2006. In addition it provides clearly for eligibility of capitalised interest rate subsidies or guarantee fee subsidies.
36(4)		Article 36.4 doesn't specify what will be included in the delegated act? Question to the COM: Clarification is needed what means "capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies" within the context of Article 36.4.	The envisaged delegated act will contain clear provisions concerning capitalisation of interest rate subsidies or guarantee fee subsidies and capitalisation of management costs and fees Capitalised interest rate subsidies and guarantee fee subsidies are calculated at closure as the total of discounted payment obligations on the interest rate subsidies or guarantee fee subsidies: 1) due to be disbursed after the eligibility period, 2) used in combination with financial instrument and 3) in respect of loans or other risk-bearing instruments disbursed in final recipients within the

			eligibility period.
36(2)		The exception is made regarding investments covered by Art. 37 and Art. 38 – why this exception is actually done?	Article 36(2) refers to management costs and fees (not investments) which cannot be covered by Articles 37 and 38 CPR. It is expected that the funds paid back to the instruments from the investments (capital resources and gains) and the interests earned on these funds added to the fund capital will cover management costs of the instrument after the eligibility date of the programme. This is covered by Article 37 and 38. However in case of equity based and micro-credit instruments, the repayments from the investments can take longer time or the amount can be significantly limited due to the risky nature of these products.
36(3)(ii)		May the private resources invested into final recipient by financial intermediaries form a part of national co-financing further to be declared as eligible expenditure?	Yes, provided that the co-financing rate for the priority axis applies to total eligible expenditure, including public and private expenditure (covered by Article 110.2).a).
36		Do we understand correct that expenditure declared eligible at the closure of a program should first of all meet national rules, referred to in Art. 55.1?	Expenditure declared at the closure should comply with the provisions of the CPR, including Article 36 CPR and with national rules as provided for in Article 55.1 CPR.
36(2)		1. PL welcomes the Commission's proposal laid down in Art. 36 par. It is a factor which will facilitate the process of keeping the management team of the fund after the eligibility period, and will ensure the stability of activities of the financial intermediary. 2. We have doubts regarding the issue of limiting the eligibility of such costs to two specific financial products only: microcredits and equity instruments. Is it possible to extend the eligibility of management fee payments made for 5 years after the eligibility period for all types of financial instruments?	2. The Commission does not consider that it is justified to extend the scope of Article 36(2) to other types of financial instruments. A more flexible approach is proposed only for two types of instruments, namely equity based and micro-credit. Equity investments are long-term investments where capital resources or gains may not come within the programming period. This significantly limits the possibility of using capital resources or gains covered by Article 38 to finance management costs and fees in the first years after closure. The high risk of defaults of micro-credits negatively affects the amounts of returned capital resources or gains, which limits the possibility to finance management costs and fees. As regards other types of instruments they should revolve already within the programming period. Before an instrument is set up a business plan analyses a priori the sustainability of the instrument in respect to its future costs.

36(1)(b)(c)		3. In relation to Art. 39 and the obligation to maintain the FI funding by MS for 10 years after the programme closure, we suggest to consider the possibility of extending the eligibility period for management fees to 10 years. 1. Given the importance of point (b) and (c) and the highly technical nature of the provisions, please provide detailed explanation of procedures and rules for recognition of the following as eligible: - Resources dedicated for guarantee contracts, outstanding or which already came to maturity (maturity date expired), - Grants for guarantee fees or grant for interest rate subsidies, payable for a period of not more than 10 years. 2. Please explain how the phrase "used in combination with financial instruments" is to be applied. It suggests a need to create additional, other than financial instruments, mechanism of support in the form of grants for guarantee fees and interest rate subsidies. 3. Additional questions: - which body opens the escrow account? - how to determine the amount eligible in a situation when a part of the resources on the account is not being used, having in mind that that by this time Member State will submit a declaration of programme closure?	3. The Commission does not see any link between Article 36(2) and Article 39. Capitalised management costs and fees under Article 36(2) relate only to two types of investments in final recipients which occurred within the eligibility period and which cannot be covered by Article 37 and 38. After five years, resources generated according to Art 37 and 38 should be sufficient to cover similar costs of other instruments. 1.Guarantee contracts which already came to maturity mean guarantees covering a multiple amount of disbursed loans which have already come to their expiry date of repayment term of the underlying loans and for which no guarantee calls were made or in respect of which, as the case may be, the guarantees have already been honoured. Outstanding guarantee contracts mean guarantees covering a multiple amount of disbursed loans in respect of which the guarantees will have to or might still need to be honoured after the eligibility period because the expiry date of repayment of the underlying loans falls after the eligibility period. Guarantee fees subsidies or interest rate subsidies which are used in combination with financial instrument in a single financial package are not considered to be grants but they are integral part of the financial instrument and constitute part of the same operation. Total amount of discounted guarantee fees subsidies or interest rate subsidies which are due to be paid after the end of eligibility period (maximum 10 years), in relation to loans or other risk bearing instruments disbursed for investments in final recipients within the eligibility period can be claimed as eligible expenditure. Guarantee fees subsidies or interest rate subsidies can be used in combination with financial instrument in a single financial package. They are integral part of the financial instrument and constitute part of the same operation. An escrow account should be opened in the name of managing authority with a financial institution in an EU Member State. The amount eligible should be calculated at 31.12.2022. Any amounts not used (until closure of the programme and after closure of the programme) should be used in accordance with the legacy provisions under Article 39.

