



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
AUDIT
The Director

Brussels,
REGIO/ C.3/LB/pt (2020)5422648

Subject: EPM 'Thematic audits on financial instruments 2014 - 2020'

Operational Programme(s): 2014IT16RFOP003 - PON Imprese e competitività

Ref.: Audit No REGC314IT0174 (*to be used in all correspondence*)
EC letter communicating draft audit report Ares(2020)1158895 24/02/2020
MS Reply Ares(2020)3795832 17/07/2020

Your Excellency,

I am writing to inform you that the Directorate-General Regional and Urban Policy has analysed the reply received from the national authorities to the related draft audit report of the audit referred to above.

Please find enclosed the **final audit report** setting out the Commission auditors' final findings and related actions and recommendations.

The irregular expenditure detected during the audit is presented in **annex III** to the audit report.

I request that you treat the enclosed final audit report as confidential until the follow up procedure set below has been brought to a final conclusion. When the whole or part of the report is transmitted to persons concerned by the audit to enable them to provide comments, please ensure that the information set out in this paragraph accompanies the transmission.

The national authorities should provide their reply via SFC 2014 – module Audit/EC audit report within 60 calendar days of submission of the national language version of this final audit report via SFC2014].

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Furthermore, the national authorities are requested in their reply to confirm that findings that have a financial impact on the EU budget exceeding EUR 10 000 have been reported to OLAF in the IMS system for reporting irregularities and to provide the relevant references.

Yours faithfully,

(e-signed)
Franck Sébert

Enclosures: Final audit report + annexes

c.c.: National authorities
via SFC2014 module Audit/EC audit report)

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EUROPEAN COMMISSION

DIRECTORATES-GENERAL
REGIONAL AND URBAN POLICY

AUDIT

Audit II and Coordination, Relations with Court of Auditors and OLAF
Head of Unit

Brussels,
REGIO/C.3/AUD/sec (2020)

FINAL AUDIT REPORT

Audit No. REGC314IT0174

ENQUIRY: 'Thematic Audits on financial instruments 2014 - 2020'

FUND(S): ERDF 2014

MEMBER STATE: Italy

OPERATIONAL PROGRAMME: 2014IT16RFOP003

AUTHORITIES AUDITED: AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

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DATE OF AUDIT: 04/11/2019 - 08/11/2019

DG/UNIT CHEF DE FILE: REGIO.C.3

PRINCIPAL AUDITOR: Luca Baldin

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EXTERNAL FIRM:

This report sets out the provisional findings, conclusions and recommendations of the Commission auditors. These may be modified in the light of the observations and further information received from the national authorities. Accordingly, this report should be treated as confidential until the follow-up procedure has been brought to a final conclusion. If the whole or part of the report is transmitted to persons concerned by the audit to enable them to provide comments, please ensure that the information set out in this paragraph accompanies the transmission.

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LIST OF ACRONYMS

AA	Audit Authority
CA	Certifying Authority
CDR	Regulation (EU) No 480/2014
CPR	Regulation (EU) No 1303/2013
DM	Decreto Ministeriale / Ministerial Decree
EPM	Enquiry planning memorandum
FI(s)	Financial instrument(s)
EGESIF	Expert Group of the European Structural and Investment Funds
FCS	Fondo Crescita Sostenibile
FoF	Fund of funds
GBER	General block exemption Regulation (EU) No 651/2014
IB	Intermediate Body
ICT	Information and Communication Technology
INTOSAI	International Organization of Supreme Audit Institutions
ISSAI	International Standards of Supreme Audit Institutions
IT	Information Technology
KR	Key requirement
MA	Managing authority
MCC	Medio Credito Centrale
MCS	Management and Control System
MS	Member State
OJEU	Official Journal of the European Union
OP	Regional Operational Programme
REGIO	Directorate-General for Regional and Urban policy

1. LEGAL BASIS

The legal base for the Commission audits in the Member States in relation to structural and investment actions expenditure is provided by Article 75 (1) and (2) of Regulation (EU) No 1303/2013 (CPR, henceforth). This provision sets out the Commission powers and responsibilities under shared management.

2. OBJECTIVES

The audit was performed in the context of the Enquiry Planning Memorandum 'Thematic audits on financial instruments 2014 - 2020'. As the payments to financial instruments are done in phased tranches (i.e. similar to advances) and the eligibility of expenditure is confirmed at the closure of the programmes, the objective of the audits under this EPM is twofold:

- To assess the control work performed by the fund managers, the managing and audit authorities, and, where necessary, to improve the implementing systems during the programme implementation period allowing the managing authorities and the bodies implementing the financial instruments to implement corrective measures (including re-allocation of funds) and to ensure sufficient eligible expenditure at closure, and
- To provide assurance that at the programme's closure the expenditure implemented through financial instruments would be legal and regular.

In respect to the financial instruments selected, the specific objectives of this audit mission were:

1. To obtain assurance on the correct implementation of financial instruments by the national operational programme "*Imprese e Competitività*" for which the related expenditure represents a high percentage of the total expenditure declared, and
2. To identify, to disclose and to propose simplification of "processes and procedures which constitute excess administrative burden and cost, or can be simplified without undermining the overall assurance and effectiveness of the management and control system"¹. In addition, the auditors will also assess whether the audit authorities are actively looking for such simplifications during their audit work.

In order to reach this overall objective, the audit work carried out under this enquiry aimed to obtain reasonable assurance that the work carried out by the AA, the MA and the financial intermediary, which has been designated to carry out tasks of the MA, is compliant with the requirements of the Articles 125 and 127 of the CPR.

¹ In agreement with point 26 of the "Draft Council Conclusions on the implementation challenges of the cohesion policy 2014-2020" – 9622/1/15 REV 1 – 17 June 2015

3. AUDIT SCOPE

The audit focused on the functions performed by the AA under the provisions of Article 127 CPR, the functions performed by the MA under the provisions of Article 125 of the CPR, as well as Article 122 (2) of the CPR in terms of preventing, detecting and correcting irregularities.

The audit covered the work carried out by the audit authority of the programme 2014IT16RFOP003 “PON Imprese e Competitività” on a sample of financial instruments expenditure declared to the Commission.

Specifically, the audit scope included:

- a) The review of the audit work carried out by the AA on the set-up of the following 5 out of the 6 financial instruments with expenditure declared to the Commission services in the accounts for the years ended 30 June 2017, 30 June 2018 and 30 June 2019:
 - (1) Fondo rotativo crescita sostenibile;
 - (2) Fondo Smart & Start;
 - (3) Riserva PON IC fondo centrale di garanzia;
 - (4) Fondo Legge 181/89;
 - (5) FCDS Fondo contratti di sviluppo;
- b) The review of the audit work carried out by the AA on the implementation of the following 2 financial instruments for which the second advance payment was declared to the Commission in the accounting periods ended 30 June 2018 and 30 June 2019:
 - (1) Fondo rotativo crescita sostenibile,
 - (2) Riserva PON IC fondo centrale di garanzia.

The scope of the mission was defined based on the risk assessment carried out annually by REGIO.

Based on the above elements, the audit work carried out on the spot included:

- 1) Review of the audits carried out by the audit authority on the set-up of the 5 sampled financial instruments;
- 2) Review of the audit files (at the level of the AA) of 8 final recipients each for the “Fondo rotativo crescita sostenibile”, and for the “Fondo centrale di garanzia”;
- 3) Re-performance for the sampled final recipients referred to in step 2) above at the level of the financial intermediary;
- 4) Review of the amounts declared in relation to management costs and fees;
- 5) Review of the management verifications performed on the files mentioned under 1) and 2) above;
- 6) Review of the system audits and audits of operations performed on the above financial instruments by the audit authority.

The audit work was carried out at the level of the audit authority, managing authority and at the level of the financial intermediary and covered expenditure declared to the Commission in the accounting periods 2017-2018 and 2018-2019.

The list of audited files is provided in **annex II**.

4. APPROACH

The audit work was carried out in accordance with the methodology set out in the abovementioned Enquiry Planning Memorandum.

All expenditure declared by the programme to the Commission during the accounting periods ended 30 June 2017 and 30 June 2018 have been sampled by the AA during their audit of operations as follows:

Financial instrument	Accounting period	Certified expenditure EUR	II or subsequent advances (YES/NO)
FCDS - Fondo Contratti di sviluppo	2016-2017	21.236.249,00	2nd advance
Fondo L. 181/89	2017-2018	18.575.000,00	NO
Fondo Smart & Start	2017-2018	9.142.500,00	NO
FCS - Fondo Crescita Sostenibile	2017-2018	39.122.848,00	N/A (art. 38(4))
FCG - Riserva PON Fondo Centrale di Garanzia	2017-2018	50.000.000,00	2nd and subsequent advances

The AA sampled 30 final recipients during the accounting period ended **30 June 2018** for the “Fondo Centrale di Garanzia”.

In the 2018-2019 accounting period the following amounts per financial instrument have been declared to the Commission in December 2018 and sampled during the 1st period sample by the AA:

Financial Instrument	Accounting period	Amount EUR	State of implementation
Fondo Investimenti Innovativi (not audited by EC)	2018-2019	50.085.786,67	1st advance
FCDS - Fondo Contratti di sviluppo	2018-2019	29.013.669,63	2 nd advance

FCS - Fondo Crescita Sostenibile	2018-2019	34.282.860,47	Fund managed directly by the MA according to Art. 38(4) (d) CPR
FCG - Riserva PON Fondo Centrale di Garanzia	2018-2019	55.800.000,00	2nd and 3rd advances

The AA sampled 14 final recipients (out of 129 final recipients) during the accounting period ended 30 June 2019 for the “Fondo Crescita Sostenibile”.

