

**Comments from the Member States on the Guidance note on Repayable Assistance following the EGESIF meeting of 25 February 2015**

	Sections	MS	Questions	COM reply
1.		DE	Obviously there are other types of financial instruments when it is the MA and not a financial intermediary that manages the direct loans (art. 38 para 4 lit.c) CPR). In these cases the MA itself is the beneficiary. Will the table in annex be extended for those cases?	The comparative table aims to differentiate between three of the most common forms of support as defined in Article 66 of the CPR. The table refers to loan funds as is apparent that here a demarcation to RA is most needed. Equity investments or guarantees appear due to their character clearly differentiable from RA and do not need a specific demarcation by criteria. If a financial instrument is according to Art. 38 para 4 lit c implemented by the MA, the managing authority will be the beneficiary. A reference has thus been added to the loan Funds column for the 'beneficiary' criteria.
2.	4	DK	This very useful guidance raises only one clarifying question; does the Commission have any special requirements for documentation regarding this instrument – e.g. special requirements for operations generating profits for which additional policy results are desired (example C on p. 8)?	As outlined under section 2.2.3 the repayable assistance is provided on the basis of an agreement with the beneficiaries clearly setting out implementation conditions including any special requirements. This agreement will determine the individual need for documentation.
3.		HU	Please provide clarification – ideally in the guidance – on how to calculate the State Aid equivalent in case of repayable assistance.	Like for any other instrument, Member States are responsible for ensuring State aid compliance. For repayable assistance, it is possible to treat it like a grant for the purposes of State aid control, in particular with respect to the relevant aid amount. Should Member States consider that, due to the specificities of the case, the aid element is lower than if it was a grant, Member States are invited to consult the Commission's Directorate General of Competition for further advice.

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4.	2.2.4	LT	<p>Part 2.2.4 of the document deals among others with net revenue reduction. It is said that <i>‘expenditure declared for repayable assistance is to be reduced by the revenues expected to be generated or generated at the latest at closure (Article 61(6) and 65(8) CPR), except for operations subject to a full repayment obligation’</i>. No reference is made to Article 61(1) CPR, where it is said that <b><i>‘Operating cost savings generated by the operation shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies’</i></b>.</p> <p>In the guidelines it is mentioned only one exception – repayable assistance subject to a full repayment obligation. Yet, 1st paragraph of Article. 61 of the CPR shall apply to grants as well as repayable assistance. When in the guidelines nothing is said on this exception, it creates some uncertainties and, possibly, some collision with the CPR. We believe that for the sake of clarity it is important to make a reference to Article 61 (1) CPR and mention it among other exceptions when cost savings are not treated as net revenues and net revenues are not calculated <i>ex ante and</i>.</p> <p><i>Example of applying Article. 61(1)</i> Lithuania will apply repayable assistance for supporting renovation of centrally owned public buildings, which are owned by the state and managed by budgetary institutions. On the one hand, according to our national law, budgetary institutions cannot borrow, so, subsequently, they cannot use any of the financial instruments and repayable assistance seems an option for them. On the other hand, budgetary institutions that manage centrally owned public buildings are financed from the state – they get operating subsidies, or, to put it the other way, budget appropriations. After project implementation we will control and assure individually for each project that annual operating subsidies that each manager of a renovated building gets are reduced by the size of annual operating cost savings generated by the operation</p>	<p>According to Article 61 (1) CPR, cost savings for projects shall be treated as net revenues in case they are not offset by the subsidies provided by the public sector. In the case where the operation is to be considered individually for each building renovated and the reduced state subsidies equal the revenues no net-revenues are generated for these projects according to Article 61 (1) CPR. Accordingly, the eligible expenditure of the operation shall not be reduced to take into account the potential of the operation to generate net revenues. This means that Article 61(2) CPR shall not apply.</p> <p>This is not the case if the operation is for instance an energy efficiency scheme and the cost savings are maintained in the operation and returned to a special account of the operation (an energy efficiency scheme). In this case Article 61 (2) CPR applies and the cost savings have to be considered as net-revenues generated.</p> <p>In order not to deviate from the main subject of the guidance note the definition and use of repayable assistance in comparison with financial instruments and grants, this specific explanation on the application of Article 61(1) is not further replicated in the guidance note</p>