36		What is the definition of "equity-based instruments" referred in art 36º?	Equity based instruments are instruments where the fund is equity holder (shareholder) in a final recipient. Typical features of equity capital include an entitlement to the profits of the enterprise, a proportionate share of the proceeds upon liquidation and subordination to creditors.
36(1)(b) 36(2)		The Slovak Republic invites COM to explain who shall prepare prudent ex ante risk assessment and what shall be source for financing of such assessment? The Slovak Republic is of the opinion that the paragraph shall comply with 36 (1c).	The prudent ex-ante risk assessment is carried out for the guarantees. It allows establishing a proper ratio between the blocked amount of programme resources and the amount of underlying loans. This analysis is carried out by the body implementing the financial instrument. Article 36(1)(c) refers to the eligibility of capitalised interest rate subsidised and grantee fee subsidies for loans or other risk bearing instruments while article 36(2) refers to the eligibility of capitalised management costs for equity based instruments and micro-credits.
36(1)		Does the reference to ex ante assessment in 36.1b mean that not all funds committed to guarantees will count as expenditure, but rather a proportion based on the risk the guarantee will have to be met? This suggests funds would have to be ring-fenced (through a legally binding contract with a third party) and not available for investment elsewhere.	Article 36.1.b requires that an appropriate amount from the programme contribution is committed for guarantees. This amount should cover expected and unexpected risks associated with underlying new loans. This is to avoid over-guaranteeing and to increase the multiplier effects.

Art	MS	Question	Commission answer
Article 37: Interest and other gains generated by support from the CSF Funds to financial instruments			
37(2) and (3)		What is meant by „other gains“?	As provided for in paragraph 1 of Article 37, support from CSF Funds shall be either placed in interest-bearing accounts or invested on a temporary basis according to the principle of sound financial management. In the first case "interests" are generated, in the second case there might be also other gains (profits) generated by the temporary investment.
		What is meant by „maintaining adequate records“ of the use of interest and other gains?	Adequate records of the use of interest and other gains shall enable verification of their proper use (as provided for in paragraph 2). Interests on the CSF Funds contribution under Paragraph 2 of Article 37 should not be confused with interests generated by investment under paragraph 2 of Article 38.
		para 2 in conjunction with Art. 38 para. 2 a): Do interest-rates earned on payments from the operational programme to the financial instrument, which are attributable to the Structural funds' contribution and which at the final closure of the operational programme have not been used in accordance with the provisions of Art. 36, have to be deducted from the final payment request?	Interest and other gains not used in line with paragraph 2 of Article 37 will have to be deducted from eligible expenditures at the closure (similar to the current provisions).
37		Funds should be managed in a professional manner according to the principles of sound financial management. The clause on placing funds in accounts could be removed as unnecessary.	The reference to accounts has to be maintained as Article 33(6) refers to these accounts. This provision is important to ensure proper treasury management of contributions to financial instruments before their use in line with Art 36 CPR.
37(3)		**The Netherlands can only accept the use of Financial Instruments when these instruments fulfill the following conditions:** <u>3. Guarantees on management and audit</u> The Netherlands wants more guarantees on management and audit of Financial instruments: *Article 37. 3 and article 38. 3*: add “and disclosed to the audit authorities in accordance with article 116.	In the current programming period, the Commission developed a comprehensive audit methodology for financial instruments under Article 44 of the General Regulation, in order to provide reasonable assurance on the legality and regularity of the expenditure declared to the Commission. This methodology was discussed with the audit authorities of the Member States. The work done in this regard in the current period will be taken into account regarding audit requirements in the next programming period.
37(1)		1. More detailed information is necessary for clarification of the period and the scope for investing such funds.	1. Support from CSF funds can be invested on a temporary basis. The type and scope of the investment should ensure appropriate liquidity and security of CSF funds to allow for quick mobilisation of full amounts for the contributions to financial intermediaries or for investments in final recipients.

		2. What kind of safe forms of investing are eligible? The Commission could prepare a closed list, or at least give the typical examples, of such types of investments.	2. The Commission does not intend to prepare a list of possible types of investments.
37(2)		The Slovak Republic proposes to replace „interest and other gains“ by „interest and other gains after taxation“ At the same time, we would like to know what is the momentum when interest and gains can be used only for the same financial instrument and when also for other financial instrument as it is defined in art. 38 (2).	The CPR does not derogate from national taxation laws which must be complied with. Interest and gains attributable to support from the CSF funds paid to financial instrument can be used only for the same financial instrument and for the same purpose. In practice it means that the interests and other gains should be added to the fund and spent for eligible actions by the end of eligibility period.

Art	MS	Question	Commission answer
Article 38: Re-use of resources attributable to the support from the CSF Funds until closure of the programme			
38(1)		Could the Commission explain this paragraph? What kind of conditions are required? Who would attest the conformity? How?	Provisions concerning re-use of contributions from operational programmes will be included in the funding agreement between the Managing Authority and a fund of funds (where applicable) and in the funding agreement between the Managing Authority (or the fund of funds) and a financial intermediary. The Commission would expect that national rules concerning the implementation of the CPR would ensure that provisions under Art 38 CPR are complied with.
38(2)(b)		What is the meaning of "who co-invest at the level of final recipients"? What kind of use could be done? What kind of conditions are required?	Contributions from investors operating under the market economy investor principle can be provided at the level of the financial instrument (fund of funds, financial intermediary) or, what is more frequent case, directly into the final recipient. This is present for example in equity investments. Preferential treatment of private investors in the form of non pari passu investments must comply with state aid rules.
38(1)		1. Capital resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts , which are attributable to the support from the CSF Funds, shall be re-used for further investments through the same or other financial instruments, in accordance with the aims of the programme or programmes. *Comments: The text does not correspond to the needs of management and economic principles of provision of some types of support from financial instruments and necessarily asks for topping up: "...for guarantee contracts at the time of closure of a financial instrument or earlier, which ... "*	The comment is not clear to the Commission.
38(2)		2. Gains and other earnings or yields, including interest~~, guarantee fees~~, dividends, capital gains or any other income receipts generated by investments, attributable to the support from the CSF Funds to the financial instrument, shall be used for the following purposes, where applicable, up to the amounts necessary: *Comments: The text should be clarified. In some implementing model this wording could by illogical.*	In some models of financial instruments, the guarantees may be provided to final recipients by financial instruments co-financed by the CSF Funds at a cost.
38(2)(b)		Why shall gains and other earnings or yields attributable to the support from the CSF Funds to the financial instrument be used to remunerate	In the case of programmes based on total expenditure, preferential treatment of private sector is an important factor to attract private investors to co-invest with