The audit has been focussed on the review of the set-up of 5 out of the 6 FIs declared by the programme and on the implementation of a sample of 2 FIs for which at least the second advance payment (3rd for guarantee fund) was declared to the Commission on 30/06/2019. The list of the 5 selected FIs is reported in **annex II**.

In the first part of the audit, for the five above-mentioned instruments selected, the auditors carried out an assessment of the MCS (monitoring, reporting, management verification), the design and set-up (mainly focussing on the ex-ante analysis and on the implementation strategy carried out).

The audit checked the audit trail and the compliance with KR5 and KR6 on performance data, information and communication for the 5 funds and reconciled the amounts reported with the expenditure declared.

In the second part of the audit, for two financial instruments, (1) “Fondo Crescita sostenibile” (which is managed directly by the MA according to Art. 38(4) (d)) and (3) “Fondo Centrale di Garanzia” (for which the MA has certified second and third tranches), the quality of the work carried out by the AA to check the FI implementation has been audited. This analysis has been focussed on the selection (eligibility) of final recipients and investments, the eligibility of expenditure, and on the compliance with Art. 41 of CPR. Moreover, a review of the audit work conducted by the AA was carried out with the re-performance of a sample of 8 final recipients from each financial instrument as listed in annex II. The AA sampled 30 guarantees for the “Fondo Centrale di Garanzia” and 14 final recipients for the “Fondo Crescita Sostenibile”.

After finalising the on-the spot work the EC auditors requested additional clarifications to the national authorities on November 12th 2019 and received a partial reply on November 19th 2019 (Ref. Ares(2019)7345646 - 28/11/2019) and a complete reply on November 26th 2019 (Ref. Ares(2019)7345056 - 28/11/2019).

The audit was performed in line with ISSAI 4000 (compliance audit standard from INTOSAI)².

² This standard is available here: <http://www.issai.org/issai-framework/4-auditing-guidelines.htm>.

5. FINDINGS AND ACTIONS TO BE TAKEN/ RECOMMENDATIONS

5.1 SYSTEM FINDINGS

Finding 01

Ex-ante assessment not covering all elements required by Art. 37(2) of the CPR

The ex-ante assessment report, covering all 5 funds, is general and not linked to the FI decision making process. The decisions to set up the specific instruments are taken in other national strategic documents, which are approved before the ex-ante analysis. The ex-ante analysis is then the basis for the preparation of the ex-ante assessment report.

According to Art. 37(2) CPR the following elements of the ex-ante assessment are missing for all five financial instruments:

- detailed information on the market failures, if any, about the products already offered on the market, the financial need analysis,
- the design and set up / implementation options selected,
- the type of products, type of final recipients, combination with grants,
- State aid implications and measures to minimise market distortion,
- the lessons learnt from previous instruments and still remaining open gaps,
- the provision for review.

Action to be taken/recommendation

Recommendation 01.01

Although the implementation of the audited financial instruments is at an advanced stage, we recommend to the programming authorities to revise the ex-ante assessment in order to ensure that all legal requirements are respected and that the instruments are adapted or if necessary adjusted to the market needs.

The revised version of this assessment should be submitted to the programme monitoring committee according to art 37(3) CPR.

The AA shall confirm the correct implementation of the recommendation in the reply to the final report. This applies to all the following recommendations addressed to the MA where the AA is indicated as one of the bodies responsible for implementing the recommendation.

Importance: Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 01.01: Rejected

In reply to the comments made by the Commission services, the following arguments are put forward:

(a) Completeness of the ex-ante assessment over the content required by Article 37 (2) of Regulation (EU) No 1303/2013.

The ex-ante assessment on the FIs of OP IC Operational Programme 2014-2020 concluded on 30 March 2016 was prepared in accordance with the guidelines set out in the relevant European legislation and in the '*Ex-ante assessment methodology for financial instruments in the 2014-2020 programming period*' version 1.2 of April 2014. In particular, the assessment was structured according to the relevant points laid down in Article 37 (2) of Regulation (EU) No 1303/2013, namely:

- (i) Analysis of market failures or sub-optimal investment situations, the estimated level and scale of public investment needs;
- (ii) Assessment of the value added of budget support, consistency with other forms of public intervention in the same market and possible State aid implications;
- (iii) The estimation of additional public and private resources that could potentially be collected by budget support, including consideration of preferential remuneration when needed;
- (iv) Lessons learned from similar instruments and evaluations carried out in the past;
- (v) Proposed investment strategy (including possible combination with grants), implementation arrangements, financial products and recipients;
- (vi) Envisaged results including measurement of indicators;
- (vii) Provisions enabling them to be revised and/or updated.

In particular, the audit authority confirms that, in the course of its audits, it has established, for each financial instrument audited, that the ex-ante assessment covers the elements provided for in Article 37(2) CPR. For an easier reading of the ex-ante assessment, please find below the references to the main information, relating to the elements raised by the Commission, for the individual financial instruments audited:

- details of the market failures and the analysis of the financial needs present on the following pages: P. 12 (general reference to the credit crunch), p. 20 (general reference to inefficiencies in the financial market), p. 28 (Sustainable Growth Fund), p. 28 (Development Axis I Fund), p. 40 (Reserve Fund for SME Guarantee), p. 63 (Reserve Fund for SMEs), p. (Fund Law 181/89 and Development Contracts III), p. 73 (Smart & Start) and p. 77 (Development contracts Axis IV);
- the options selected in terms of design and creation/implementation, the type of products, the type of recipients, where applicable, the combination with subsidies, possible State aid implications, and measures to minimise market distortion: pp. 32-37 (Sustainable Growth Fund and Development Contracts Fund (I)), pp. 42-45 (Reserve for SME Guarantee Fund), pp. 64-66 (Fund Law 181/89 and

Development contracts under Axis III), pp. 74-75 (Smart & Start) and pp. 80-84 (Development contracts Axis IV);

- the lessons learned from the use of the previous tools and gaps still to be filled: pp. 22-27 (general reference to the lessons learned from previous programming), pp. 35-36 (Guarantee Fund for Sustainable Growth and Development Axis I), p. 44 (Reserve for SME Guarantee Fund), p. 65 (European Guarantee Fund for Law No 181/89 and Development Contracts III), p. 74 (Smart & Start) and pp. 82-83 (Development contracts Axis IV);
- The provisions of the ex-ante assessment review are described on page 86.

(b) Accuracy and detail in the description of the individual financial instruments adopted

With regard to the Commission's observation that "*The report on the ex-ante evaluation, common to the five selected funds, is general [omissis]*", we would point out that the MA has chosen to address, in line with the explicit provisions of the EC services guidelines, in one single report the overall analysis on all financial instruments to be adopted in order to deal in a coordinated manner with all the different intervention measures. In the opinion of the programme authorities, this allows an internal coherence of the programme facility of FIs and, in particular, it allows the complementarity between the instruments in terms of markets, products and recipients.

However, the uniform treatment did not affect the accuracy and detail of the descriptions in so far as each content referred to in one of the aforementioned points (a) to (f) of Article 37 (2) of Regulation (EU) No 1303/2013 gave rise, in relation to each of the FI handled, to a specific point of analysis of the ex-ante assessment. In particular, in the context of paragraph 3 "Perspectives for the 2014-2020 programming period" for each type of financial instrument, the related aspects are detailed: opportunities for intervention in strategic sectors with optimal levels of investment; the design specifications of the defined instruments on the basis of the objectives and expected results; the implementation strategy; target products and target groups, in synergy and/or combination with other forms of public and private support and the experience gained in the previous programming period.

All financial instruments are treated transversally, namely:

- Analysis of the national macro-economic context, which, in order to avoid redundancy, has been described in detail in such a way to cover all subjects of interest, only once with reference to all the FCLs subject to the assessment, with the necessary specifications, referring, where necessary, to the categories of the Central-North and South regions (see ex-ante assessment paragraph 1 "Scenario Analysis").
- The provisions for revision, which are dealt with uniformly in the final paragraph of the Report (see paragraph 4 "Review of the assessment").

(c) Grading of the ex-ante assessment as an instrumental assessment document for the decision-making and administrative procedure

The European Commission services note that:

1. The ex-ante assessment 'is not linked to the decision-making process relating to the financial instrument;

2. The decisions to activate specific instruments are taken in other Country Strategic Papers, which have been approved prior to the analysis carried out for the ex-ante assessment.

In relation to the second point, we would point out that the pre-existence of regulatory measures (Ministerial Decrees) is in any case in line with the possibility to co-finance already existing instruments provided for in Article 38 (3) (b) of Regulation (EU) No 1303/2013 and with EGESIF_14_0039-1_11.02.2015 ‘Guidance ex ante assessment’.

In this regard, the ex-ante assessment, following the analyses of the market failures conducted, confirmed the need for the added value of the measures to be implemented on the OP and made those instruments, which were already identified as possible policy options, to be financed with the resources of the Programme.

It should be considered that some aid measures, especially those that are more strategic for the achievement of the OP’s priority objectives (such as: access to finance for SMEs, research funding and innovation in production systems) require long-term action to be effective, particularly in less developed areas, and are supported by cohesion policy in several programming periods. This is the natural consequence of the fact that, as noted in some cases, the establishment of FEIs is established in other national strategy documents, even prior to the ex-ante analysis. Moreover, it favours an existing instrument for guarantees or loans, rather than the creation of a new instrument providing the same product, has clear advantages, such as the strategic continuity of the intervention, the reduction in time of implementation, the importance of previous experience in the management of the instrument.

