



EUROPEAN COMMISSION

European Structural and Investment Funds

Guidance for Member States on
Definition and use of repayable assistance in
comparison to financial instruments and grants

DISCLAIMER

“This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for colleagues and bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the programme implementation and to encourage good practice(s). This guidance is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.”

1. BACKGROUND

1.1. Regulatory references

Regulation	Articles
Reg. (EU) N° 1303/2013 Common Provisions Regulation (<i>hereafter CPR</i>)	<i>For the EAFRD, EMFF, ERDF, ESF and CF</i> Article 66 – Forms of support Article 67 – Forms of grants and repayable assistance
Reg. (EU, EURATOM) N° 966/2012 Financial Regulation (<i>hereafter FR</i>)	Article 2 - Definitions

1.2. Purpose of the guidance

The different forms of support provided for ESI Funds are listed in Article 66 CPR and include grants, repayable assistance and financial instruments (FIs). Yet, the CPR does not provide a definition for repayable assistance.

It appears useful to identify the scope of repayable assistance by reference to the scope of other forms of support foreseen in the CPR.

Specific attention is paid in this guidance to a differentiation between loans and repayable assistance. FIs providing other forms of support than loans, i.e. equity investments, guarantees or risk sharing instruments are usually not subject to a repayment mechanism.

2. RULES AND CONDITIONS FOR THE APPLICATION OF REPAYABLE ASSISTANCE UNDER THE CPR

2.1. Definition and scope of repayable assistance

Article 66 CPR lists four different forms of support from ESI Funds: grants, prizes, repayable assistance and FIs. The legislator thereby differentiates repayable assistance as such from grants, prizes and FIs.

Articles 67 to 69 CPR apply to both grants and repayable assistance. The fact that grants and repayable assistance are dealt with by the same provisions and subject to the same rules means that the nature of both forms of support may be considered similar. The main difference with grants lies in the repayable character of the repayable assistance as opposed to the non-reimbursable character of a grant.

FIs are defined in Article 2(11) CPR by reference to the Financial Regulation. Article 2(p) FR defines FIs as instruments "[...] that may take the form of equity or quasi equity investments, loans or guarantees, or other risk sharing instruments [...]". Definitions of loan, guarantee, equity investment, quasi-equity investment, and risk-sharing instrument are provided in paragraphs (k) to (o) of the same Article.

As repayable assistance is subject to different rules than FIs, ESIF programme support to operations implemented via repayable assistance may **not include** the same types of support as those specified in the definitions relating to FIs, defined in the CPR by reference to the Financial Regulation, notably loans.

Article 2(k) FR defines loan as an agreement, which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time under which the borrower is obliged to repay that amount within the time agreed. The amount to be repaid and the time for repayment are, thus, not to be linked to implementation conditions in the context of a loan. If the amount to be repaid or the duration changes, the loan agreement is to be modified. A loan agreement does not address the possibility to transform automatically part of the loan into a grant if certain implementation conditions are met. The support granted via repayable assistance is subject to implementation conditions that are linked to repayment obligations. Financial products containing an unconditional obligation to repay with a clear timing of repayment should not be treated as repayable assistance.

On the basis of the above, if the form of support to operations to be implemented does not fall within the definition and scope of FIs as defined in the CPR by reference to the Financial Regulation, but includes conditions governing the repayment, it should be considered repayable assistance falling under Article 66 CPR.

A table is provided below under part three of this note, summarising the main similarities and differences with regard to the above mentioned forms of support.

Operations that may be supported by repayable assistance are operations for which it is not possible to determine in an agreement ex-ante the appropriate mix of grant and loan because it depends on implementation conditions. These may include:

- A. operations with an unpredictable outcome: ESIF programme support will need to be repaid only in case the operation succeeds. In case of failure, no repayment or no full repayment is expected; or
- B. operations with measurable policy objectives: ESIF programme support will need to be repaid in case the expected policy objectives (desired results that go beyond the project specific results but are directly linked to the project) are not achieved, or
- C. operations generating profits for which additional policy results/impact are desired: ESIF programme support takes the form of repayable support which might be partly transferred into non-repayable support subject to the achievement of certain performance indicators. Uncertainty of the extent of achievement of performance indicators implies that an appropriate mix of grant and loan cannot be defined in advance.