		investors, who co-invest at the level of final recipients (beyond the investment to the financial instrument)?	public funds in areas of high risks or low return, pursuing public policy objectives. Addressing market failures through structural funds can require non pari passu relation. National private contributions to programme may take place at the level of financial instrument or at the level of final recipients.
38(1) 38(2)(a)		We would like COM to consider the possibility to re-use the funds for new investments after the closure of programmes with similar objectives and not necessarily for the same financial instruments. "Quality results" from Fiche 12: we would like more information on how to assess these quality results, along with a clear definition of the very term.	Article 38.1 set out the rules for re-use of resources attributable to the support from the CSF funds until the closure of the programme and can be done in the same or other financial instruments. Art 39 includes provisions regarding the use of resources after closure and does not foresee such restrictions. The quality of results refers to the indicators set in the relevant operational programme.
    38(3) 38		**The Netherlands can only accept the use of Financial Instruments when these instruments fulfill the following conditions:** <u>3. Guarantees on management and audit</u> The Netherlands wants more guarantees on management and audit of Financial instruments: *Article 37. 3 and article 38. 3*: add "and disclosed to the audit authorities in accordance with article 116. <u>4. No revolving funds</u> The Netherlands is very cautious about revolving funds. In general the Netherlands feels funds should be revolving only in specific cases if at all, and article 38 should be rewritten accordingly. We propose the following amendment in line with the Financial Regulation: "capital resources generated by FI or paid back to it from investments, guarantees, or any other income attributable to the support from the Union budget to the financial instrument, with the exception of re-used resources within the same instrument, shall constitute internal assigned revenue in accordance with the Financial Regulation. The delegated act will specify any matter relating to liquidation of financial instruments, whereby any remaining capital resources attributable to the EU budget shall in principle constitute internal assigned revenue and be used for the same purposes as the initial support from the EU budget.". In addition, paragraph 1 of article 38 (and 2c) should be adapted to ensure that resources are not transferred from FEI to FEI, without intervention of the budget authority:	Please see previous answers provided in this section. The Member State's comment refers to Union-level instruments with direct contributions from the EU budget. In the case of CSF Funds, Member States may opt to use the resources available to them through the operational programmes to support financial instruments or grant operations. In the earlier case, it is normal that the resources attributable to support from the CSF Funds will be re-used in line with the objectives of the programme in a revolving manner to the benefit of the same Member State or region.

		"Capital resources paid back to Financial instruments from investments or from the release of resources committed for guarantee contracts, which are attributable to the support from the CSF Funds, ~~shall~~ may only be re-used for further investments through the same financial instrument ~~or other financial instruments~~ and in accordance with the aims of the programme or programmes.'' Article 38 para 2 c: further investments through the same financial instrument ~~or other financial instruments~~ and in accordance with the aims of the programme or programmes.	The Commission does not agree with the wording proposed by the Member State. Managing authorities should have the option of using these resources within the same FI or other FIs according to the solution that best meets the objectives of the programme. The possibility of re-using resources through "other financial instrument" shall be kept as in some cases the financial instrument can be established for very specific periods of time and for very specific financial needs - just to address the identified gap.
38(2)(b)		1. The Commission should define detailed rules and procedures for providing that type of support / awards. 2. Are the proposed provisions replacing provisions concerning the so-called performance incentives?	Preferential treatment of private investors as non pari passu investments must comply with State aid rules. Preferential treatment refers to private investors whereas performance incentives refer to management costs and fees.
38(1)		The Slovak Republic would like to know if bonification of loans may also be included.	"Bonification" of loans understood as improvement of loan conditions (e.g. interest rate subsidies, loan discounts or capital rebates) can be combined with financial instrument in a single financing package. In this case these forms of support will be treated as financial instrument investment and can be financed from resources paid back to FI under Article 38(1) provided that the investment strategy/business plan envisaged such support.
38(1) 38(2) 38(3)		In 38.1, can the Commission clarify where returns would have to be re-used? For example, if a fund was set up to assist start-up R and D SMEs, do the resources have to be re-applied to SMEs in the same market? Likewise, if the fund is focused on an specific urban area, do the resources have to be re-applied in the same area? In 38.2, preferential allocation seems to conflict the market investor principle. Can the Commission explain their intention in the article and how it fits with EU competition rules. Are (a), (b) and (c) in order of priority? If so, why? In 38.3, we would welcome clarification as to what is meant by "adequate"	The funds have to be reused in the same FI or other FI in accordance with the aim of the operational programme. There is no requirement to invest exactly in the same market/target group or geographical area (the market gap may not exist anymore after the first round of investments). Preferential treatment of private sector is an important factor to attract private investors to co-invest with public funds in areas of high risks or low return, pursuing public policy objectives. Addressing market failures through structural funds can require non pari passu relation. Preferential treatment of private investors as non pari passu investments must comply with State aid rules. The order of points a), b) c) does not reflect any particular priority of the Commission. Adequate records should allow for clear identification of the resources under Article 38.1 and 38.2 and attestation of their re-use.