On the other hand, in the preparation of the programme template drawn up by the Commission, the MA has reported specific information on decisions on the use of financial instruments (e.g. for the Central Guarantee Fund).

d) Current socio-economic context and evolving regulatory framework

In the light of points (a), (b) and (c) above, it is considered that the revision of the ex-ante assessment requested by the Commission services should be assessed in the light of the current context of intervention and the innovations introduced to the regulatory framework.

In this regard, it is useful to consider two further aspects, in addition to the reasons already given in the previous points:

- i) The flexibility offered by the legal framework of the current financial crisis represented by Article 25a of Regulation (EU) No 1303/2013 as amended by Regulation (EU) 2020/558 of 23/04/2020;
- ii) The simplifications linked to the development of the regulatory framework for the next programming cycle referred to in Article 52 (3) of the proposal for a general regulation.

In relation to the considerations under (i), it is necessary to highlight the flexibilities provided for under the Temporary Framework of EU measures, which will exceptionally allow reprogramming the resources of the OP, including as regards the financial envelope of the financial instruments, depending on the exceptional market needs related to the health emergency. In this respect, in the context of Parliament’s legislative resolution of 17 April 2020 on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1303/2013 and (EU) No 1301/2013, it has been taken to reduce the administrative burden in cases where the effective response to the public health crisis requires changes to financial instruments, considering it appropriate

to disregard, for the remainder of the programming period, the review and the update of the ex-ante assessment.

In line with the orientation of the Resolution, the amendment to Regulation 1303/2013 introduced by Article 25a — Exceptional measures for the use of ESI Funds in response to the COVID-19 epidemic — of Regulation (EU) 2020/558 of 23 April 2020 is to be understood. Indeed, according to point 10, by way of derogation from Article 37(2)(g), no review or update of ex ante evaluations is required in cases where the effective response to the COVID-19 outbreak requires changes to the financial instruments.

With regard to the considerations under (ii), the assessment in question should be assessed in the context of the spring 2020 scenario, the approach set out in the proposals for regulations for the next programming cycle (Article 52 (3) of the proposal for a general regulation), which, for the ex-ante assessments, provides for a considerable simplification of the procedures and a substantial reduction of the content requested. It is considered that these simplifications should be kept in mind in the activities, which are requested to be carried out by the Programme Authorities.

e) Administrative burden and possible implementation delays in the response to the COVID-19 Health Emergency Response

The MA also pointed out to the AA the following aspects:

(1) administrative burdens arising from a possible revision of the ex-ante assessment: the MA pointed out that most of the financial instruments of the OP have already met the conditions for the request of the second tranche under Article 41 of Regulation (EU) No 1303/2013 (see the Central Guarantee Fund, S & S Fund for Italy, Fund for Development Contracts) and they are all stemming from pre-existing instruments. An update of a document, which is justified in the phase prior to the financing of financial instruments with the resources of the OP in order to assess the context and identify different options and synergies, would, to date, be of a purely formal nature;

(2) impact on other activities of the MA in response to the public health crisis COVID 19: the MA considers that the update of the ex-ante assessment could lead to delays in the implementation of the measures undertaken or to the MA study within the thematic objectives of the OP IC14-20 in order to respond effectively to the public health crisis COVID-19.

In conclusion, for the reasons set out in points a, b, c, d and e, we ask the Commission to reassess their position, given that the Programme authorities consider that ex-ante assessment in line with the provisions of Article 37 (2) of the CPR. In addition, the ex-ante assessment itself has been examined by the European Court of Auditors and its comparison with the AA as part of the audit carried out on financial instruments (ref. CL-9932- Audit Report of 30/04/2020), as a result of which no observations/recommendations have emerged from the ECA.

Position of the Commission services:

The recommendation 01.01 is Closed

The Commission auditors take note that the ex-ante assessment covered each of the elements provided for in Article 37(2) CPR. However, after reviewing the additional explanations and observations contained in the reply of the audit authority the Commission auditors confirm their position that the ex-ante assessment is general, not linked directly to the financial instrument decision-making process and relevant

information were approved in other national strategic documents. In particular, the additional observations related to the information required by Art. 37(2) CPR for all five financial instruments do not contain any new element compared to those analysed during the audit. The Commission auditors note that the legal elements laid down in art 37(2) CPR are mentioned in the ex-ante assessment but not with the necessary details. For example, as also stated by the audit authority, the ex-ante assessment contains a general reference to the credit crunch, to the inefficiencies in the financial market and to the lessons learned from previous programming, etc. Therefore, the Commission auditors are of the opinion that a revision of the ex-ante assessment would have been required in order to ensure full compliance with the legal requirements of Art. 37(2) CPR, if the macroeconomics conditions had not changed significantly with the COVID-19 public health crisis starting from spring 2020.

Taking into account the consequence of the COVID-19 public health crisis and its impacts on the economy, the Commission auditors note that the programme authorities indicated that the update of the ex-ante assessment might lead to delays in the implementation of measures being undertaken in order to respond to the needs and urgency related to the COVID-19 crisis. Moreover, the Commission auditors also take into account the flexibility offered by the legal framework of the current crisis represented by Article 25a of Regulation (EU) No 1303/2013, as amended by Regulation (EU) 2020/558 of 23/04/2020, namely:

- point 9 of the legal framework, where it is highlighted that in order to reduce administrative burdens and delays, the review and update of the ex-ante assessment, as part of the supporting documents demonstrating that support provided was used for its intended purpose, should no longer be required for the remainder of the programming period.
- Article 25 a, point 10: “by way of derogation from point (g) of Article 37(2), no review or update of the ex-ante assessments shall be required where changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak”.

In conclusion, in view of the exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak and the flexibility offered by the above-mentioned legal framework, the Commission services consider this recommendation closed.

Finding 02

Retrospective projects

The audit noted the presence of “retrospective” projects declared in 4 out of the 5 Financial Instruments audited, namely in “Fondo Crescita Sostenibile”, “Fondo contratti di sviluppo”, “Fondo Smart & Start” and “Fondo Legge 181/89”. Most of the final recipients for these 4 FIs were initially financed with national funds and were selected at an early stage before the set-up of the FI. The possibility that the instrument could be co-funded by the 2014-2020 ESIF funds was already foreseen in all cases audited by the Commission auditors except for one sampled case RIVECO Generalsider SPA under the fund “Fondo contratti di sviluppo”³.

³ Refer to finding n. 15

Taking into consideration the specific structure of the 4 instruments (“Fondo Crescita Sostenibile”, “Fondo contratti di sviluppo”, “Fondo Smart & Start” and “Fondo Legge 181/89”) and the fact that ESIF funding was already foreseen at the time of the launch of the call, the Commission auditors take note that the managing authority aimed at accelerating the early implementation of the financial instruments.

As a result, and considering these specific circumstances, the Commission auditors are of the opinion that the expenditure incurred before the set-up of the FIs can be considered eligible and would not infringe the provisions of article 37 CPR if the following elements were fulfilled:

- all other eligibility conditions, such as compliance with applicable law or objectives of the OP, are met;
- the financed projects are financially viable;
- the support of the pre-existing finance through ESIF financial instruments was already foreseen in the call/investment decision and did not replace the pre-existing finance;
- the ex-ante assessment confirmed a market situation / sub-optimal investment situation at the moment of granting of support (refer to finding and recommendation n. 1) in which support was given to projects which could not receive support from market sources;
- the criteria for support were not changed when the national resources were replaced with the ERDF programme resources.

Action to be taken/recommendation

Recommendation 02.01

The AA is requested to provide evidence that, for each of the investments in final recipients in its sample the above conditions have been complied with.

In case that this additional audit work reveals irregularities, the MA should be requested to extend the verification to all “*retrospective*” financing cases and deduct ineligible expenditure from the list of eligible amounts for each of the FI concerned.

Importance: Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 02.01: Accepted

In relation to the recommendation expressed by the Commission services, the AA confirms that for each of the investments in final recipients in the selected sample and the expenditure checked by the AA in respect of the accounting periods (2016-2017; 2017-2018 and 2018-2019) covered by this EC audit, the following conditions have been complied with:

- (a) Consistency with other eligibility conditions, such as compliance with applicable law or objectives of the OP are respected;
- (b) Projects financed are financially viable;
- (c) The support of the financing with the financial instruments of the ESI Funds had already been foreseen in the call/investment decision and did not replace the pre-existing funding;
- (d) The ex-ante assessment confirmed a market situation/condition of sub-optimal investment when granting support (see finding and recommendation 1), on this basis, support was granted to projects that could not have received it from market sources.
- (e) The criteria for access to support have not changed when national resources have been replaced by ERDF resources.

In this respect, we would point out that these aspects are already included in the analysis carried out by the AA and reported in the relevant audit reports and control instruments relating to the accounting periods indicated.

We would point out that the European Court of Auditors made no comments on the failure to comply with these conditions, in its audit of financial instruments for the purpose of the Statement of Assurance for the financial year 2019 (ref. CL-9932- Audit Report of 30/04/2020). The European Court of Auditors has analysed the concession notices and procedures relating to three ‘retrospective projects’ of the FCS — which the AA has already been sub-sampled — in the accounting period 2017-2018 of the ECA’s audit reference period, namely:

- a. “ERICSON TELECOMMUNICATIONS S.P.A” — sampled EUR 3 306 834.90 — call for reference: Ministerial Decree of 15 October 2014, as amended;
- b. ‘TreSOL S.R.L’ — sampled EUR 971 491.34 — call for reference: Ministerial Decree No 20/06/2013 — Horizon 2020;
- c. “MEMETHOD S.P.A”. — Euro 710 823.52 sampled certificate — call for reference: Ministerial Decree No 20/06/2013 — Horizon 2020).

