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

## COMMISSION IMPLEMENTING REGULATION (EU) No 964/2014

## of 11 September 2014

## laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) To facilitate the use of financial instruments set up at national, regional, transnational or cross-border level and managed by or under the responsibility of the managing authority in accordance with Article 38(3)(a) of Regulation (EU) No 1303/2013, rules on standard terms and conditions for certain financial instruments should be established. Those standard terms and conditions would make those instruments ready to use — the so-called off-the-shelf financial instruments.

(2) To facilitate the use of financial instruments, the standard terms and conditions need to ensure compliance with state aid rules and facilitate the delivery of Union financial support of final recipients through a combination of financial instruments and grants.

(3) The standard terms and conditions should not allow a finance provider, such as a public or private investor or a lender, a manager of the financial instrument, or a final recipient to receive any state aid which is incompatible with the internal market. The standard terms and conditions should take into account the relevant *de minimis* Regulations such as Commission Regulation (EU) No 1407/2013[(2)] and Commission Regulation (EU) No 1408/2013[(3)], Commission Regulation (EU) No 651/2014[(4)], Commission Regulation (EU) No 702/2014[(5)], the Guidelines on State aid to promote risk finance investments[(6)] and the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020[(7)].

**Changes to legislation:** *There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 964/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Given that the State aid rules do not apply to agricultural activities supported under the European Agricultural Fund for Rural Development, compliance with the standard terms and conditions should be voluntary. For other activities receiving support from the European Agricultural Fund for Rural Development, general State aid rules apply and therefore, the standard terms and conditions should be mandatory.

(5) It is possible that undertakings in the fisheries sector, particularly small and medium-sized enterprises (SMEs), may benefit from financial instruments financed by a European Structural and Investment Fund. When such a benefit is funded by another European Structural and Investment Fund than the European Maritime and Fisheries Fund, the total amount of the aid granted through the financial instruments to all undertakings in the fisheries and aquaculture sector over three years should be below a cap of the annual fishery, aquaculture and processing turnover by Member State specified in Commission Regulation (EU) No 717/2014[(8)]. In addition Regulation (EU) No 702/2014 and the Guidelines for the examination of State aid to fisheries and aquaculture[(9)] should to be taken into account.

(6) The standard terms and conditions should also include a minimum set of governance requirements to ensure proper management of the financial instruments in order to provide for more detailed rules than those included in the Regulation (EU) No 1303/2013.

(7) In order to support SMEs growth in a difficult funding environment, a portfolio risk sharing loan ('RS loan') is an appropriate financial instrument. The RS loan provides new loans to SMEs with easier access to finance by providing financial intermediaries with funding contribution and credit risk sharing and thereby offering SMEs with more funds at preferential conditions in terms of interest rate reduction and/or collateral reduction.

(8) Financing through the RS loan may be a particularly effective way of supporting SMEs in a context of limited availability of funding or relatively little risk appetite of the financial intermediaries for certain sectors or type of SMEs. In this context, the standard terms and conditions are an effective way to address such market failure.

(9) In order to provide an incentive to financial intermediaries to increase lending to SMEs covered by Union funded guarantees, a capped portfolio guarantee is an appropriate financial instrument.

(10) The capped portfolio guarantee should address the existing gap in the debt market for SMEs supporting new loans by providing credit risk protection (in the form of a first loss portfolio capped guarantee) with the aim to reduce the particular difficulties that SMEs face in accessing finance because of the lack of sufficient collateral in combination with the relatively high credit risk they represent. In order to achieve the expected impact, the Union contribution to the capped portfolio guarantee should, however, not replace equivalent guarantees received by the respective financial institutions for the same purpose under existing Union, national and regional financial instruments. In this context, the standard terms and conditions are an effective way to address such market failure.

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(11) In order to incentivize the energy saving potential arising from the renovation of residential buildings, a renovation loan is an appropriate financial instrument.

(12) The renovation loan should target long term subsidised loan conditions and upfront technical support and funding of residential building owners to prepare and implement building renovation projects. It also assumes a financing market in which banking intermediaries are essentially the only source of funding, but where this funding is either too little (due to the risk appetite of the intermediary), too short term, too costly or otherwise inappropriate for the long term payback nature of the projects being financed. This, together with an inefficient system of identifying and procuring the works on behalf of multiple apartment owners without excluding the possibility to support individuals, constitutes a market failure. In this context, the standard terms and conditions are an effective way to address such market failure.

(13) The measures provided for in this Regulation are in accordance with the opinion of the Coordination Committee for the European Structural and Investment Funds,

HAS ADOPTED THIS REGULATION:

*[F1 Article 1*

**Subject matter**

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

(a) a portfolio risk sharing loan (‘RS Loan’);

(b) a capped portfolio guarantee;

(c) a renovation loan;

(d) a co-investment facility;

(e) an Urban Development Fund.**]**

**Textual Amendments**

**F1** Substituted by Commission Implementing Regulation (EU) 2016/1157 of 11 July 2016 amending Implementing Regulation (EU) No 964/2014 as regards standard terms and conditions for financial instruments for a co-investment facility and for an urban development fund.

*Article 2*

**Additional terms and conditions**

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

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*[F1 Article 3]*

**Grants under the standard terms and conditions**

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

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

**Textual Amendments**

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*Article 4*

**Governance under the standard terms and conditions**

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

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

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

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

*Article 5*

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

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

2 The funding agreement shall contain as annexes:

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a the *ex-ante* assessment required under Article 37 of Regulation (EU) No 1303/2013 justifying the financial instrument;

b the business plan of the financial instrument including the investment strategy and a description of the investment, guarantee or lending policy;

c the description of the instrument which must be aligned with the detailed standard terms and conditions of the instrument and which must fix the financial parameters of the financial instruments;

d the monitoring and reporting templates.

*Article 6*

**RS Loan**

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

2 The RS Loan shall comply with the terms and conditions set out in Annex II.

*Article 7*

**Capped Portfolio Guarantee**

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

2 The Capped Portfolio Guarantee shall comply with the terms and conditions set out in Annex III.

*Article 8*

**Renovation Loan**

1 The Renovation Loan shall take the form of a loan fund to be set up by a financial intermediary with contribution from the programme and contribution of at least 15 % of the loan fund from the financial intermediary. The loan fund shall finance a portfolio of newly originated loans, to the exclusion of the refinancing of existing loans.

2 Final recipients may be natural or legal persons or independent professionals, owning premises as well as administrators or other legal bodies acting on behalf and for the benefit of owners, implementing energy efficiency or renewable energies measures that are eligible under Regulation (EU) No 1303/2013 and programme support.

3 The Renovation Loan shall comply with the terms and conditions set out in Annex IV.