Art	MS	Question	Commission answer
Article 39: Use of legacy resources after closure of the programme			
39		Who will be responsible for controlling the resources 10 years after the closure? What could be, in the eyes of the Commission, the consequences of a possible need for correction after such a period? What are we expected to do with the amount still available after the closure?	The Member State should have in place the necessary measures to ensure compliance with Art 39 CPR. Verification of compliance by the Commission should obtain assurance that national authorities have adopted the necessary measures to ensure compliance with Art 39 CPR, namely through legislative or administrative acts which would give enforcement to this provision and make it subject to compliance verification by national control authorities. The objective of Art 39 is to ensure that capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least ten 10 years shall be used in accordance with the aims of the programme.
39		It is not clear how the period of 10 years for the use of legacy resources was defined. The period seems to be too long. It should be outlined that the investment horizon of venture capital and private equity funds is much shorter than the proposed 10 years period which can lead to low market interest. In addition, the investment/policy objectives of the MS can change as well during that period. Is it possible that the period is defined as „up to 10 years" or that additional wording allowing for fund manager exit during the 10-years period to be added as well as investment in a variety of policy objectives?	The objective of Art 39 is to ensure that capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least ten 10 years shall be used in accordance with the aims of the programme. The provision of Art 39 in no way imposes specific restrictions concerning the period of investments or any other limitations concerning the actual implementation of the financial instrument. Art 39 refers to capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least 10 years after the end of the eligibility period, either within the financial instrument or by way of any form of support following the exit of the resources attributable to the CSF contribution from the financial instrument, as applicable.
39		Member States shall adopt the necessary measures to ensure that the capital resources and gains and other earnings or yields attributable to the support from the CSF Funds to financial instruments are used in accordance with the aims of the programme for a period of at least 10 years after the closure of the programme. *Comments:* *This condition does not reflect the economic development and fact that the demand for supported activities doesn't have to exist 10 years after the closure of the operational program and financial resources will be unused. We sugest to reduce proposed time into 5 years after the closure of the programme as in case of durability of operations.*	Art 39 refers to capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least 10 years after the end of the eligibility period, either within the financial instrument or by way of any form of support following the exit of the resources attributable to the CSF contribution from the financial instrument, as applicable. The Commission considers that the period of 10 years is a sufficiently long period to ensure longer term impact of EU resources implemented through financial instruments. In this regard, it is the same period as considered for capitalised interest rate subsidies and guarantee fee subsidies foreseen under Art 36(1)(c) CPR. The proposed timeframe could be considered as starting from the end of the

		Will be possible to use the re-paid resources after the closure of programme for providing grants?	eligibility period in order to ensure uniform application of the rule and legal certainty since the date of closure of programmes varies.
39		Why is the period for the use of capital resources, gains e.a. fixed at least ten years? Would a period of five years also be sufficient? Does „closure of the programme“ mean the ending of eligibility, the ending of the funding period or the closure following the final payment by the Commission? Do control duties result from the closure of the programme, and if so, for whom and how long? (the terms might not correspond to the terms of availability of documents. Here we prefer a coordination.) Does the wording „in accordance with the aims of the programme“ also include a possible subsequent programme and its embedded aims?	Please see the answer on this matter provided on page 70. The Commission will consider changing "closure of the programme" to "end of the eligibility period". The Member State should have in place the necessary measures to ensure compliance with Art 39 CPR. Verification of compliance by the Commission should obtain assurance that national authorities have adopted the necessary measures to ensure compliance with Art 39 CPR, namely through legislative or administrative acts which would give enforcement to this provision and make it subject to compliance verification by national control authorities. The Commission will consider adjustments to the wording of this Article.
39		This article sets that Member States that the resources attributable to the support from the CSF Funds to financial instruments are used for a period of at least 10 years after the closure of the programme. In our opinion, and given the continuous changes in the economic context, this period is too long: A period of 5 years would be more reasonable. **Q.** Does the Commission consider the possibility of reducing this period?	Please see the answer on this matter provided on page 70.
39		What is the reasoning of establishing 10 years time frame to use the financial instruments in accordance with the aims of the programme whereas the durability of operations regarding grants is 5 or 3 years (art 61)? Considering the constant changes in economy it is very hard to predict in a year 2013 what kind of stimulating activities the economy needs after the 15-20 years. Also the 10 years rule raises the obligation to control the use of FI 10 years after the eligibility period, which is not reasonable.	The objective of Art 39 is to ensure that resources that capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least 10 years shall be used in accordance with the aims of the programme. Art 39 refers to capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least 10 years after the end of the eligibility period, either within the financial instrument or by way of any form of support following the exit of the resources attributable to the CSF contribution from the financial instrument, as applicable. The Member State should have in place the necessary measures to ensure compliance with Art 39 CPR.

			Verification of compliance by the Commission should obtain assurance that national authorities have adopted the necessary measures to ensure compliance with Art 39 CPR, namely through legislative or administrative acts which would give enforcement to this provision and make it subject to compliance verification by national control authorities. Concerning the proposed 10 year timeframe, please see the answer on this matter provided on page 70.
39		Finland considers 10 years as a long time from the viewpoint of capital investments in particular. The long period creates strains on the size of the funding volume. The period should be shorter in smaller funds compared with bigger ones. However, Finland supports the inclusion of a definition for the time period in the regulation, but at this point leaves the duration of the period open.	Concerning the proposed 10 year timeframe, please see the answer on this matter provided on page 70. Art 39 refers to capital resources and gains and other earnings attributable to the support from the CSF Funds to financial instruments which are generated during a period of at least ten 10 years after the end of the eligibility period, either within the financial instrument or by way of any form of support following the exit of the resources attributable to the CSF contribution from the financial instrument, as applicable. The provision of Art 39 in no way imposes specific restrictions concerning the period of investments or any other limitations concerning the actual implementation of the financial instrument.
39		The period of 10 years is considered extremely long for the obligation to use the same financial instrument, under the current economic environment. We would like to suggest some flexibility for the targets after the closure of the program, while keeping the legacy. In addition we would like to have clear rules in advance regarding the management and control of financial instruments after the closure of programmers.	Please see previous answers provided in this section.
39		What kind of regulations, controls are to be applied to the use of legacy resources after closure? (These amounts practically do not belong to any operational programme.) Can these sources be used in the form of grants as well?	Please see previous answers provided in this section.
39		Reservation. LV is skeptical about the 10 year post-monitoring period. It would create an excessive administrative burden.	Concerning the proposed 10 year timeframe, please see the answer on this matter provided on page 70.

