PARLAMENTUL ROMÂNIEI

SENAT

Comisia economică, industrii şi servicii
Nr.XX/53/27.02.2008

Către,

Comisia pentru buget, finanțe, activitate bancară şi piață de capital

AVIZ
la proiectul de lege pentru aprobarea Ordonanței de urgență a Guvernului nr.5/2008 privind cadrul financiar general pentru fondul de participare JEREMIE

Comisia economică, industrii şi servicii a fost sesizată cu adresa nr. **L143/2008** pentru dezbaterea şi avizarea proiectului de lege.

În urma dezbaterilor, membrii comisiei au hotărât cu majoritate de voturi **avizarea negativă** a proiectului de lege, pentru următoarele considerente:

- Datorită importanței pe care o reprezintă Memorandumul de înțelegere între Guvernul României şi Fondul European de Investiții privind programul JEREMIE în România precum şi plățile pe care acesta le implică, ar fi fost necesară aprobarea lui prin lege şi nu prin hotărâre a Guvernului;

- Inițiativa JEREMIE reprezintă un cadru de acțiuni menite să îmbunătățească accesul la finanțare al IMM. Aderarea unui stat membru la inițiativa JEREMIE, prin încheierea unui Memorandum de înțelegere între Guvernul statului membru şi Fondul European de Investiții, nu presupune în mod obligatoriu desemnarea FEI ca manager unic al Fondului de participare JEREMIE şi încheierea unui Acord de finanțare cu acesta. Astfel, art. 44 din Regulamentul Consiliului nr. 1083/2006 prevede că statul membru (prin autoritatea de implementare a programului JEREMIE) va stabili managerul fondului JEREMIE fie printr-o procedură de achiziție publică de servicii, în conformitate cu legislația națională de achiziții publice, fie printr-o procedură de încredințare directă către BEI sau FEI.

- Realizarea studiului de evaluare a mediului de finanțare pentru IMM-uri în țară reprezintă parte integrantă a inițiativei JEREMIE şi se realizează fără costuri suplimentare din partea statului membru, el fiind susținut financiar de către Comisia Europeană.

- Selectarea managerului Fondului JEREMIE printr-un proces de achiziție publică ar permite obținerea unui comision de management competitiv. Comisionul negociat cu FEI de 1,6% anual, pentru perioada 2007 – 2015 aplicat la suma agregată a finanțărilor primite în contul JEREMIE (de la FEDR şi cofinanțări BEI) plus dobânda acumulată în contul fondurilor JEREMIE (ceea ce înseamnă o sumă totală de minim 14,6 milioane EURO) nu este corelat cu activitățile şi responsabilitățile reduse ce îi revin FEI prin MOU (v. pctele 13, 15, anexă)

- Selectarea instituției financiare din România care va găzdui conturile Fondului JEREMIE ar trebui realizată printr-un procedeu de achiziții publice de servicii, pentru a se obține condiții bancare competitive, şi nu cum este prevăzut la pct. 3.3 din Anexa la MOU, adică FEI va desemna instituția financiară cu consultarea Ministerului Economiei şi Finanțelor.

Anexăm Memoramdumul CE referitor la Fondul JEREMIE

PREŞEDINTE,
Senator Silvia CIORNEI

SECRETAR,
Senator Nicolae NEAGU

European Commission

Regional Policy

European Investment Fund

MEMORANDUM OF UNDERSTANDING

in respect of

a coordinated approach to improving access to finance for micro to medium enterprises in the regions supported by the European Regional Development Fund

(Joint European REsources for MIcro to medium Enterprises- JEREMIE)

between

THE EUROPEAN COMMISSION

and

THE EUROPEAN INVESTMENT FUND

This MEMORANDUM OF UNDERSTANDING is entered into on this 30th day of May 2006 between

The **EUROPEAN COMMISSION,** (hereinafter referred to as the "Commission"), established 200 Rue de la Loi, B-1049 Brussels which is represented for the purposes of the signature of this Memorandum of Understanding by Commissioner Danuta Hübner,

of the first part, and

the **EUROPEAN INVESTMENT FUND** (hereinafter referred to as the "EIF"), established at 43, Avenue J.F. Kennedy, Luxembourg, Grand Duchy of Luxembourg, represented for the purposes of signature of this Memorandum of Understanding by Mr Francis Carpenter, Chief Executive Officer,

of the second part,

1. CONTEXT

The Commission's Communication of July 2005, "Cohesion policy in support of growth and jobs, Community strategic guidelines 2007-2013" stresses the importance of improving access to finance for the development of SMEs. In particular, the Commission refers to the need to enhance support for start-ups and micro-enterprises, through technical assistance, grants as well as non-grant instruments such as loans, equity venture capital or guarantees, and highlights the added value of undertaking these actions in cooperation with the European Investment Fund and European Investment Bank (hereinafter EIB).