Specifically, for each of the above conditions (a), (b), (c), (d) and (e), the details of the checks carried out for the coherent projects are hereafter detailed.

(a) All other eligibility conditions, such as compliance with applicable law or the objectives of the OP, are met.

The AA has verified that the eligibility conditions such as compliance with the reference legislation and the objectives of the OP have been met.

In particular, checks were carried out on the point at the level of the operational instrument and the reference legislation/notice for the selection of the projects, both at the level of the individual disbursements to the final recipients certified to the EC (see check list on the individual recipients provided during the audit).

The verifications carried out by the AA at the documentary level are clarified below. At the level of the operating instrument/reference legislation/selection notice, AA has checked:

- (a) The consistency of these notices with the Financing Agreement (for FCDS)/Policy Paper and the Fund Strategy (FCS);
- (b) The compliance of the selection criteria for the recipients/projects with the selection criteria for the OPs approved by the Monitoring Committee;
- (c) The consistency of the eligibility criteria for expenditure with those laid down in the OP and in the applicable legislation with particular reference to the basic conditions laid down in Article 37 of Regulation (EU) No 1303/2013;
- (d) That it was already provided for in the reference legislation/selection notice and/or the granting decree the possibility of co-financing projects with European resources;
- (e) The consistency with the relevant exemption and/or *de minimis* rules.

At the level of the individual beneficiary, AA has checked:

- (a) The correct selection of the final beneficiary/project by the investigator/manager based on the procedures and rules applicable to the individual financial instrument;
- (b) That all payments to final recipients taken into account for the purpose of calculating the thresholds laid down in Article 41 of Regulation (EU) No 1303/2013 are subsequent to the date of ex-ante assessment;
- (c) That the selected project had not been physically carried out before the investment decision was taken (Article 37 (5) of Regulation (EU) No 1303/2013);
- (d) The actual use by the final recipients of the investment received for the intended purpose (Article 37 (4) of Regulation (EU) No 1303/2013);
- (e) That the investment decisions on the OP are made after the date of the ex-ante assessment, in particular for 'coherent' projects has been checked:
 - i) for projects financed under the FCS on the date of the investment decision on the OP (19/06/2017) — that is, as communicated to the Commission during the audit and indicated in the audit reports examined by the Commission, the date of 19/06/2017, the date on which the MA communicated to the Monitoring Committee the coherent projects to be financed under the OP following the date of ex-ante assessment (30/03/2016).
 - ii) for the project RIVICO, the date of the investment decision on the OP (26/09/2018) — that is, as communicated to the Commission during the audit and indicated in the audit reports examined by the Commission, the date on which the MA communicated to the implementing body INVITALIA SpA the decision to admit the project to OP — is after the date of ex-ante assessment (30/03/2016).
- (f) The expenditure declared to the Commission corresponded to the accounting documents and that the supporting documents required showed the existence of an adequate audit trail.

Finally, we would point out that for each individual beneficiary, the documentary evidence has been obtained to ascertain that:

- a) the request for the aid was submitted within the time limit prescribed by the call notice/notice of reference for the selection;
- b) the investigation carried out by the investigating person (MCC for FCS)/operator (Invitalia for a CDS) on the application for a concession found, namely:
 - the completeness of the application submitted by the beneficiary;
 - the consistency of the project with the eligibility requirements set out in the notice;

- the compliance with the minimum eligibility requirements, with specific reference to the recipient's ability to reimburse the funding, the amount of the eligible expenditure, the duration of the project, the location of the project;
- the respect of the ceiling of the relationship between the allowable aid and the eligible investment;
- c) the recipient was successfully placed on the list;
- d) the document containing the decision to grant was consistent with the relevant legislation and with the results of the investigation;
- e) the results of the checks carried out by the evaluator on the request for payment were consistent with the relevant legislation and the granting measure;
- f) the payment made to the recipient was consistent with the check carried out on the request for payment;
- g) there is evidence of investment and evidence of the checks carried out by the intermediary/managing body and the first-level control carried out by the MA;
- h) refunds to the Revolving Fund by recipients of funding received.

These checks, as evidenced by the audit reports produced, have been documented in the checklists.

b) The projects financed are financially viable

Based on the results of verifications conducted by the bank responsible and/or the managing entity, the AA confirms that the coherent projects are financially viable.

On this point, we wish to point out that the AA has checked the carrying out by the investigating body/manager of the checks and activities of competence at the stage of the investigation relating to the following aspects:

For FCS — RIVECO SPA: As stated in Article 9 (4) (b) and (d) and (f) of Ministerial Decree No 9/12/2014, the managing body, in the case of investment programmes relating to industrial development projects (such as the one submitted by RIVECO SpA), is to assess the economic viability of the development programme with the relevant employment impact, the financial viability of the investment, the activity of the project, the relevance and general adequacy of the costs envisaged. In accordance with Article 9 (4) (a) of the Ministerial Decree, Invitalia also assesses the technical, economic and financial reliability of the undertaking which is proposing.

Therefore, on the basis of the preliminary findings of Invitalia (technical report, Cap. 3 and Cap. 4) and the positive judgement issued by the Manager (Reference Report on Prior Technical Verification, Cap. 6 — Conclusions) that the investment programme submitted by RIVECO SpA has the characteristics of economic viability and financial viability, as can be seen, moreover, most recently in the Decision approving the 9/11/2015 Development Contract (ref. decision approving the contract) which provides adequate qualitative and quantitative elements to appreciate the overall positive judgement of the managing body.

Similarly, as regards the sustainability aspects of the undertaking concerned, it was found that the total financial needs were covered by the capital injections indicated in the diagram on page 44 of the approval decision mentioned above.

For the FCS, in relation to each of the sub-sampling, the AA checked the activities of the evaluator during the submission of the application for admission aimed both at verifying the financial viability of the individual recipient and the ability to repay the benefit granted, and the calculation of the relevant mark on the basis of the rules laid down in the

opening orders/reference notices. The legal references under which the auditor carried out their verification on this aspect are reported hereafter:

- a. the “Digital Agenda” reference notice referred to in the Ministerial Decree of 15 October 2014, as amended and supplemented: verification carried out during the investigation procedure under Article 10 (3) of Ministerial Decree of 15/10/2014;
- b. the Horizon reference notice ‘Horizon’ referred to in Ministerial Decree No 20/06/2013, verification carried out pursuant to: Article 1 (1) of Article 9 of Ministerial Decree No 20/06/2013 of 2) of Article 9c (2) (b) of that Ministerial Decree;
- c. the reference notice ‘Seismic crater Aquilano’ as referred to in the Ministerial Decree of 22 October 2013: verification carried out during the investigation procedure under Article 3 (4) of Ministerial Decree of 29/01/2014 (Decree opening the gateway).

c) The support of the pre-existing financial instruments of the ESI Funds had already been foreseen in the call/investment decision and did not replace the pre-existing funding

For project “Riveco” the support for co-financing with EU funds was already foreseen both in the Decree of 9/12/2014 and in the reference notice of 29/04/2015.

For FCS projects, we confirm that:

- for the H2020 calls (ref. Article 8 (1) of Ministerial Decree No 20/06/2013) and “Digital Agenda (ref. Article 7 of Ministerial Decree 15/10/2014), the funding of projects with EU resources was already explicitly foreseen in the call;
- in the call for proposals “Seismic crater Aquilano”, the explicit reference to unitary programming (ref. DM 22/10/2013 and Ministerial Decree No 29/01/2014) is present. It is added that for the project examined by the AA, the Ministry of Economic Development issued, on the basis of Ministerial Decree No 23/12/2015, the facilities directly applicable to NOP IC 14-20 (ref. MISE Decree No 7990 of 30/12/2016).

(d) The ex-ante assessment has confirmed a market situation/condition for sub-optimal investments when and which the support was granted to projects which could not have received support from market sources

The AA in this regard indicates that it has verified that, in accordance with Article 37 (2) of the CPR, the support of financial instruments is based on an ex ante assessment which provided evidence of market failures or sub-optimal investment conditions, as well as on the estimated level and areas of public investment needs, including types of financial instruments to be supported.

With reference to the retrospective projects examined by the AA, it should also be noted that at the time of the granting of the facilities under the PON, the ex-ante assessment confirmed a market situation/condition for sub-optimal investment by providing for the use of “existing and functioning” instruments in line with the wording of Article 38 (3) (b) of Regulation (EU) No 1303/2013 and the guidance contained in EGESIF_14_0039-1_11.02.2015 “Guidance ex ante assessment”.

For checks carried out on individual beneficiary, reference is made to what has already been stated in point (a) above.

(e) The criteria for access to support have not changed when national resources have been replaced by ERDF resources

The AA verified that the criteria adopted for the selection of the retrospective projects examined were in line with the selection criteria adopted for the OP.

Position of the Commission services:

The recommendation 02.01 is Closed

The Commission auditors take note of the explanations and additional evidence provided by the audit authority, and in particular those to ascertain the fulfilment of the conditions for each of the investments for final recipients in relation to the accounting periods (2016-2017, 2017-2018 and 2018-2019) covered by this audit.

The explanations about the checks carried out by the audit authority both at level of the instrument, the reference legislation and of the selection notice and at level of the individual beneficiary, give adequate assurance that all other eligibility conditions, such as compliance with applicable law or the OP objectives are met. The Commission auditors take note also of the specific reference to ministerial decrees in which it is specified that the support of the existing funding with the financial instruments of the ESI Funds had already been foreseen in the call/investment decision and that thereby it did not replace the pre-existing funding.