39		It is indicated that resources should be used in accordance with the aims of the program for a period of at least 10 years – is it correct that these resources can be used for any type of operation, other than previously financed; and how the accountability regarding the use of these resources should be carried out? Also, programs envisage certain investment priorities – will it be possible to use the legacy resources for the same objective stated in the program, however not for the same type of activities?	Please see previous answers provided in this section.
39		1. Art. 39 should cover instruments managed by the EC as well. 2. Who takes the responsibility for the use of the resources of financial instruments set up at the EU level: the MS or EC? 3. The reference should be to "aims of the cohesion policy/Fund" rather than "aims of the programme" – the proposed wording may be to narrow in light of the 20 year period covered (the programming period plus 10 years).	Please see previous answers provided in this section. The Commission considers that resources contributed to EU instruments are resources made available to the MS through the programmes. Any capital resources and gains and other earnings attributable to the support from the CSF Funds to those EU-level instruments should revert back to the Member State or region that contributed the resources and be used in accordance with Art 39 CPR. The funding agreement between the MA and the body implementing the EU-level instrument will have to ensure that for as long as resources remain within the EU-level instrument for further investments, the EU-level instrument would be responsible for ensuring compliance with Art 39. If any capital resources and gains and other earnings attributable to the support from the CSF Funds to the EU-level instruments is reverted back to the Member State or region that contributed the resources, it is the responsibility of the Member State or region to ensure compliance with Art 39 CPR. The Commission will consider adjustments to the wording of this Article covering all CSF Funds.
39		The Slovak Republic is interested to find out how to ensure flexibility to respond to market challenges within the given period of 10 years. Are there any available instruments?	Flexibility exists already. Article 39 does not require continuing with the same financial instrument. Other forms of support can be used. MS has to ensure only that resources are used with the aims of the programme.
39(1)		39.1 clears up the ambiguity but ten years is long time and if the market failure underlying the original fund in the context of the programme is no longer prevalent (ie the fund has done its job) why is the managing authority restricted to continuing down the same path? Is it reasonable to expect programme aims at both EU and member state level to be the same 10 years after closure (ie 2035). Also what happens if delivery arrangements change in subsequent periods – the managing authority may not be the same, ten years after	Please see previous answers provided in this section. Article 39 does not impose this obligation on the Managing Authority but on the Member State. Art 39 is not prescriptive in relation to the type of activities that can be supported during this period. Programme aims should be understood in a broad sense as programme support to social and economic development of the regions concerned.

		closure. Finally, does this mean the returns can be used only in further FEI measures or can they be used for other measures such as a R&D&I grant scheme?	Art 39 does not impose any restrictions in terms of delivery mechanisms.

Art	MS	Question	Commission answer
Article 40: Report on Implementation of Financial Instruments			
40(1)		Is this rapport the same as the one asked informally by the Commission in 2010?	The report developed by the Commission in 2011 was based on voluntary exercise and data submission by Member states as there was no regulatory obligation for the member states to report on financial engineering instruments. Such obligation was introduced into the legal framework in December 2011 which implies that as of 2012 Member States will report formally on the implementation of FEI. For 2014-2020 period the same regulatory obligation is proposed. Reporting on financial instruments will be part of annual report on implementation of the programme (in accordance with Article 44).
40(2)		1. The managing authority shall send to the Commission a specific report covering the operations comprising financial instruments as an annex to the annual implementation report. 2. The report referred to in paragraph 1 shall include, for each financial instrument, the following information: (a) identification of the programme and of the priority from which support from the CSF Funds is provided; (b) description of the financial instrument and implementation arrangements; (c) identification of the bodies to whom implementation tasks have been entrusted; (d) total amount of support by programme and priority or measure to the financial instrument included in requests for payment submitted to the Commission; (e) total amount of support paid or committed in guarantee contracts by the financial instrument to the final recipients by programme and priority or measure included in requests for payment submitted to the Commission; (f) revenues of, and repayments to, the financial instrument; (g) multiplier effect of investments made by the financial instrument and value of investments and participations; *Comments:* *In Article 40 (2) g) is not entirely clear how multiplier effect should be quantified. We do not also consider appropriate to separate this information from the resulting multiplier effect of the implementation of cohesion policy as a whole, since the information itself can be misleading. We expect explanation through an Implementing act.*	The uniform conditions concerning the monitoring and provision of monitoring information should be presented in the envisaged Implementing act (in accordance with Article 40.3). Separate information on multiplier effects for financial instruments is crucial as this is one of the features which makes FI more efficient than grants.

40(3)		(h) contribution of the financial instrument to the achievement of the indicators of the programme and of the priority concerned. 3. The Commission shall adopt, by means of Implementing act, in accordance with the examination procedure referred to in Article 143(3), the uniform conditions concerning the monitoring and provision of monitoring information to the Commission, including in respect of financial instruments referred to in Article 33(1)(a). *Comments:* *We would like to recommend setting up technical assistance instrument for managing authorities and final recipients in context of financial instruments. It could be specify like a part of management fee.*	Commission is envisaging a special Technical Assistance (TA) platform for financial instruments. This TA, depending on the type of assistance, could be financed by TA priority of the programme or directly by the Commission.
40(2)(g) and (h) 40(2)(d) 40(2)(e)		Art. 40, para. 2, g + h): delete both letters Rationale: The reporting requirements are too far-reaching. Reporting level should be the level of the financial instrument. Can one financial instrument receive financial contributions from different operational programmes and priorities? The amount paid from the financial instrument to the final recipient is not subject of payment requests to the Commission (s. Art 2 (8) and 9). Please clarify to which level the rule is directed, to the recipient or the final recipient.	Information on multiplier effects for financial instruments is crucial as this a feature which makes FI more efficient than grants. The report on financial instruments is part of the annual reporting which requires MS to report on implementation of the programme and priority by reference to indicators and quantified target values. Information on contribution of the FI to the achievements of the indicators of the programme and of the priority is thus a crucial element in each annual report. One financial instrument can be financed from different programmes, priorities or measures. In this case information should be distinguished by measure, priority, programme, and should be reported under all the programmes concerned. In accordance with Article 35 the amount paid by the financial instrument to the final recipient is not subject of the first payment request to the Commission. However, all subsequent payment requests must include information regarding the cumulative amounts of payments and the cumulative amount of eligible expenditure in the meaning of Art 36. The information required under paragraph (e) is important to assess to which extent the CSF resources paid to the financial instrument have reached final recipients and could therefore have an impact in the real economy.
		Besides, the current proposal increases the reporting requirements, and therefore the administrative burden for National Authorities, away from the principle of simplification that we have been defending. **Q.** Does the Commission envisage any way of simplification in the	The reporting requirements under Art 40 CPR are needed to ensure that there is effective monitoring of financial instruments by MAs and that the Commission receives essential information on the use of financial instruments with CSF funding to allow it to discharge its responsibilities vis-à-vis control and budgetary authorities. The uniform conditions on monitoring information, which should be presented in