In this context, a proposal for a joint initiative to support improved access to finance for SMEs and development of micro-credit for the next programming period, referred to as "JEREMIE" (Join European Resources for Micro to Medium Enterprises) has been prepared by the Commission (DG REGIO) in consultation with the EIF.

The JEREMIE initiative was presented by the Commission and the EIF at a Ministerial meeting on 11 October 2005 and, subsequently, at a conference on 24 November 2005 with the regions and the international financial institutions on " *Financing growth and cohesion in the enlarged EU",* where it received wide support.

2.OBJECTIVES AND GENERAL PRINCIPLES

This Memorandum of Understanding has been established in the context of the JEREMIE initiative and aims at setting out the principles for a coordinated approach and cooperation between the Commission and the EIF, in close cooperation with the Member States, to the preparation, programming and implementing of the JEREMIE initiative in the context of operational programmes co-financed by the European Regional Development Fund (hereinafter ERDF) for the period 2007-2013.

The coordinated action of the parties hereto shall be manifested through the joint work in the Steering Committee (c.f. item 4), regular exchanges of information and the adoption of a common approach, in close cooperation with Member States, aiming at improving access to finance for micro to medium enterprises in the regions supported by the ERDF.

3. COORDINATED APPROACH IN THE PREPARATORY PHASE OF JEREMIE

JEREMIE evaluations

During the preparatory phase in 2006-2007, the EIF with the Commission, and in cooperation with national and regional authorities, financial intermediaries and SMEs as appropriate, will undertake evaluations of the gaps between supply and demand for financial engineering products in the regions. The objective of the JEREMIE evaluations is to identify gaps between, on the one hand, the potential demand for financial engineering products in support of SMEs and micro-credit operations in the regions and, on the other hand, the existing supply capacity of the local specialised financial intermediaries for such products. The evaluations will include a proposed action plan.
The parties hereto can envisage extending the evaluations both after 2007 as appropriate, and to the sub-regional level, for example, in order to prepare the ground for the JEREMIE initiative to be accessible to interested urban authorities.

Results of evaluations
The results and conclusions of evaluations, including proposed action plans, will be made freely available to the regions and the competent programme authorities in the Member States, as well as to SMEs, interested holding funds and financial intermediaries.

Financing JEREMIE evaluations
The Commission intends to contribute 75% of the funds required to finance the evaluations and the EIF intends to contribute the remaining 25%. The total budget for the year 2006 amounts to EUR 3.500.000. The Commission's contribution in 2007, and possibly in subsequent years, will be subject to signature of corresponding legal commitments (annual contribution agreements) between the Commission and the EIF. In addition, the Commission's contribution is subject to budgetary availability and will only be made available to the extent that the budgetary authority of the European Community makes available the necessary appropriations.

4. COMMON UNDERSTANDING ON OPERATIONAL PRINCIPLES FOR THE IMPLEMENTATION OF JEREMIE

The parties hereto confirm their common understanding and approach concerning operational principles for the implementation of JEREMIE, in accordance with the new Council regulation laying down general provisions on the Structural Funds and the Cohesion Fund for the period 2007-2013, and the relevant Commission's implementation regulation, as follows:

Preparing and adopting operational programmes
The evaluations including the proposed action plan will be used by the Commission and the Member States for the preparation of operational programmes for the period 2007-2013. These programmes are prepared in partnership between the Member States and the Commission. The programmes will set out, as appropriate, objectives and the relevant resources for actions to improve access to finance for micro to medium enterprises.