With reference of the financial viability of the funded projects, please refer to the Commission auditors' finding no 5 hereunder.

In conclusion, in view of the evidence and additional information contained in the audit authority's reply, the Commission auditors conclude that the expenditure incurred before the creation of the financial instrument is eligible and in line with the provisions of Article 37 of the CPR and therefore this recommendation is closed.

Finding 03

Absence of conflict of interest not demonstrated

For "Fondo Crescita Sostenibile" and for "Fondo Centrale di garanzie", no evidence was provided on the absence of conflict of interest at the different levels involved in the selection and verification of investments (MA staff and technical assistance, i.e. banks involved and research experts, financial intermediaries).

This was not checked/detected by the AA.

Action to be taken/recommendation

Recommendation 03.01

The OP authorities are requested to introduce an obligation to sign a declaration of absence of conflict of interest and to ensure that all staff involved in selection and verifications of investments in final recipients has signed the declaration, or that mitigating measures were taken otherwise.

The AA should review this aspect under the audit work carried out under key requirement n.7, and as part of its normal audit work of audit of operations.

Importance: Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 03.01: Partially Accepted

With regard to the observations made by the European Commission, the AA points out that the procedures adopted both within the framework of the FCS and under the Guarantee Fund are adequate to reduce the risk of conflict of interest. In particular:

- i) The staff of the MA involved inter alia in the first level controls, in the drawing up and signing the concession decrees for the FCS and/or in the Guarantee Fund Management Board must comply with the Code of Conduct and the “Three-Year Prevention of Corruption, Transparency and Integrity Plan”. In this regard, we would point out that the MISE staff sign a special declaration with three years of validity of any family or affinity relations with the holders, administrators, members and employees of the entities concluding contracts with DGLAI or who are interested in proceedings for the authorisation, granting or granting of economic advantages of any kind within the Directorate. Under the Code of Conduct, if there is a conflict of interests, the employee refrains from taking decisions or carrying out activities relating to his duties. Notice of the abstention and its reasons shall be given in writing to the person responsible for the procedure or to the immediate superior, who shall take a decision on this matter in writing.

Please find attached the statements of the persons responsible for the administrative checks at the first-level control — Ref. All. 3.1 (Ms Azzurra Marchesano, the Central Guarantee Fund and Ms Maria Cristina Frasca for the Sustainable Growth Fund), which are fully in line with the requests included in the Commission’s recommendation. A similar statement is signed by the evaluators and, under the FCS, the members of the committees appointed for the final assessment of the expenditure of the projects.

- ii) The banks and financial intermediaries involved:
 - are subject to the rules on the supervision laid down in Legislative Decree No 385 of 1/09/1993 — Banking Act, and must comply with the rules laid down in Regulation (EU) No 600/2014, Directive 65/2014/EC and Legislative Decree No 129/2017.
 - in addition, the provisions of Article 47 (2) of the Banking Act have been complied with: ‘The allocation and management of public funds of credit facility provided for in the laws in force and the provision of services relating thereto shall be governed by contracts between the competent public authority and the banks of the competent public authority. The contracts set out criteria and arrangements that may overcome the conflict of interest between the

management of the funds and the activity carried out on its own account by the banks.

To this end, separate bodies responsible for the preparation of acts in the field of aid and separate accounts may be set up. The contracts also determine the fees and reimbursements to be paid to the banks.

With regard to the management of the public funds of the concession, a system of separation of duties dedicated to the management of public funds is normally subject to the ordinary banking activities, which fall within the remit of other structures of the Bank, operating under a separate decision-making structure, organisation appropriate to the nature and size of the activities entrusted by public entities.” In this regard, we would point out, *inter alia*, that:

- (1) For the FCS, Article 9 of the agreement concluded on 29/10/2014 between the Ministry of Economic Development and the Medio Credito Centrale SpA (as an agent for carrying out the technical assistance and support for the technical, administrative and investigative, granting and monitoring of the facilities granted under the FCS), governs the situation of conflict of interest and incompatibility in the operation of the service of TA. Specifically, Article 9 (8) of the Convention states that compliance with Article 47 2) of Legislative Decree No 385/1993, namely the presence, at the level of the financial intermediary involved, of separate structures for the management of public funds in relation to those dealing with ordinary activities, is an appropriate measure to avoid conflict of interest.
- (2) For Guarantee Fund, under Article 3 of the agreement signed on 28/03/2012 between the Ministry of Economic Development and the Medio Credito Centrale SpA (representative of the temporary consortium set up for the management of the Fund), the management of the Fund is entrusted to the Management Committee. The Committee, which is responsible for approving and deciding on transactions processed by applicants and by the managing body, is composed of 7 members, 2 of whom are appointed by the Ministry of Economic Development, one by the Ministry of Economic Development and Finance, one by the Department of Development and Economic Cohesion, one by the Department for Development and Economic Cohesion, one by the Standing Conference for Relations between the State, the Regions and the Autonomous Provinces of Trento and Bolzano and by two experts on credit and corporate finance, respectively appointed by the Ministry of Economic Development and the Ministry of Economic Development and Finance, together with the associations of small and medium-sized enterprises operate in accordance with the provisions laid down in the relevant internal codes of conduct and policies which, *inter alia*, define the general principles for the conduct of their employees, lay down specific policy for identifying potential conflicts of interest and their management .

- iii) For research experts, activated in the framework of the FCS for evaluation of project proposals submitted by potential beneficiaries on calls for interest, please note that:
- a. There is an ad hoc procedure (subject, inter alia, to the ECA's examination — ref. CL 9932) in order to identify, in a preventive manner, potential conflicts of interest on the part of the CNR experts (the scientific partner of the temporary consortium identified for the operation of the TA service) to be activated for the evaluation of the project proposals (see annex 3.2).
 - b. where, in accordance with the procedure referred to in point (a), they identify a situation of conflict of interest on the part of CNR's expert, the expert shall be selected directly by the Ministry of Economic Development in the register referred to in the Decree of the Minister for Production Activities of 7 April 2006, as amended.

The management and control system, through multi-level governance and decision-making, ensures that the risk of conflict of interest is reduced:

a) For the FCS, it is provided that:

- the staff involved in the performance of the main tasks (economic, financial and administrative and project treasury management) and secondary services (scientific assessment and technical verification of projects) relating to the TA services provided by the RTI — MCC, as provided for in Article 3 of the abovementioned Convention of 29/10/2014 and paragraph II of the technical tender annexed to that convention, shall be placed in two dedicated organisational structures. Within the organisational structure dedicated to the main supply, three different 'Team' are identified for carrying out the 3 phases (*ex-ante*, in *itinere*, *ex post*) of the service. Each of the resources used in those teams operates in only one of the working groups set up as provided for in paragraph 2.2 — Structure dedicated to the performance of the main provision of the technical tender referred to above.
- the body, which authorises and decides on the concessions and disbursements to the Fund shall be the Ministry of Economic Development.
- the first-level controls are carried out by a dedicated and separate MISE staff in relation to the staff involved in the investigation and implementation.
- more generally, the process of carrying out the management and control activities of the fund provides for different evaluation, authorisation and control levels, which ensure the separation and protection of all the different stages, in order to avoid a self-referential as referred to in the Decree of the Minister for Production Activities of 7 April 2006, as amended, in the process and, indirectly, the potential conflicts of interest of the resources responsible for managing a single microphase.

b) For the Central Guarantee Fund, the process of selecting the funds to be included in the portfolios involves a number of different actors, namely:

- Applicants (banks/financial institutions) carrying out, in the first instance, the assessment of the eligibility of final recipients and of the financing of the guarantee;
- The managing body, who, on receipt of requests for inclusion submitted by the applicants, carries out the same additional evaluation and documentary checks on the same operations, in accordance with a process of carrying out the activities involving different evaluation and authorisation levels;

- The Management Committee to which it is responsible inter alia, to approve and decide the transactions processed by the applicants and the managing body;
- The Ministry of Economic Development (MISE) carrying out first-level surveillance and control activities on the Fund.

The AA in the course of its audits and in relation to the particularities of each instrument has tested:

a) For FCS:

- that the Ministry of Economic Development (MISE) employees carrying out the relevant tasks have been assigned with special service orders (check carried out in the context of system audits);
- respect for the implementation of the procedure for the selection of CNR experts with the acquisition, where applicable, of declarations of absence of conflict of interest and/or evidence of the selection of the expert from the register referred to in the Decree of the Minister for Production Activities of 7 April 2006, as amended (verification carried out during the audits of operations);
- that the bank employees carrying out the investigations and verification activities are included in the dedicated team and presented by the RTI — MCC at the stage of submission of the tender (check carried out during the audits of operations);
- more generally that the multi-level governance system is respected.

b) For the “Fondo Centrale di Garanzia”:

- that the Ministry of Economic Development (MISE) employees carrying out the relevant tasks have been assigned with special service orders (check carried out in the context of system audits);
- the procedures for requesting, investigating, evaluating and approving operations are implemented on the basis of the multi-level governance system established;
- the composition of the Management Board to approve and decide the transactions processed by the applicants and the managing body.

Finally, we would point out that, in the context of the audit carried out by the European Court of Auditors on financial instruments (ref. CL-9932- Audit Report of 30/04/2020), these aspects, together with the relevant procedures, have been subject to scrutiny by our auditors, which have not made any observations/recommendations on the matter.

Position of the Commission services:

The recommendation 03.01 is Open

The Commission auditors take note of the obligations of the staff of the managing authority, banks and financial institutions laid down by national law and regulations and other measures put in place at organisational level to ensure the absence of conflict of interests.