		management and use of financial instruments by Member States?	the envisaged Implementing act, should facilitate and standardize reporting.
40(2)(b)		It does not seem necessary to give the description of financial instruments and their implementation arrangements every year in the implementation report. We propose deleting the art 40 par 2 (b).	Information on financial instrument and implementation arrangements may vary in time. It is especially valid for instruments implemented through fund of funds where new financial intermediaries and new implementation arrangements evolve in time. Multiannual character of financial instruments may imply changes in the strategy and reorientation in products. Each annual implementation report should include a self-contained overview of the essential elements concerning financial instruments.
40		In principle, Finland can accept the article, but emphasises that reporting must be simple and clear and it should not cause any additional administrative burden to the financial instruments and final recipients.	The uniform conditions on monitoring information, which should be presented in the envisaged Implementing act, should facilitate and standardised reporting.
40(2)		"(h) la contribution de l'instrument financier à la réalisation des indicateurs du programme et de la priorité concernés. (i) une liste des bénéficiaires finaux soutenus à la date de l'établissement du rapport d'activité, fournissant des informations sur les types de bénéficiaires finaux (type d'entreprise, taille, secteur d'activité) et la nature des projets soutenus." Les données prévues par le présent règlement relèvent exclusivement d'une logique de gestion comptable et financière par la COM. Au niveau local, les Autorités de Gestion recueillent également auprès des gestionnaires des IF des informations qualitatives qu'il serait utile d'agréger au niveau communautaire pour le suivi des IF.	The main objective of the reporting provisions is to monitor that the financial instruments are effectively implemented. The reporting requirements under Art 40 CPR are needed to ensure that there is effective monitoring of financial instruments by MAs and that the Commission receives essential information on the use of financial instruments with CSF funding to allow it to discharge its responsibilities vis-à-vis control and budgetary authorities. This provision is without prejudice to obligations relating to common and programmes specific indicators. This does not preclude the managing authority from including additional monitoring requirement for the activities of the financial instrument.
40 40(2)(g) 40(2)(h)		The information that is required in every annual report is too extensive. We assume that the "multiplier effect" is just an estimation of the leverage effect occurred through the use of the financial instrument, since an extensive calculation of the equity invested is too difficult to be estimated annually. Concerning the indicators referred to in this paragraph, it is necessary to have clear and applicable directions from COM in the case of result indicators. Alternatively, we propose to use output indicators which are easier to be measured.	Please see previous answers provided in this section. As demonstrated in the voluntary monitoring exercise, it is feasible to collect data concerning additional resources mobilised. The relevant definition and formula for calculating multiplier effect will be presented in Implementing act. Art 40 does not include specific indicators but includes parameters to demonstrate how the financial instrument contributed to the indicators of the programme(s). This provision is without prejudice to obligations relating to common and programmes specific indicators. The envisaged Implementing act should set out the conditions on monitoring information.

40		This proposal can be assessed only after the presentation of the related implementing act. On that basis MSs will have the possibility to evaluate the proposed information content. Should this reporting obligation remain in the final proposal, we would like to emphasise again that clear guidance would be inevitable for such reports, and, as we articulated earlier during the debate on the last amendment to the 1083/2006 GR, the Commission should prepare an EU level report on the basis of the individual reports and make it available to MSs.	The Commission takes note of the Member State's proposal.
40(2)		Reservation. The monitoring requirements in this article seem to be too excessive and need to be slimmed down. The same time clarification is needed on what is meant by 'value of investments and participations" within the Article 40.2 (g) ? Proposal: to delete paragraphs (f) and (g) of the Article 40.2	Please see previous answers provided in this section. In case of equity investment the value of initial investment made is evolving in time (e.g. share appreciation). The MS should report the value of al these investments at the end of the previous year. For equity investments, this is commercial practice. The information on revenues and repayments is relevant in relation to Article 38 CPR and it is very relevant information also to measure to measure the efficiency and level of success of the financial instrument..
40(1) 40(2)(g)		W ill the template of specific report covering financial instruments be provided? Do we understand correct that multiplier effect is applied for guarantee instruments only?	The envisaged Implementing act should set out the conditions on monitoring information. Multiplier effect applies to all financial instruments.
40(1) 40(2)		Does the obligation to send to the EC this special report includes the FI established at the EC level? It should. 1. Please explain the method for calculating the multiplier effect index. A standardized method of calculation is necessary. 2. We propose to move aspects relating to data in (h) to evaluation or implementation reports for the years 2017, 2019 and final report. These are complex data, therefore detailed analysis/ evaluation is required in order to provide them.	Yes, reporting provisions foreseen by Art 40(1) also include EU-level instruments. The MA should ensure that the finding agreement signed with the body implementing the EU-level instrument includes reporting requirements that satisfy the criteria of Art 40(1) CPR. The definition of multiplier effect will be aligned with the definition of the Financial Regulation and the related delegated act. A standardised method should be presented in the envisaged Implementing act. In each annual reporting MS are obliged to report on implementation of the programme and priority by reference to indicators and quantified target values. Information on contribution of the FI to the achievements of the indicators of the programme and of the priority is thus crucial element in each annual report.
40		The Slovak Republic does not agree with the specific reporting for financial instruments, we would suggest a specific report only in	Please see previous answers provided in this section.

		specific cases (e.g. the case when Fund Manager is also MA as in case of EIB)	
40(2)(g), (h)		In 40.2, points g and h may not be quantifiable at the time of the report during the lifetime of the programme.	The Commission agrees that where investments by co-investors are not simultaneous the multiplier ratio will be affected. In such case additional information (e.g. on committed amounts) may need to be provided. The envisaged Implementing act should provide a template on monitoring information which should take account of such situations. In each annual reporting MSs are obliged to report on implementation of the programme and priority by reference to indicators and quantified target values as captured at the time of the reporting. Information on contribution of the FI to the achievements of the indicators of the programme and of the priority is thus crucial element in each annual report.