2.2. Modalities for the implementation of operations supported by repayable assistance

2.2.1. The operation

According to Article 2(9) CPR, an operation is a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities. As defined in Article 2(9) second indent CPR, as regards financial instruments, the operation consists of the financial contribution from a programme to FIs and the subsequent financial support provided by those FIs.

As rules on the FIs do not apply to repayable assistance, the definition of the operation of Article 2(9) first indent CPR applies to an operation to which support is provided via

repayable assistance. In this context, the operation is the concrete investment realised by the beneficiary for which it receives support.

2.2.2. *The beneficiary*

In case of repayable assistance, the beneficiary of the operation supported by ESIF is the body responsible for initiating or initiating and implementing the operation. The definition of the beneficiary for FIs stated in Article 2(10) third indent CPR (i.e. the body which implements the FIs) is not applicable to operations to which support is provided via repayable assistance. It should also be noted that in the context of State aid rules, beneficiaries are entities which receive State aid.

2.2.3. *The agreement providing the support via repayable assistance*

Repayable assistance should be provided on the basis of an agreement with beneficiaries clearly setting out implementation conditions, which will determine the implementation and repayment obligations.

The fulfilment of conditions could either result in repayment of the support granted or rebate on repayment. These repayments will, however, not reduce the EU support provided in the form of repayable assistance to an operation. The corresponding amounts, entered into in the accounts of the national authorities, must be reinvested for the same purpose in accordance with the objectives of the respective programme.

2.2.4. *The eligible costs in operations supported via repayable assistance*

Eligibility of expenditure must comply with Article 65 CPR and national eligibility rules.

In line with Article 66 CPR, the managing authority must reuse the repaid support for the same purpose or in accordance with the objectives of the programme.

Repayable assistance thus allows that repayments from the beneficiary are kept at national level and reused by national authorities. This means that any repayment from the beneficiary because of the non-fulfilment of the conditions for the repayable assistance to be totally converted into a grant (conditions that are indicated in the repayable assistance agreement) (see example B) is not to be deducted from the expenditure declared to the Commission.

Eligibility of expenditure remains conditional to the compliance with the provisions of the agreement, but is an issue separate from the repayable nature of the support as such. In case the breach of the provisions of the repayable assistance agreement constitute an irregularity in the meaning of Article 2(36) CPR, a financial correction must be applied, which will trigger a reimbursement of all or part of the support received by the beneficiary and a corresponding deduction of the amounts recovered from the expenditure declared to the Commission.

Operations supported by repayable assistance are subject to the rules of Articles 61 and 65(8) CPR. Accordingly, 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 exceptions under Article 61(7) and (8) CPR¹.

¹ Article 61(8) CPR exempts from the application of Article 61(1) to (6) CPR operations for which support under the programme 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.

Finally, eligible costs for operations receiving repayable assistance must be supported by invoices or accounting documents of equivalent probative value or evidenced by simplified cost calculations.

2.2.5. *The monitoring of repayments*

The CPR is silent on the monitoring of repayments and at which moment the repayment is to be done, which provides certain flexibility as regards timing. The agreement granting the support needs to include precise repayment and reporting conditions.

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.

2.2.6. *Durability, availability of documents*

As regards durability of operations and availability of documents, Articles 71 and 140 CPR² apply. This means in case the investment financed by repayable assistance does not comply with the durability requirements, the corresponding ESIF contribution must be recovered by the Member State in proportion to the period for which the requirements have not been fulfilled and cannot be reused for the same purpose in another project. The provisions of Article 140 CPR on the availability of documents apply to the investments financed by repayable assistance and the reuse of funds.

3. COMPARATIVE TABLE SHOWING MAIN CHARACTERISTICS OF GRANTS, REPAYABLE ASSISTANCE AND FINANCIAL INSTRUMENTS (LOANS)

CRITERIA	LOAN FUNDS	GRANTS	REPAYABLE ASSISTANCE
REPAYMENT ³	unconditional full repayment The repayment will not reduce the amount of eligible expenditure declared under the operation	no repayment	repayment according to the conditions formulated in the repayable assistance agreement The repayment will not reduce the amount of eligible expenditure
CAPITAL REBATES	not applicable	not applicable	possible for part or the full amount of the repayable assistance. See example C

² The corresponding article, which is applicable to the EAFRD, is Article 49 of Regulation (EU) No 1306/2013