With reference to the research experts, the programme authorities are requested to explain more in detail the *ad hoc* procedure aimed at identifying, in a preventive manner, potential conflicts of interest by the experts of research centres towards the final beneficiaries. Indeed, the Commission auditors consider that the note in annex 3.2.1 of the audit authority’s reply (cit. Nota CNR per nuovo schema Conflitto di Interessi) is not sufficiently clear and the procedure described does not seem adequate to ensure the

absence of conflict of interest for all staff involved. The Commission auditors consider the methodology put in place for the personnel of the research centres to be insufficient, as no specific declaration on the absence of conflict of interest towards the final beneficiary is foreseen. In addition, the obligation to hire a researcher from a different research centre from those in charge of the technical assistance of the project does not provide any assurance that the staff is not in a position of conflict of interest with the final beneficiary.

Moreover, the Commission auditors note also that the ‘Declaration of absence of grounds for incompatibility’ (cit. “*Dichiarazione di assenza di cause d’incompatibilità*”), set out in annex 3.2.1.2 to the audit authority’s reply’, does not provide for any specific declaration by the researcher in charge that s/he will act in absence of conflicts of interest towards the final beneficiary. The Commission auditors find this declaration too general and not sufficiently focused on the issue of conflict of interests as it contains mainly general statements about incompatibility and impartiality.

The Commission services invite the authorities of the programme to improve the procedure, taking into account the Commission (draft) *Guidance on avoidance of conflicts of interest under the Financial Regulation*. This (draft) guidance was established following adoption of Article 61 of the new Financial Regulation applicable to the EU budget, with impact on shared management as well. The draft guidance was presented to the audit authorities in the Technical group meeting of 23/9/2020 (and to EGESIF on 24/10) and is available on CIRCABC.

The Commission auditors also note that the audit work carried out in accordance with Key Requirement No 7 does not include specific checks on the declarations of absence of conflict of interests signed by the staff of MISE, MCC and banks. Moreover, with reference to the staff of research centres it is not clear which declaration of conflict of interest has been checked by the audit authority, as those provided in annex 3.2 is called ‘Declaration of absence of grounds for incompatibility’ (cit. “*Dichiarazione di assenza di cause d’incompatibilità*”). The audit authority is invited to clarify and further improve the methodology for checks on absence of conflict of interests, taking into account the above-mentioned guidance.

Finding 04

SME status not properly verified

For the financial instruments “Fondo Crescita Sostenibile” and “Fondo Centrale di garanzie”, the Commission auditors noted that the SME status is not properly verified, as the analysis does not consider all legal partnerships of the linked companies (indirect partnership). The following shortcomings were noted in the verification by the fund manager Medio Credito Centrale (hereafter MCC) of the SME status for the final recipients audited:

- a) Not all companies, which are legally linked to the final recipients, are taken into consideration when assessing the size of the company. In fact, for the 16 final recipients sampled and audited by the Commission auditors it was noted that MCC limited the analysis to the company directly linked to the final recipient, without taking into account the legal partnerships of these linked companies i.e. the indirect partnerships;

- b) The assessment of the size of the company did not take into account those partnerships linked to the company based on the so-called *de facto control* exercised by the administrators of the same company.

Out of the 16 final recipients audited, the Commission auditors noted that for 3 cases (Palumbo, Casa di Cura and Centro di Riabilitazione) not all partnerships were taken into account in the calculation of the company size and requested MCC to perform additional verifications. Following these additional verifications, MCC could confirm that despite the inclusion of the new partnerships, the size of these three companies remained within the parameters for the definition of SMEs.

The Commission auditors conclude that the assessment of the SME status performed by MCC at the time of the admission of the investments was not complete and that a risk remains regarding the eligibility of the other final recipients. The AA did not appropriately verify this aspect.

Moreover, the MA has the responsibility to monitor the financial intermediaries, and to control the management verifications delegated. Indeed, even if these bodies perform management verifications, the MA has the final responsibility and has to perform controls on the work of these bodies.

Action to be taken/recommendation

Recommendation 04.01

The audit authority should check the SME status of all the final recipients selected for its audit of operations, taking into consideration the shortcomings identified by the Commission auditors. The AA should improve its checklists/procedures to cover this aspect.

In case that this additional audit work reveals irregularities, the MA should be requested to extend the verification to all final recipients.

The AA should inform the Commission on the outcome of these additional checks.

The MA is also requested to improve the procedures for the verification of the SME status performed by the financial intermediaries. It should also ensure that the updated procedure includes a re-performance/quality control by the MA, on a sample basis, of the work done by these bodies.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 04.01: Partially Accepted

The AA is of the opinion that the additional checks requested by the Commission, relating to the verification of the size of the undertaking, relate to findings in the Fund Central Guarantee — PON IC Reserve, and in particular to 3 final beneficiary, namely Palumbo Costruzioni srl, Casa di Cura Macchiarella and Centro di Riabilitazione Lars. In this regard, from the '*Size Assessment form*' (*Scheda dimensione impresa*) submitted on 25/11/2019 to the Commission together with the supporting documentation, it could be shown that, on the date of the application, the size of the company for the aforementioned three companies is within the parameters for the definition of an SME. As a result of these checks, in which account was taken of the associated and/or linked enterprises as defined in annex I to Regulation (EU) No 651/2014, as amended, it was found that the 3 entities were *SMEs* under Article 2 of annex I to Regulation (EC) No 651/2014, thus confirming the lawfulness of the aid granted.

In the light of the above, taking into account the weaknesses identified by the Commission auditors that are attributable to the above three final beneficiaries of the Fund Central Guarantee and the outcome of the further verifications carried out by MCC to confirm the regularity of the expenditure certified to the Commission, the AA confirms the status of SMEs when applying for the aid for all the undertakings in their own sample of the 2018/2019 accounting period with reference to the GFL and FCS.

As regards the improvement of the AA's control tools covering this aspect, we would point out that, even following the recommendations made by the Commission, a *specific* company size's verification tool was set up in annex 4.1, which supplements the audit kit already in use for checks on operations relating to aid schemes. The purpose of the new *Tool* is, in particular, to highlight the verifications carried out, providing more details on the work done and the documentation consulted during the audit, with particular reference to the analysis of the company structure of the applicant undertaking. It is noted that *the tool* is already used for the ongoing audits of operations relating to the accounting year 2019-2020.

We would also point out that, in the system audit carried out in 2019, the MA was requested, for all the aid measures financed from the resources of NOP IC 2014-2020, to check compliance with the undertaking's size in the context of the administrative checks under Article 125 (5) (a) of Regulation (EU) No 1303/2013, as amended, and, consequently, to amend the current manual, together with the audit trails and checklists. In particular, the improvement actions that the MA undertook to implement for all the aid instruments following the recommendations of the AA (see *follow up* report ref. ALCT No 6036 of 18/05/2020, present on the CFS), provide for:

- Amend, for future notices, the form '*application for financial benefits*' and the annexes thereto, including both the status and the values relating to '*actual*' and '*financial thresholds*' which define the categories of undertaking referred to in Article 2 of annex 1 to Regulation (EU) No 651/2014, as well as the classifications of autonomous, associated and linked undertakings referred to in Article 3 of Regulation (EU) No 651/2014, in order to enable the beneficiary undertaking to declare the status, the actual values (*employees*) and financial

thresholds, both of the undertaking itself and of any other connected and/or associated undertakings as defined in Articles 2 and 3 thereof.

- Carry out the consistency checks on the size declared by the undertaking — for new calls — already when applying for the aid on all the statements made by the undertakings on the basis of the form amended in the previous point, to carry out — both for new notices/notices/notices already published — substantive checks on the size of the undertaking declared when applying for the aid by means of checks on the declarations submitted by the beneficiaries (Article 71 of Presidential Decree No 445/2000 and Article 3 (5) of the annex1 of Regulation (EU) No 651/2014), as part of the administrative checks of the documents referred to in Article 125 (5) (a) of Regulation (EU) No 1303/2013.

On this point, we would point out that the MA, in order to improve the procedures concerning the verification of the SME qualification, has already:

- Provided operational information to the offices responsible for controls (UCOs) concerning control activities (ref. MA letter ref. 0070001 of 06.03.2020 — Annex4.2), with particular reference to the procedure for the control of the Declarations on the corporate dimension, as well as the methodology to be used to identify the operations to be audited.
- Update and supplement the relevant manuals, audit trails and checklists used for the management verifications under Article 125 (5) (a) of Regulation (EU) No 1303/2013 and for all aid measures. In the specific case of the CGF and the FFCS, please note the following:
 - (a) for the PON IC Reserve for the Central Guarantee Fund, the check list of the administrative level of the Fund has been supplemented, under the heading ‘Eligibility of expenditure’, with a specific control point (point 3) relating to compliance with the SME size parameter *‘The size of the undertaking declared by the beneficiary to the application for the facility and allowed during the investigation has been checked in accordance with the provisions of Articles 2 and 3 of annex I to Regulation (EU) No 651/2014’* (Ref. All.4.3- Administrative Check List I Level — Guarantee Fund — NOP I & C). In addition, as a result of the system audit carried out by the AA in 2019, the MA, in the context of its periodic inspections as part of the audit trail of the operational audit under the operational reserve, PON CI, provides for a sample check on the verification of the final consignee and in particular by performing the SME status verification (post audit system 2019, starting from the first sample drawn for the accounting year 1 July 2019-30 June 2020) on the basis of appropriate supporting documentation for all the operations included in the selected sample.
 - (b) for the Fund for Sustainable Growth, for the first-level administrative checks carried out since 2020 following the AA’s system audit 2019, as part of the checklist for first-level checks on the SMEs’ size, in line with the provisions of Articles 2 and 3 of Annex I to Regulation (EU) No 651/2014 (Ref. Annex.4.4 - Administrative Check List at the Level I Fund of the Revolving Fund for Sustainable Growth). In addition, for these projects, the procedures for checking the size have been

reinforced, in line with the parameters set out in annex I to Regulation (EU) No 651/2014. In fact, it is requested that the checks on the SME's size have to be carried out on all projects (except for the cases of large enterprises, universities and public research bodies), either by the managing party (financial intermediaries or banks) or after the aid has been granted by the first-level control.