Implementing JEREMIE – selecting a holding fund
The implementation of programmes and projects is the responsibility of Member States and managing authorities. For operations to improve access to finance for micro to medium enterprises under the JEREMIE initiative, Member States or managing authorities must select a suitable holding fund.
They can select it either by awarding a grant to the EIF or to a financial institution pursuant a national law compatible with Community legislation, or by awarding a public service contract to a financial institution in accordance with public procurement law. EIF may

participate, alone or in cooperation with other international or specialised financial institutions in any such tendering procedure.

Funding agreement with the holding fund

Following the selection of a JEREMIE holding fund, Member States or managing authorities must negotiate and sign a "funding agreement" with it. The Funding agreement shall in particular include provisions for:

i) the terms and conditions for contributions from the operational programme to the holding fund,
ii) the call for expression of interest addressed to financial intermediaries,
iii) the description of the process for appraisal, selection and accreditation of financial intermediaries by the holding fund,
iv) setting up and monitoring the investment policy, including the targeted small and medium enterprises and the financial engineering products to be supported,
iv) reporting by the holding fund to Member States or managing authorities, and monitoring implementation of actions as well as auditing requirements,
v) the investment exit policy, and the winding up provisions for the holding fund.

Local presence of JEREMIE holding funds

JEREMIE holding funds would undertake to ensure a sufficient presence in the Member States, or as appropriate, the regions concerned, possibly in local offices. This local presence will help to provide information, marketing and similar contacts with the financial intermediaries, and the SMEs in the regions concerned. The operational cost to the holding fund for this presence will be included in the eligible management cost, for the amounts and on the conditions to be specified by the funding agreement, respecting Commission's regulation for the implementation of the Council regulation for the Structural Funds 2007-2013.

Operational programmes contribution to JEREMIE holding funds

Initial and supplementary contributions from the operational programme will be possible, on the conditions to be specified in the funding agreement. Each contribution from the operation programme to the selected holding fund will be irreversible for the programming period 2007-2013. It will constitute an eligible interim payment for the ERDF under the rules of the Structural Funds

Selecting financial intermediaries

The JEREMIE holding fund will make an open call for expression of interest addressed to all financial intermediaries concerned (including possibly venture capital, loan or guarantee funds or micro-credit providers), offering them the possibility to participate in the initiative. The call should be sufficiently flexible and remain open for at least the first half of the programming period 2007 – 2013.The holding fund will evaluate, select and formally accredit financial intermediaries. Such accreditation will be subject to periodic review.
The terms and conditions for contributions to funds, from the JEREMIE holding funds supported by operational programmes, including deliverables, investment strategy and planning, monitoring implementation, investment exit policy and winding up provisions, will be set up in a specific funding agreement, to be concluded between the fund on one hand, and the holding fund on the other.

Contributions from JEREMIE holding funds to financial intermediaries

Drawing on the contributions from operational programmes, the holding fund will provide equity, guarantees or loans, to accredited financial intermediaries. Member States or managing authorities could decide to make available technical assistance credits from the relevant operation programme(s) to accredited financial intermediaries, in accordance with operational details to be agreed between the managing authority of the operation programme and the selected holding fund.

Financial intermediaries supporting SMEs
The selected financial intermediaries will in turn make available equity, loans or guarantees, on competitive terms the principles of which would be agreed between the programme authority and the holding fund, to micro, small or medium sized enterprises. Special emphasis would be given to supporting technology transfer, start-ups, technology and innovation Funds, micro credit. The financial intermediaries will monitor investment implementation by supported SMEs.

Recycling contributions from operational programmes
Resources returned to the holding fund from investments undertaken by it, reimbursement of loans, or left over after all guarantees have been honoured shall be reused by the Member States for the benefit of micro to medium enterprises, possibly under the JEREMIE holding fund, on the terms and conditions specified by the funding agreement. This revolving character of operational programmes resources contributed and used for improved access to finance for micro to medium enterprises will be a key point for ongoing and sustainable support for the social and economic fabric of the regions.

Leverage for contributions from operational programmes
Contributions from operational programmes to JEREMIE actions, are expected to give rise to a significant leverage effect, bringing in additional loan capital from banks, the EIB , notably where the EIF ensures the holding fund tasks, and other international financial institutions. Such loan capital and financial products to be contributed would be used to co-finance complementary actions with the operation programme(s) concerned, to support micro to medium enterprises in the region(s).