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			[project]. So in our case operating cost savings should not be treated as net revenues, as stated in Article 61 (1) CPR.	
5.	2.2.5	LT	<p><b>MONITORING OF REPAYMENTS</b></p> <p>In part 2.2.5. of the guidelines it is mentioned that at closure of the programme national authorities will have to demonstrate compliance with the requirement of reuse of funding. This requirement implies that at closure of the programme all or a part of the repayments have to be reused. Yet, in the first paragraph of this part of the note it is said that the CPR is silent on the deadline for repayments. According to Article. 66 of the CPR, the repaid amounts have to be reused [“have to be kept in a separate account or separated with accounting codes and reused for the same purpose or in accordance with the objectives of the programme”], yet it is not said when. As we understand, even after closure of the programme it is possible to repay and, subsequently, reuse the funds. So, in our view, there is a conflict between the 1st and the 2nd paragraph. What is more, the requirement formulated in the second paragraph is a new requirement and is not reflected in the Regulation. So, we see the need to reformulate the 2nd paragraph. Accordingly, we would like to suggest to specify the 2nd paragraph and do not mention the concrete time period – closure of the programme stressing only that national authorities have to demonstrate compliance with the requirement to reuse the funding</p>	<p>A new sentence is added to the guidelines to align paragraph 2.2.5 with Article 66 of the CPR. The second paragraph of section 2.2.5 reads now:</p> <p>' The national authorities have to ensure compliance with the requirement of reuse of funding as set out in the second subparagraph of Article 66 CPR. Therefore they shall ensure that repayments of support given in the form of repayable assistance, including amounts repaid after closure, are reused for the same purpose or in accordance with the objectives of the programme.'</p>

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6.	3	LT	<p><b>STATE AID RULES</b></p> <p>In the table comparing repayable assistance to grants and financial instruments a reference is made to the State aid provisions when state aid is applied for research and development investments. Accordingly, in that case repayable assistance would be with interest. Also, the same reference is made in the first of the three examples, which mentions research and development investments. For the moment repayable assistance is not mentioned among transparent categories of aid among grants, loans, guarantees etc. as laid down in the GBER 5 (2), yet repayable advance is mentioned there. However, the GBER defines repayable advance as “a loan”.</p> <p>In our opinion, there is a lack of clarity when it comes to repayable assistance and the State aid rules. This lack of clarity is noticed not only in the guidelines, but also in both regulations. First of all, we suggest to clearly showing the line between repayable assistance and repayable advance in the guidelines.</p> <p>Secondly, we suggest initiating the amendment of the GBER adding repayable assistance to other transparent categories of aid in Article. 5 (2) of the GBER, because repayable advance do not cover repayable assistance.</p> <p><i>Example of repayable assistance and the State aid rules</i></p> <p>In our case, after sending an inquiry to DG Competition on repayable assistance for renovation of cultural buildings [aid to culture infrastructure is subject to State aid rules, according to Article. 61 of GBER!], which among other public buildings are planned to be renovated in Lithuania, we received</p> <p>a following answer: our model and the claw-back mechanism of the funding by reducing budget appropriations should be in line with the GBER rules. So, following the logic of this answer repayable assistance should not be in conflict with the GBER rules.</p>	<p>Concerning the request to mention ‘repayable assistance’ as form of transparent aid in State aid rules, it should be noted that the instrument to a very large extent resembles a grant. A grant is transparent aid and the aid element is the amount of the grant. Even if the specificities of repayable assistance could possibly allow Member States to argue that the aid element is lower than the full amount, it remains possible, for the purposes of State aid control, to treat repayable assistance as a grant since this would be the ‘worst case scenario’ from a State aid perspective. Therefore, if Member States treat the repayable assistance like a grant, it is possible to make use of the existing State aid rules. Only in the event that Member States would like to use a lower amount as ‘aid element’ there could be an issue for the application of the GBER or the de minimis regulation which should then be verified with the Commission’s Directorate General for Competition.</p>