Art	MS	Question	Commission answer
Other relevant CPR provisions (following Art 40)			
48(3)		Is it possible that ex ante evaluation on financial instruments indicated in Art. 32.1 forms part of the ex ante evaluation mentioned in this article?	No. Ex-ante evaluation covered by Article 48 relates to the entire programme. It should be carried out in the programming process (before the programme is adopted). It should also inter alia appraise the rationale for the form of support (e.g. financial instrument) proposed in the programme. Ex-ante assessment required under Article 32.1 should be conducted prior to setting up financial instruments as part of the programme implementation. This ex-ante assessment can be carried out also during the implementation of programme. It should aim at identifying market failures or sub-optimal investment situations, and investment needs, should also assess possible private sector participation and an appropriate investment strategy (to be pursued by the financial instrument in question).
55(2)		How this provision should be applied when implementing financial instruments?	This Article refers to the eligibility period. For financial instruments pursuant to Article 32, the eligible expenditure is defined under Article 36 CPR.
55(8)		How this provision should be applied when implementing financial instruments?	This provision applies to financial instruments. The envisaged delegated act will set out elements allowing support from more than one operational programme supported by the CSF Funds or from more than one priority axis. In such cases, for reporting and audit purposes, separate accounts or adequate accounting codes should be kept for the contribution from each operational programme and from each priority axis. A single managing authority and a single audit authority would be designated to ensure compliance of the operation with applicable rules.
56		Article 56 Forms of support The CSF Funds shall be used to provide support in the form of grants, prizes, repayable assistance and financial instruments, or a combination thereof. In the case of repayable assistance, the support repaid to the body that provided it, or to another competent authority of the Member State, shall be kept in a separate account and reused for the same purpose or in accordance with the objectives of the programme. Comments:	The definition of financial instrument provided in the Financial Regulation justifies using "financial instrument" in Article 56. Financial instruments according to Financial Regulation are Union measures of financial support provided from the budget in order to address when necessary and duly justified, one or more a specific policy objectives of the Union. Such instruments may take the form by way of loans, guarantees, equity or quasi-equity investments, or other risk-sharing instruments, and may, where appropriate, be combined with grants.

		It is necessary to correct the text. Financial instrument does not represent a form of support. The form of support may consist of credit, guarantee or other risk-bearing instruments and other products provided in a direct connection with these products (interest subsidy, guarantee fee subsidy or other equivalent measures).	
60(2)(b)		How this provision may be applied when implementing financial instruments, i.e. is it possible that part of the resources of the financial instrument is invested outside the program area? And do we understand correct that, following Art. 60.4, in case of financial instruments supported from ESF, there will be no possibility to implement these financial instruments outside the program area?	In line with Article 60(2)(b), it will be possible that the contributions from a programme may support investments outside the programme area up to the maximum percentage defined in that Article. Drawing upon the lessons from the current programming period, the Commission would strongly recommend setting up financial instruments under programmes covering more than one NUTS II region.
61		Article 61 Durability of operations Paragraphs 1 and 2 shall not apply to contributions to or by financial instruments or to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy. Comments: The text is insufficient. In some case the business is only terminated in a form of liquidation and there are no signs of bankruptcy (e.g. termination of business due to illness sooner than there is excessive debt there). It is not quite clear how to understand the text, i.e. whether it is possible to consider it as a special legal text related to the generally valid principles in the area of state aid.	In the context of these replies, the Commission underlines that Art 61 CPR does not apply to financial instruments pursuant to Art 32 CPR.
77(2)(a)		How this provision could be applicable in respect of financial instruments, defined in Art. 33 3 a) or b)?	In line with the definition under Article 2, "operation" in the context of financial instruments is constituted by the financial contributions from a programme to financial instruments and the subsequent financial support provided by these financial instruments.
88(2)		How this provision should be applied in respect of financial instruments?	Article 88 concerns the situation where the ERDF and ESF resources jointly provide support under one programme. In the context of financial instruments it is also possible to support the same financial instrument from different CSF funds, different programmes or different priority axes. For reporting and audit purposes, separate accounts or adequate accounting codes should be kept for the contribution from each operational programme and from each priority axis. A single managing authority and a single audit authority would be designated to ensure compliance of the operation with

			applicable rules.
		There seems to be no more provisions regarding global grants - will it be possible to have global grants in 2014-2020, i.e. implement an interest rate subsidy scheme separately from financial engineering operations by appointing a manager of such scheme?	The CPR does contemplate the eligibility of interest rate subsidies as part of financial instruments pursuant to Article 32. A clarification may be needed concerning Article 59(3)(a) in order to contemplate interest rate subsidies as eligible expenditure under grant operations.
119		Article 119 Common rules for payments The Member State shall ensure that at the latest by the closure of the operational programme, the amount of public support paid to beneficiaries is at least equal to the contribution from the Funds paid by the Commission to the Member State. Comments: It is not quite clear how this should be applied. It seems to us that in case of a national co-financing of 15% it would be sufficient to spend only 85%. The Commission should explain what the text means.	This question does not relate to Title IV of the CPR and will be reviewed in a separate set of discussions.
131		Article 131 Rolling Closure (1) For the ERDF and the Cohesion Fund, the annual accounts for each operational programme shall include at the level of each priority axis the list of operations completed during the accounting year. The expenditure relating to these operations included in the accounts subject to the clearance decision shall be considered as closed. Comments: There are two possible explanations of the term „ operation“ especially in relation to financial instruments. There are two options – either only financial instrument or individual projects/actions. It is necessary so as the Commission explained its intention and simultaneously also reconsidered specification of the text, if its intention is really to have a list of completed projects/actions. In CZ we can assume some hundreds of projects annually.	For financial instruments, the operation is completed when all programme contributions paid to the financial instrument were spent as eligible expenditure in the meaning of Art 36 CPR, or when the financial instrument is wound up before closure (whichever occurs earlier), and the related expenditure is included in the accounts for the purposes of Art 131 CPR.