5. GOVERNACE – STEERING COMMITTEE

The parties hereto agree to exchange information on their respective experience under the JEREMIE initiative, in view of coordinating their approach in close cooperation with Member States, aiming at improving access to finance for micro to medium enterprises. This exchange of information and coordinated approach will be monitored by a Steering Committee, which shall consist of:

- three members appointed by the Commission;
- three members appointed by the EIF;
- one member appointed by the EIB acting as an observer without voting powers.

The Commission, EIF and EIB members of the Steering Committee shall act on behalf of the party appointing them to the Committee. The rules and procedures governing the Steering Committee will be set out and adopted by it.

6. STATUS OF MEMORANDUM OF UNDERSTANDING

This Memorandum records the understandings of the parties hereto and does not create legally binding obligations.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Memorandum of Understanding to be signed in their respective names and to be executed in 2 originals, one for the Commission and one for the EIF, as of the date written below.

Brussels, this 30th day of May 2006

Signed for and on behalf of
THE EUROPEAN COMMISSION

Danuta HÜBNER
Commissioner for Regional Policy

Signed for and on behalf of
THE EUROPEAN INVESTMENT FUND

Francis W. CARPENTER
Chief Executive Officer

COUNCIL REGULATION (EC) No 1083/2006
of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999

Article 36: Participation by the European Investment Bank and the European Investment Fund

1. The EIB and the EIF may participate, in accordance with the modalities laid down in their statutes, in the programming of assistance from the Funds.

2. The EIB and the EIF may, at the request of Member States, participate in the preparation of national strategic reference frameworks and operational programmes, as well as in activities relating to the preparation of projects, in particular major projects, the arrangement of finance, and public-private partnerships. The Member State, in agreement with the EIB and the EIF, may concentrate the loans granted on one or more priorities of an operational programme, in particular in the spheres of innovation and the knowledge economy, human capital, the environment and basic infrastructure projects.

3. The Commission may consult the EIB and the EIF before adoption of the decision referred to in Article 28(3) and of the operational programmes. That consultation shall relate in particular to operational programmes containing an indicative list of major projects or programmes which, by the nature of their priorities, are suitable for mobilising loans or other types of market-based financing.

4. The Commission may, if it considers it appropriate for the appraisal of major projects, request the EIB to examine the technical quality and economic and financial viability of the projects concerned, in particular as regards the financial engineering instruments to be implemented or developed.

5. The Commission, in implementing the provisions of this Article, may award a grant to the EIB or the EIF.

Article 44: Financial engineering instruments

As part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds, and for urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development.

When such operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds and urban development funds, the Member State or the managing authority shall implement them through one or more of the following forms:
(a) the award of a public contract in accordance with applicable public procurement law;
(b) in other cases, where the agreement is not a public service contract within the meaning of public procurement law, the award of a grant, defined for this purpose as a direct financial contribution by way of a donation:
(i) to the EIB or to the EIF; or
(ii) to a financial institution without a call for proposal, if this is pursuant to a national law compatible with the Treaty.

The implementing rules of this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Statement of the Commission on Article 44 of Regulation 1083/2006
The ability of Member States and managing authorities to select a suitable holding fund is essential for operations to improve access to finance for micro to medium enterprises under the JEREMIE initiative, and for operations to promote sustainable investment in urban projects under the JESSICA initiative. In order to ensure that this power of selection is not compromised and to give an *effet utile* to Article 44(b), the Commission encourages the Member States and managing authorities to select a holding fund by awarding a grant to the EIB, the EIF or to financial institutions pursuant to their national laws in compliance with the Treaty. Alternatively, Member States and managing authorities may select a holding fund by awarding a public service contract in compliance with public procurement law.

Article 78: Statement of expenditure

1. **All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure, in accordance with Article 56, paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value.**
However, as regards aid schemes within the meaning of Article 87 of the Treaty only, in addition to the conditions set out in the previous subparagraph, the public contribution corresponding to the expenditure included in a statement of expenditure shall have been paid to the beneficiaries by the body granting the aid.