³ Beyond repayments due to financial corrections

CRITERIA	LOAN FUNDS	GRANTS	REPAYABLE ASSISTANCE
INTEREST	according to the loan agreement	not applicable	not applicable ⁴
PAYMENT DECLARATION	payments declared following the set-up of the fund in tranches according to Art. 41 CPR and confirmed eligible at closure according to Article 42 CPR	reimbursement of eligible costs actually incurred and paid together with, where applicable, contributions in kind and depreciations or by simplified costs on the basis of Article 67 CPR	idem grants
BENEFICIARY	The Managing authority, the body which implements the fund of funds or the FI, as appropriate	either the public or private body responsible for initiating or initiating and implementing the operation (i.e. the enterprise or other entity receiving support), or, in case of an operation benefiting from state aid, the body which receives the aid	idem grants
RULES ON THE DEDUCTION OF NET REVENUES	not applicable	applicable in accordance with Articles 61 and 65(8) CPR	applicable in accordance with Articles 61 and 65(8) point c) CPR (for operations subject to partial repayment obligations only)
OPERATION	financial contributions from a programme to FIs and the subsequent financial support provided by those FIs	project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility that contributes to the objectives of a priority or priorities	idem grants

⁴ Except if repayable assistance is a form of support envisaged in the State aid provisions (i.e. state aid framework for Research and Development Investments)

4. EXAMPLES⁵

Example A

Project to be supported may generate income with high improbability (e.g. obligation for repayments if a very risky project in research & development succeeds commercially).

A public research centre develops laser technology that may be of interest for commercial companies. The technology is highly innovative and production costs and reception by the market are completely unknown. The project is compatible with applicable rules for state aid in the RTD sector.

Non-repayable support is provided under the assumption that operation will not generate profits. However, in case profits are generated, support will have to be partly/fully repaid depending on the profits generated by the operation. In case that any of the exceptions from the need to deduct revenues of Article 61(7) or (8) CPR applies, a reduction of the eligible amount by revenues assessed ex-ante is not required.

Example B

Supported project receives a full grant only if specific results are achieved that cannot be directly stimulated by the support (desired results that go beyond the project specific results but are directly linked to the project, e.g. connection rate of water and wastewater networks to marginalised communities).

The project objective is an extension of sewerage networks of Y km which should result in X thousand new connections to households. The expected net revenues are deducted ex-ante from the project costs.

Connections to households are not part of the project as these will have to be financed by the household itself or by individual aid provided by the Municipality to certain households fulfilling poverty conditions.

Uncertainties are the number of connections to marginalised communities which need to be subsidised. Municipalities tend accordingly to avoid connections to marginalised community. However, the Managing Authority wants to stimulate them without providing direct help to these connections itself.

A grant is accordingly given on the assumption that the sewerage network will serve, out of the X thousand households, Z thousand households from marginalised communities. The physical object of the operation co-financed by support from the funds can be only the sewerage network but not the connections itself. In order to stimulate the connections financed by the Municipality to the marginalised communities, the support is provided as an assistance that is partly repayable if there are no or less connections to marginalised communities. The physical object will be co-financed by EU funding only to a maximum amount if all possible connections to marginalised communities are provided. The implementing body will reduce the amount and request a repayment if this target after implementation of the physical objective is not achieved (which requires than a higher public contribution of the Municipality to physical object of the co-financed operation, the sewerage network).

⁵ Referring to operations A.B.C. in section 2.1

Example C

Innovative Incentive System that stimulates results by grant elements linked to performance indicators.

In order to attract innovative investments, the national authorities have chosen an aid system that provides incentives for productive investments that can provide better assurance for sustainable employment. It can provide higher compensation than simple loan schemes but less than grant schemes and is as such compatible with existing aid schemes.

A project is approved since it complies with eligibility conditions and is coherent with the objectives of the programme, the company being awarded a repayable support under the following conditions:

- Repayable support without interest;
- 7 year repayment period, including a 3 year deferment;
- Attribution of a benefit (non-repayment of a portion of the incentive - 40% maximum), conditioned to obtaining contracted results.

A company, whose business consists of the production of electric light bulbs and other lighting equipment, presents a project with the objective to launch a set of new products in the market (more efficient light bulbs – LEDs, use of new materials and stylish design).

Conditions for obtaining a maximum capital rebate of 40% are

- Higher than expected creation of jobs resulting in 15 jobs, 5 of which highly qualified;
- patent(s) granted for a technology developed by the project

The capital will not exceed the 40% and will be reduced in relation to the results obtained.