132		Article 132 Availability of documents (1) Without prejudice to the rules governing State aid, the managing authority shall ensure that all supporting documents on operations are made available to the Commission and the European Court of Auditors upon request for a period of three years. This three year period shall run from 31 December of the year of the clearance of accounts decision pursuant to Article 130 or, at the latest, from the date of payment of the final balance. This three year period shall be interrupted either in the case of legal or administrative proceedings or by a duly justified request of the Commission. (2) The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. Comments: It is not much clear from the text what is the idea of the Commission in case of financial instruments. It is not obvious whether by documents related to an operation are meant only the documents between managing authority and beneficiary or whether also documents related to particular projects/actions/investments supported by the financial instrument. Will it be sufficient if final recipients are bound to have documents proving use of resources directly or indirectly (in case of guarantees) supported by the financial instrument?	Supporting documents for financial instruments should be kept until three years after the closure. A non-exhaustive list of appropriate supporting documents will be set out in the envisaged Delegated Act.

Art	MS	Question	Commission answer
ESF Regulation – Article 15			
15		Could the Commission clarify this article and its modalities?	Please see explanatory fiche 13
15		Could the Commission provide us with more information on the design of the future ESF instrument? What is the level of risk implied by it and under what conditions the policy-based guarantees will be put in place?	Please see explanatory fiche 13 There is no risk for the EU budget and the risk exposure for the programme is limited to the amount of the PBG.
15(2)(a)		We refuse „ESF-policy based guarantees“ Rationale: It is not an appropriate instrument for ESF because it aims at general balance of payments support; furthermore the instrument would be posing a high risk to the EU budget because of its intrinsic high risk of failure. It is an open question whether ESF-projects could generate any income to pay the lent money back. A similar instrument of the World Bank was created during the East Asian crisis to attract foreign capital. It has fallen short of expectation; as a study of the World Bank pointed out.	The use of PBG is conditional to the policy supported linked to the relevant programme, hence is not a general balance of payment support. PBGs do not constitute a risk for the EU budget, as they do not entail a contingent liability for the EU budget. The repaying of the loan (or bonds) is not expected to be done (entirely) through project revenues. Please see explanatory fiche 13 for details. The Commission consulted the independent evaluation of the World Bank Group Guarantee Instruments, which covers PBGs, published in 2009. Since this publication, the World Bank has continued to use this instrument.
15(2)		What is meant with 'ESF policy-based guarantee' and does Commission approve all financial instruments applications financed from ESF or only some of those and which ones?	Please see explanatory fiche 13 Each Policy Based Guarantee will be subject to Commission approval
15		Finland supports the use of repayable financial instruments also in ESF activities. Technically, article 15 should refer to the regulations in the common provision that are applicable if this is what is meant. In order to define the scope of coverage, more information should be provided.	The title of the articles qualifies all instruments described under Article 15 as financial instruments. Hence all relevant provisions of the CPR apply to these instruments.
15(2)		We would like more clarifications on “ESF policy-based guarantees”. If this is a definition, we would like to see it in Article 2 of CPR. Under which conditions the delegated act can be revoked (article 16.3)?	Please see explanatory fiche 13 PBGs are a form of financial instrument and do not require a specific definition. The question is not clear
15(2)		LV supports implementation of financial instruments within ESF; nevertheless we express our concerns regarding necessity to conform	Due to the specificities of the PBGs, the Commission considers it relevant to set ceilings. Please see explanatory fiche 13 for further explanation on these

		to ESF policy-based guarantees and guarantees ceilings from the EC side. <u>Proposal for wording of Article 15.2:</u> “2. ESF may be used to enhance access to capital markets for public and private bodies at national and regional levels implementing actions and policies falling within the scope of the ESF and the operational programme."	specificities
15(1)		Is it necessary in the programme to include the financial instruments the member state would like to use, or we actually may decide later and identify financial instruments in national legal acts? Could you explain what does “ESF policy-based guarantee” mean? Could you give possible examples? In case the member state would like to use this instrument, should this be indicated in the programme? Would it be possible for a member to decide on using such instrument during the course of programme implementation?	All the provisions of the CPR applicable to financial instruments of the CPR also apply to PBGs, including in terms of planned utilisation in the corresponding operational Programme(s). This will be notably necessary to make use of the incentives offered by the CPR (i.e. higher co-financing rates) for using financial instruments Please see explanatory fiche 13.
15 15(1) 15(2)		The value added of a specific ESF article is not clear. If it is to stay, it requires a revision because of the lack of consistency with the CPR - for example it uses the notion holding funds, which is not used in the general regulation. In addition, it mixes modes of implementation of funds (ie. fund of funds) with their types (loans, guarantees). Please explain how the listed in the article instruments shall be understood in regard to the contribution provided by the ESF – i.a. risk-sharing schemes, equity, debt. 1. What is meant by "ESF policy-based guarantees"? 2. Would it be possible to combine ESF guarantee with ERDF loan? (question in the context of combining instruments).	The wording "holding funds" could be adjusted to the CPR wording. ESF may co-finance all forms of financial instruments provided for in the CPR Please see explanatory fiche 13 ESF may only co-finance operations (including financial instruments) consistent with its mission and scope
15(2)		The Slovak Republic invites COM to provide a definition on “policy-based guarantees”.	Pleasee explanatory fiche 13
15(2)		What evidence does the Commission have that the policy-based guarantees in 15.2 are needed, in what circumstances could they be used and what sorts of activities would they cover?	Please see explanatory fiche 13