We consider that the actions put in place by the MA, in accordance with the recommendation made by the AA, lead to a greater protection of the aspect relating to the verification of the size of the undertaking by the MA itself, in accordance with the procedures laid down, for all the aid measures, to verify the size of the undertaking, in accordance with the provisions of annex 1 to Regulation (EC) No 651/2014, already at the time of the application for the aid (for new calls) and in any event as part of the first-level administrative checks.

On the basis of the above elements, taking into account the absence of errors in the sample selected by the EC, the improvement actions put in place by the AA and the MA, it is considered that sufficient and adequate safeguards exist with regard to the verification of the SME status of final recipients of the financial instruments of the NOP JU 2014-2020 and there is no need for further audit work.

Position of the Commission services:

The recommendation 04.01 is Open

The Commission auditors welcome the improvements put in place by the MA to ensure compliance with the company size in the context of the first level controls under Article 125(5)(a) of Regulation (EU) No 1303/2013, as amended, and, consequently, steps taken to amend the manuals, the audit trails and checklists currently in use. The MA is expected to provide detailed information on the progress of their verifications to ensure compliance with the provisions of article 2 of annex 1 to Regulation (EC) No 651/2014 in the Annual Summary due to be submitted by February 2021.

The Commission auditors also note that the audit authority, based on the additional verifications carried out by the financial intermediary MCC, confirms the status of SMEs of all the undertakings included in their sample for the accounting period 2018/2019 with reference to the Fondo Centrale di Garanzia and the Fondo di crescita sostenibile.

The Commission auditors have analysed the additional documents submitted by the audit authority for the verification of the size of the companies for the final beneficiaries Palumbo Costruzioni srl, Casa di Cura Macchiarella and Centro di Riabilitazione Lars. With reference to Centro Riabilitazione Lars, some weaknesses are noted in the assessment of the *de facto control* (e.g. through administrators of the same company) as it is not clear why the financial intermediary MCC excluded some companies owned by the shareholders from the assessment even though they exercise related activities (e.g. Virtus Arechi Salerno). The audit authority is requested to submit additional explanations why in the assessment for Centro Riabilitazione some companies were excluded.

The Commission services also take note of the adoption of a new tool reported in annex 4.1 of the audit authority's reply, providing more details of the work done and the documentation consulted during the audit, with particular reference to the analysis of the company structure of the applicant undertaking and the checks of information with

external sources like Telemaco/Arachne. The Commission auditors recommend giving more emphasis to the *de facto control* highlighting the checks on owner's situation and requesting to document the reasons in case of exclusion of companies from the assessment of *de facto control*. In addition, the new tool does not specify if under the headcount also the owners and directors are taken into account as mentioned in the Commission's guide. The Commission auditors recommend that in line with the Commission's guidance, owners and directors are taken into account even though the company does not formally employ them.

The recommendation is **open** pending the required clarifications.

Finding 05

Lack of assessment of the economic viability of projects

For “Fondo Centrale di garanzie”, the economic viability of investment projects to be financed (Art. 6.1.a Regulation 480/2014) is not assessed by the financial intermediary MCC. There is furthermore no evidence that it was assessed by the banks providing the loans. In the audit file, the audit found evidence only about the assessment of the financial capacity of the entity requesting the loan, with no link to the specific operations financed.

Action to be taken/recommendation

Recommendation 05.01

The programme authorities are invited to provide evidence that the economic viability of investment projects was assessed before their admission to the Fund.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 05.01: Partially Accepted

In accordance with the applicable legislation providing for a subsidiarity mechanism through the involvement of private entities in the implementation of the financial instrument and taking into account its nature, the verification of the economic viability of the projects is left to the banks providing the funding. Indeed, it is carried out prior to the request for the inclusion of funding in the portfolios, on the basis of the information provided by the final recipient in the “application form submitted to the final beneficiary” (see annex 4 of AA reply).

In particular, this form contains a section on the description of the financed company's development project, structured in such a way sufficient information is provided to

enable the bank (applicant) to carry out its own assessments. In the case of investment operations, the form shall include an indication of the purpose for which the financial transaction is requested, the total amount of the investment programme that the undertaking intends to carry out, the date of commencement of the investment if it is already started on the date of submission of the request and any other benefits obtained in order to realise that investment. In the case of working capital operations, the application form requires the fields relating to the purpose of the project for the development of the company to be financed, including those provided for in Article 37.4 of Regulation (EU) No n.1303/2013, and the description of the project (objectives, estimated time of completion, type and amount of the expenditure envisaged and the manner in which it is to be financed).

Applicants may be allowed to acquire additional information in their dealings with undertakings in order to elaborate on the information provided in annex 4.

With a view to further improving the information relating to the business project being financed, an update of the application form (annex 5.1), which has been in use since 15 March 2019, provides for a specific section on the description of the programme and the timetable for completion, on page 1 of page 3. In particular, specific detailed information on the investment is foreseen (e.g. purchase of land, machinery, intangible investment, etc.) with the related costs, and the financial coverage of the investment programme.

Evidence of the valuation work carried out by the banks providing the funding is found in the forms used to request the inclusion of the funds within the portfolio. In the application form for inclusion (ref. annex 5.2), the applicant must declare in this respect to have verified the technical, financial and economic data for the proposed operation and the updated financial and financial position of the beneficiary undertaking and any other security assisting the operation.

The funds for which inclusion in the portfolio is requested have the characteristics and purpose of Article 5 of the Decree of the Minister for Economic Development, in agreement with the Minister for Economic Affairs and Finance of 13 March 2017 and paragraphs D.2.e D.3 of the operating rules for the Guarantee Fund.

Subsequently, on the basis of the declarations provided by the applicant, MCC and the MA ensure that the guarantee has been granted for funding required for the realisation of an investment or for working capital requirements linked to a business development project that is consistent with the purposes of Regulation (EU) No n.1303/2013, NOP IC and the operational provisions governing the implementation of the financial instrument.

These analyses must be supplemented by assessments of the creditworthiness of undertakings carried out by credit institutions. It should be noted that, in accordance with the operational arrangements for financing portfolios, applicants should assess the eligibility of the final recipient and the funding to the Fund guarantee, without prejudice to the additional evaluation activities provided for by the current operational provisions of the Fund by the Manager. In particular, the applicants certify the creditworthiness of the final beneficiary, ensuring that the latter is eligible for assistance from the Fund on the basis of the evaluation model and therefore does not fall under the 5 evaluation.

We would also point out that, as a result of the last operating provisions in force since 15.03.2019, the fund manager (pursuant to Article 2 (6) of Decree-Law n.69/2013) adopted an internal model for the assessment of the creditworthiness of undertakings, similar to the rating models used by banks, which replaced the old credit scoring system. The evaluation model has a structure made up of two information forms: (a) economic and financial form, providing a predictive measure of the asset, economic and financial risk profile; (b) credit profile form, providing a predictive measure of the credit risk

profile, deepening the dynamics of its relations with financial institutions at system level. The final assessment of the creditworthiness of the recipient is the result of the joint analysis of the data contained in the two forms as well as any event and/or insolvency proceedings that have been registered. The new valuation model was formally adopted in July 2019 by the Guarantee Fund Management Board; the rating scale is structured around 5 credit quality classes, with the last class defining the 'non-eligibility' area for the Fund in view of a high probability of default.

The banks carry out, therefore, also in compliance with the internal procedures for granting the credit, a bankability analysis of the financial transaction. In order to substantiate the proposal for a decision on the grant of the financing, the main economic, income and financial ratios for the company, analysed by the bank are summarised in the notes to the proposal for a decision on the award of the financing. This is considered compliant with Article 6 of Regulation (EC) No 480/2014, which, in laying down the role and responsibilities of bodies implementing financial instruments, provides that they shall act because of a level of professionalism, efficiency, transparency and diligence in accordance with the applicable rules and in relation to the nature of the financial instrument.

In particular, with reference to the nature of the instrument, it should be pointed out that the PON IC Reserve of the Central Guarantee Fund is intended to improve access to finance for SMEs with the Fund's "public guarantee". The PON IC Reserve operates through actions to establish, in the Mezzogiorno regions, a higher level of coverage of the Guarantee Fund and a modulation of the amount of funding granted in accordance with the level of riskiness of the financed undertaking.

In line with existing EU legislation and, in particular, with Commission Communication 2008/C 155/02 of 20 June 2008 on State aid in the form of guarantees, the rationale behind the intervention of the Guarantee Fund is based on a fair sharing of risk between the State and the fund provider. The guarantee rates of the Fund shall always be partial and leave the financing entity for a significant part of the risk of the financial operation in order to ensure the involvement and responsibility of the financial entity itself in the selection of the undertakings and projects to be financed. The provisioning rates for the Fund range from a minimum of 30 % of the amount of the financed operation to a maximum of 80 % in the event of a situation of more than one market failure. In the specific case of the PON IC Reserve, the guarantee is granted based on portfolios of new financing provided to SMEs to cover losses incurred on these portfolios up to a certain cap of the portfolio itself (10 or 12 %, depending on the type of portfolio). The losses exceeding that cap continue to be borne in full by the funding bank. It is therefore in the interest of the bank that proper investigation of the validity of the application for funding is made.