2. By way of derogation from paragraph 1, as regards State aid within the meaning of Article 87 of the Treaty, the statement of expenditure may include advances paid to the beneficiaries by the body granting the aid, under the following cumulative conditions:
   (a) they shall be subject to a bank guarantee or a financial public facility having an equivalent effect;
   (b) they shall not exceed 35 % of the total amount of the aid to be granted to a beneficiary for a given project;
   (c) they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest three years after the year of the payment of the advance or on 31 December 2015, whichever earlier; if they are not, the next statement of expenditure shall be corrected accordingly.

3. Statements of expenditure shall identify, for each operational programme, the elements referred to in paragraph 1 relating to regions receiving transitional assistance.

4. In the case of major projects as defined in Article 39, only expenditure related to major projects already adopted by the Commission may be included in statements of expenditure.

5. Where the contribution from the Funds is calculated with reference to public expenditure as provided for in Article 53(1), any information on expenditure other than public expenditure shall not affect the amount due as calculated on the basis of the payment request.

6. **By way of derogation from paragraph 1, as regards financial engineering instruments as defined in Article 44, the statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds.**
However, at the partial or final closure of the operational programme, eligible expenditure shall be the total of:
   (a) any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; or
   (b) any payments for investment in enterprises from each of the abovementioned funds; or
   (c) any guarantees provided including amounts committed as guarantees by guarantee funds; and
   (d) eligible management costs.
The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary.
The corresponding statement of expenditure shall be corrected accordingly.

7. **Interest generated by payments from operational programmes to funds as defined in Article 44, shall be used to finance urban development projects in the case of urban development funds or financial engineering instruments for small and medium-sized enterprises in other cases. Resources returned to the operation from investments undertaken by funds as defined in Article 44 or left over after all guarantees have been honoured shall be reused by the competent authorities of the Member States concerned for the benefit of urban development projects or of small and medium-sized enterprises.**

COMMISSION REGULATION (EC) No 1828/2006 of 8 December 2006
setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

CHAPTER II
IMPLEMENTING PROVISIONS OF REGULATION (EC) NO 1083/2006

Section 8
Financial engineering instruments

Article 43
General provisions applicable to all financial engineering instruments

1. Articles 43 to 46 shall apply to financial engineering instruments in the form of actions which make repayable investments, or provide guarantees for repayable investments, or both, in the following:

(a) enterprises, primarily small and medium-sized enterprises (SMEs), including micro-enterprises, as defined in Commission Recommendation 2003/361/EC as of 1 January 2005, in the case of financial engineering instruments other than urban development funds;

(b) public-private partnerships or other urban projects included in integrated plans for sustainable urban development, in the case of urban development funds.

2. When the Structural Funds finance operations comprising financial engineering instruments, including those organised through holding funds, a business plan shall be submitted by the co-financing partners or shareholders or by their duly authorised representative.

The business plan shall specify at least the following:
(a) the targeted market of enterprises or urban projects and the criteria, terms and conditions for financing them;
(b) the operational budget of the financial engineering instrument;
(c) the ownership of the financial engineering instrument;
(d) the co-financing partners or shareholders;
(e) the by-laws of the financial engineering instrument;
(f) the provisions on professionalism, competence and independence of the management;
(g) the justification for, and intended use of, the contribution from the Structural Funds;
(h) the policy of the financial engineering instrument concerning exit from investments in enterprises or urban projects;
(i) the winding-up provisions of the financial engineering instruments, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured, attributable to the contribution from the operational programme.

The business plan shall be assessed and its implementation monitored by, or under the responsibility of, the Member State or the managing authority.

The assessment of the economic viability of the investment activities of the financial engineering instruments shall take into account all sources of income of the enterprises concerned.

3. Financial engineering instruments, including holding funds, shall be set up as independent legal entities governed by agreements between the co-financing partners or shareholders or as a separate block of finance within a financial institution.

Where the financial engineering instrument is established within a financial institution, it shall be set up as a separate block of finance, subject to specific implementation rules within the financial institution, stipulating, in particular, that separate accounts are kept which distinguish the new resources invested in the financial engineering instrument, including those contributed by the operational programme, from those initially available in the institution.

The Commission may not become a co-financing partner or shareholder in financial engineering instruments.