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7.	4	LT	<p><b>INCREASING THE NUMBER OF EXAMPLES ON REPAYABLE ASSISTANCE</b></p> <p>The guidelines provide some examples of practical application of repayable assistance. Unfortunately, energy efficiency projects are not mentioned there and they do not actually fit into any of the three categories. We think that because of the following reasons a fourth type of projects – namely public building energy efficiency projects could be presented as an example of using repayable assistance:</p> <p>a) Energy efficiency projects generate revenues which is the source of repayment;</p> <p>b) No reduction of eligible expenditure is needed if operating subsidies are reduced by an equal size of operating cost savings, as stated in the CPR 61 (1). This is possible where energy efficiency projects are implemented by public bodies that are financed via operating subsidies from the budget.</p> <p>In our case grant elements are linked to performance indicators in reverse order: the better the results, the lower the non-repayable support. When required to reach a specific minimum threshold of energy savings, say 20 percent, repayments, which are generated by savings are guaranteed. The repaid amount may reach up to 100 percent.</p> <p>Mentioning public building energy efficiency projects among other examples might encourage some other Member States to use it and, subsequently, move one step further from traditional form of intervention - grant financing to some more innovative solutions when financing renovation projects.</p>	<p>As regards the application of CPR Art. 61(1) see the reply to question 4.</p> <p>Certain types of energy efficiency projects could indeed be covered by repayable assistance, i.e. if it is not possible in advance to determine the appropriate mix of grant and loan which is subject to the achievements of efficiency targets.</p>
8.		IE	<p>The Commission's document seems to be stating that unless there is conditionality (bonus, performance incentive or sanction) related to the achievements of a co-funded operation that materially affects</p>	<p>Article 66 CPR differentiates between the different forms of support which are subject to different legal requirements as regards their implementation. Depending on the type of support chosen in between the four options offered</p>

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			<p>the portion of a grant that is in repayable or grant form post-approval, then it cannot be deemed to be repayable assistance.</p> <p>If on the other hand, the amount in repayable form is on fixed unconditional terms in the grant agreement, then it must be considered a loan and is therefore a de facto financial instrument and must fulfil all of the financial instrument requirements.</p> <p>In our opinion, this will lead to an additional burden of complying with all of the reporting requirements associated with a Financial Instrument and we would welcome the Commission's comments on this.</p>	<p>in this Article, the CPR requires that different implementation requirements (and thus reporting requirements) are respected. This is one of the reasons why the clear demarcation addressed by the guidance note appeared necessary and should help to avoid irregularities. The CPR requires that financial instruments as defined in Article 2(11) CPR by reference to Article 2 of the Financial Regulation are following the rules of Title IV CPR.</p>
9.		SK	<p>We are seeking for a solution that would help us implement the support of beneficiaris' projects as effective as possible. Our preliminary findings of ex ante assessment of FIs show that we could address certain suboptimal investment situations, for instance in the field of energy efficiency, with a financial instrument combined with a bonus grant-type support.</p> <p>Our intent would be to follow some of the best practices that the Commission itself has identified. For instance, EBRD's SlovSEFF fund in Slovakia provides final recipients with soft loans and in case the project is successfully implemented, they may be granted 5-20 % cash grant depending on the energy efficiency of the finalised project. We understand that this example is not fully usable with ESIF, but our suggestion would be to:</p> <ul style="list-style-type: none"> <li>•Grant the final recipient a subsidy on technical preparation of the project</li> <li>•provide soft loan to finance the investment part of the project</li> </ul>	<p>Certain types of energy efficiency projects could indeed be covered by repayable assistance, i.e. if it is not possible in advance to determine the appropriate mix of grant and loan which is subject to the achievements of efficiency targets.</p> <p>However, if it is possible to determine in advance the amounts of grants and loans needed for an operation, the form of support could be as well a combination of the two forms of support presented in the guidance note. There is no restriction in the regulation to combine repayable assistance with financial instruments as two operations following two distinct forms of support within the same project. Support provided by repayable assistance can be granted by an intermediate body which can act under the responsibility of the Managing Authority and carry out implementation duties on behalf of it.</p> <p>Repayable assistance is the right form of support for projects that need to convert a part of the repayable support into grant in case the project has fulfilled certain conditions that depend on the outcome of implementation</p>

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			<p>(using appropriate leverage of private sources in the FI)</p> <ul style="list-style-type: none"> <li>•after the implementation of the project, find out, if the energy efficiency objectives of the project were really achieved (indicator)</li> <li>•grant a bonus on the same eligible cost (in whatever form of assistance) ranging from let's say 5-25 % depending on the energy efficiency of the project (for instance – if it's a energy efficiency in a building project and the project would help to shift the energy class from D to A, FI the bonus would be let's say 10 %, if from D to A+, bonus would be let's say 20 %)</li> </ul> <p>The bonus would incentivize the final recipients to energy efficiency. We believe this system may be also usable for instance for projects implementing innovation in enterprises. In this respect, we do not understand why Art. 37 of the CPR explicitly unables the combination of grant and FI on the same eligible cost with the exception of technical preparation of projects.</p> <p>Alternatively, we would use a form of repayable assistance, but we find its definition ineffective, we would like the Commission to clarify the following points:</p> <ul style="list-style-type: none"> <li>•why the repayable assistance should not be combined with FIs,</li> <li>•the repayable assistance should not be provided only by managing authority, but also by a financial intermediary,</li> <li>•the logic of repayable assistance should enable to convert a part of the FIs support into grant in case the project has fulfilled its objectives (bonus incentivizing and motivating final recipients to invest in projects with higher impacts on programme's objectives)</li> </ul> <p>We believe this would unlock potential for investments of final recipients in many cases.</p>	

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10.		EE	<ul style="list-style-type: none"> <li>• Notably we consider it important to clarify the state aid consequences and limitations to the use of repayable assistance that come from state aid rules. At this time the guidance note highlights one type of state aid which explicitly allows for this type of aid, but does not include information on other types of state aid.</li> <li>• We are also interested in the potential use of repayable assistance in case of de minimis aid. Thus, we would like to ask for a clarification on how the state aid element should be calculated in case of de minimis aid (under de minimis there are presumably no restrictions to the use of repayable assistance) in circumstances where the proportions of “loan” and grant are not clear from the onset. Since the cumulation of de minimis aid must be monitored at all times, it is important how the aid element is reflected. Should the aid element be reflected as in the case of grants, making adjustments when a part of the assistance is repaid or should it be reflected as in the case of loans, making adjustments when it is clear how much of the support will be a grant? Or potentially a third way?</li> </ul>	<p>See replies to questions 3 and 6</p> <p>The following footnote was added for clarification:</p> <p>"Article 61 (8) exempts from the application of Article 61 (1) to (6) operations for which support under the OP constitutes (a) de minimis aid, (b) compatible State aid to SMEs, where an aid intensity or an aid amount limit is applied in relation to state aid, and (c) compatible State aid, where an individual verification of financing needs in accordance with the applicable State aid rules has been carried out."</p>
11.		GR	<ol style="list-style-type: none"> <li>1. Please enrich the guidance with more examples</li> <li>2. Please clarify whether there is need for a special study (e.g. ex ante assessment) on the implementation of this kind of support, or on the management framework (e.g. fund manager, funding agreement) as in cases of FIs</li> <li>3. For what support rates, state aid schemes, scale and budget of projects (thresholds) it is recommended to use this kind of support?</li> </ol>	<p>To 1) So far we have not received more practical examples by Member States; While the guidance should be available as soon as possible in order to provide clarification on interpretation questions a brochure of examples could be added at a later stage</p> <p>To 2) and 3) as outlined in the guidance note, repayable assistance follows grant provisions in most of the implementation requirements, except as regards the repayment mechanism. It is up to the Member States to organise this form of support in a separate management framework, which unlike the management of FI is not required by the regulation. The same applies for other implementation parameters (support rates, state aid schemes, scale and budget of projects (thresholds))</p>

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12.		LV	Please provide a more detailed comparison of the implementation process of repayable assistance and grants. This would help to better grasp the advantages of repayable assistance and limitations of grants in the phase of fixing conditions of repayment and during repayment itself.	Point covered by section 3. Rules on eligibility, payment declaration and durability are the same.
13.		F	We have one suggestion, in order to give a more complete picture in the comparative table (page 6). For the moment the table only compares the loan, with the repayable assistance, and with the grant. We think this table would be even more valuable to managing authorities, if it also included other forms of financial instruments (other than the loan).	The Commission identified evident similarities between FI and repayable assistance only with regards to loan schemes which explains the more detailed demarcation for these FI only. Other risk sharing instruments, like guarantees or equity investments are different from the onset <sup>1</sup> .

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<sup>1</sup> In case of guarantees there exists no direct payment to the final recipient, in case of equity investments the investor is becoming a shareholder of the final recipient