4. Management costs may not exceed, on a yearly average, for the duration of the assistance any of the following thresholds, unless a higher percentage proves necessary after a competitive tender:
(a) 2% of the capital contributed from the operational programme to holding funds, or of the capital contributed from the operational programme or holding fund to the guarantee funds;
(b) 3% of the capital contributed from the operational programme or the holding fund to the financial engineering instrument in all other cases, with the exception of micro-credit instruments directed at micro-enterprises;
(c) 4% of the capital contributed from the operational programme or the holding fund to micro-credit instruments directed at micro-enterprises.

5. The terms and conditions for contributions from operational programmes to financial engineering instruments shall be set out in a funding agreement, to be concluded between the duly mandated representative of the financial engineering instrument and the Member State or the managing authority.

6. The funding agreement referred to in paragraph 5 shall include at least:
(a) the investment strategy and planning;
(b) monitoring of implementation in accordance with applicable rules;
(c) an exit policy for the contribution from the operational programme out of the financial engineering instrument;
(d) the winding-up provisions of the financial engineering instrument, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured that are attributable to the contribution from the operational programme.

7. Managing authorities shall take precautions to minimise distortion of competition in the venture capital or lending markets. Returns from equity investments and loans, less a *pro rata* share of the management costs and performance incentives, may be allocated preferentially to investors operating under the market economy investor principle up to the level of remuneration laid down in the by-laws of the financial engineering instruments, and they shall then be allocated proportionally among all co-financing partners or shareholders.

Article 44
Additional provisions applicable to holding funds

1. Where the Structural Funds finance financial engineering instruments organised through holding funds, the Member State or managing authority shall conclude a funding agreement with the holding fund, setting out the funding arrangements and objectives.

The funding agreement shall, where appropriate, take account of the following:
(a) as regards financial engineering instruments other than urban development funds, the conclusions of an evaluation of gaps between supply of such instruments to, and demand for such instruments by, SMEs;
(b) as regards urban development funds, urban development studies or evaluations and integrated urban development plans included in operational programmes.

2. The funding agreement referred to in paragraph 1 shall, in particular, make provision for:
(a) the terms and conditions for contributions from the operational programme to the holding fund;
(b) a call for expression of interest addressed to financial intermediaries or urban development funds;
(c) the appraisal, selection and accreditation of financial intermediaries or urban development funds by the holding fund;
(d) the setting up and monitoring of the investment policy or the targeted urban development plans and actions;

(e) reporting by the holding fund to Member States or managing authorities;
(f) monitoring the implementation of investments in accordance with applicable rules;
(g) audit requirements;
(h) the exit policy of the holding fund out of the venture capital funds, guarantee funds, loan funds or urban development funds;
(i) the winding-up provisions of the holding fund, including the reutilisation of resources returned to the financial engineering instrument from investments made or left over after all guarantees have been honoured which are attributable to the contribution from the operational programme.

The investment policy referred to in point (d) shall comprise at least an indication of the targeted enterprises and the financial engineering products to be supported.

3. The terms and conditions for contributions to venture capital funds, guarantee funds, loan funds and urban development funds from holding funds supported by operational programmes shall be set out in a funding agreement, to be concluded between the venture capital fund, guarantee fund, loan fund or urban development fund, on one hand, and the holding fund, on the other.

The funding agreement shall include at least the elements listed in Article 43(6).

Article 45
Additional provisions applicable to financial engineering instruments other than holding funds and urban development funds

Financial engineering instruments other than holding funds and urban development funds shall invest in enterprises, primarily in SMEs. Such investments may be made only at the establishment, in the early stages, including seed capital, or on expansion of those enterprises, and only in activities which the managers of the financial engineering instruments judge potentially economically viable.

They shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty as of 10 October 2004..

Article 46
Additional provisions applicable to urban development funds

1. Where Structural Funds finance urban development funds, those funds shall invest in public-private partnerships or other projects included in an integrated plan for sustainable urban development. Such public-private partnerships or other projects shall not include the creation and development of financial instruments such as venture capital, loan and guarantee funds.

2. For the purposes of paragraph 1, urban development funds shall invest by means of equity, loans and guarantees.

Urban projects receiving grant assistance from an operational programme may also be supported by urban development funds.

3. Where Structural Funds finance urban development funds, the funds concerned shall not re-finance acquisitions or participations in projects already completed.