Support for access to finance for SMEs and the sharing of credit risk between the State and the fund provider are two building blocks of the financial instrument Reserve NOP IC, which means that credit institutions and MCC are relevant for the financial evaluation of the undertaking and their ability to repay the guaranteed funding.

In addition, the loans are granted for investment programmes and/or working capital requirements of limited size (the average value of funding granted under the PON IC Reserve is about EUR 150 000,00). The funding in most cases concerns projects related mainly to the purchase of machinery/equipment, renovation works, suppliers and purchasing stocks, which by their nature do not present any particular elements of complexity.

In view of the above, we consider that, in relation to the financial instrument of NOP IC Reserve, the activities to verify the economic viability of projects are properly carried out within the framework of the mechanisms implementing the financial instrument. In addition, as of March 2019, further improvements have taken place as regards the information and the establishment of this specific aspect by the implementing body.

Position of the Commission services:

The recommendation 05.01 is Closed

The Commission auditors take note the improvements in the application form submitted by the final beneficiary set out in annex 5.1 of the audit authority reply, in which more specific detailed information on the underlying investment is requested (e.g. purchase of land, machinery, intangible investment, etc.) with the related costs, timetable and the financial coverage of the investment programme. The Commission auditors take note that based on this form banks can ensure adequate verification of the potential economic viability of the investment projects to be funded (Article 6(1)(a) of Delegated Regulation (EU) No 480/2014).

The Commission services highlight the importance for each operation to document adequately the checks carried out by the banks on the verification of the potential economic viability, in addition to the checks aimed at monitoring the credit worthiness of the applicant companies, based on an internal model adopted in July 2019. As stated by the audit authority, it is therefore in the interest of the bank that proper checks on the validity of the application for funding is made.

Nevertheless, it is reminded that as part of its responsibility to monitor the work of the financial intermediaries and to control the delegated management verifications, the managing authority should update its internal procedures to provide for checks on a sample basis on the verification carried out by the banks on the potential economic viability.

The audit authority should review this aspect under the audit work carried out under key requirement n.4, and as part of its normal audit work of audit of operations and report the results of this work in the next annual control report

The recommendation is **closed**.

6. PROJECT FINDINGS

Finding 06

Category: Financial instruments

Sub-category: Other financial instruments

FONDO SMART & START

Variation in the funds allocations over time

The fund had an initial allocation of EUR 45 000 000, of which EUR 36 570 000 in financial instrument financed with ERDF. After the declaration to the Commission of the first 25% of the initial allocation (first tranche for EUR 11 250 000 of which ERDF EUR 9 142 500 reported in the accounting period ending on June 2018) the fund global amount was reduced with a Ministry act dated 21 May 2018 by EUR 6 000 000 and the resources were transferred into a guarantee fund for transition regions. The entire European contribution of EUR 6 000 000 to the guarantee fund was requested through interim payment in the accounting year ending in June 2019.

As provided for in Article 10 of the CDR Member States and MA may withdraw the contribution from an ESIF programme to the FI. In this case, when the programme contributions had been certified in previous accounts, the payment applications should reflect the withdrawals to contributions from programmes to the FIs supported by the ERDF, in line with Article 10. The Guidance on Article 41 of the CPR requires that these withdrawals, irrespective whether they occur as a result of the revised investment strategy (with reduced ESIF programme contribution), or result from irregularities detected during the implementation of the FI, should be registered in the accounts prepared by the CA and disclosed in the appropriate appendixes of the accounts submitted to the Commission, in line with Annex VII CIR.

The managing and certifying authorities should have ensured an adequate and timely audit trail supporting the adjustments made to payment applications.

In addition, since the contribution from ESIF programme to the FI has been already included in the accounts for the accounting period ending on June 2018, the Appendix 1 of the following first payment application (interim or final and which presents cumulative amounts) should have reflected the reduced programme contribution paid to the FI.

Action to be taken/recommendation

Recommendation 06.01

The Commission auditors will verify during the assessment of the assurance package whether or not the accounts for the programming period ending on June 30, 2019 reflects the correct updated information as regards the cumulative payments to financial instruments and the possible effect on the TER for the accounting year ending in June 2018.

In case not, the programme authorities should reflect the reduced programme contribution paid to the FI in the next application for payment and provide evidence for it.

Importance: Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 06.01: Accepted

With reference to the checks carried out for the case No 10 "Reserve NOP IC — Fondo Centrale di Garanzia", the AA confirms the compliance with Article 3 of the Ministerial Decree of 21/05/2018, which provided for the "Decrease of the financial allocation for the Smart & Start Italy intervention in the transition regions and the integration of the financial allocation assigned to the section “NOP IC” of the Guarantee Fund for Small and Medium-sized Enterprises”.

In this regard, the AA recommended to the competent authorities, in accordance with the provisions of Article 139 (10) of the CPR, to adjust the amount already certified as the first payment of 25 % for the financial instrument Smart & Start Italia during the 01/07/2017-30/06/2018 accounting period and to proceed with the ensuing recovery, in order to ensure compliance with Article 41 (1) (a) of Regulation (EU) No 1303/2013 in the first following payment application.

The AA, based on the documentation sent by the MA with letter ref. 0015290 of 22/01/2020 in the context of the contradictory procedure, established:

- The new envelope of the financial instrument *Smart & Start* of EUR 31 724 800 as a result of the reduction in the resources of the NOP allocated to the TR section of the S&S Fund, as set out in the Directorial Decree No 44399 of 10/12/2019 (Ref. annex 6.2).

In particular, the allocation of NOP IC resources to the Smart & Start NOP dedicated to the operations located in transition regions, as referred to in Article 1 (1) of the Directorial Decree No 4319 of 24 October 2017 (Ref. Annex 6.3), was reduced in accordance with Article 1 of Directorial Decree No 44399 of 10 December 2019, cited above, from Euro 9 725 200,00 to EUR 4 880 000,00.

This reduction in the allocation of resources to the section of the Revolving Fund dedicated to localised initiatives in transition regions (amounting to EUR 4 850 200,00 = EUR 4 880 000,00 — EUR 9 725 200,00) results in a corresponding reduction of the overall budget of the financial instrument, which has been restated from EUR 36 570 000 to EUR 31 724 800.

- The correction, in the interim payment application No 1 of 20/12/2019, referring to the 1/07/2019-30/06/2020 accounting year (Ref. Annex 6.4.1) of the amount of EUR 1 211 300,00 from transition regions in excess of 25 % of the new financial envelope of the Fund.

In particular, based on the statement of expenditure of the MA (ref. no 441999 of 17/12/2019) and the supporting acts (Ref. annex 6.4.) the AA found that EUR 1 211 300,00 corresponds to the difference between EUR 2 431 300,00 (amount certified as first 25 % for TR regions in the accounting year 17-18) and EUR 1 220 000,00 (25 % of the new financial envelope of EUR 4.880.000,00 from the Fund section devoted to interventions on transition regions).

The AA also took note of the second payment advance to the Fund, set out in the above-mentioned Directorial Decree No 44399 of 10/12/2019, in respect of the less developed regions of EUR 5 499 900,00. This corresponds to the difference between EUR 6 711 200, 00 (25 % of the budget of the LDR section of the Fund) and the amount of EUR 1 211 300, 00 as recovery.

With regard to this aspect, based on the documentation sent by the MA in letter ref. 0097125 of 31/03/2020 (Ref. annex 6.5.) and as referred in the follow-up report of the system audit on the MA ref. 0006036 of 18/05/2020 (Ref. annex 6.6), the AA was able to check that:

- The crediting of the amounts paid in respect of the second payment in respect of the LDR regions for EUR 5 499 900,00 on the dedicated C/c number 9626 for the LDR regions;
- The transfer, amounting to EUR 1 211 300,00, to c/c (9629) of the TR Regions for less developed regions.

In conclusion, the above elements provide evidence of the reduction of the programme's contribution to the financial instrument and the decertification made in payment claim No 1 of 20/12/2019.

With reference to the request to assess this reduction for possible effects on the TER for the accounting year ending in June 2018, the assumptions and reasons for the revision of the total error rate are not included in the regulatory provisions nor in the guidelines provided by the European Commission, considering also that this reduction does not result from an irregularity detected by the AA in the audited sample in the accounting year 17-18. Furthermore, despite having regard to the RTER of the accounting year in which the financial correction took place (accounting year 2019-2020), please note that negative amounts with deduction of expenditure from previous accounting periods cannot be included in the calculation of the residual risk (see paragraph 4 EGESIF_15-0002-04 of 17.12.2018).

Position of the Commission services:

The recommendation 06.01 is Closed

The Commission auditors take note of the explanations provided and of the actions taken by the programme authorities. In particular, the audit authority has verified the new amount of the ESI contribution to the fund and the managing authority has corrected the amount related to the reduction of the fund in the first interim payment available, as requested by the Commission auditors.

The reduction of the fund has been carried out by offsetting the amount exceeding the 25% of the fund for the transition region with the second advance payment of the fund for the less developed regions.

The recommendation is **closed**.

Finding 07

Category: Financial instruments

Sub-category: Investments not eligible

FONDO CENTRALE DI GARANZIA

Insufficient verifications of the regularity of the guarantees issued by the fund manager MCC: eligibility of the investments and use for the intended purpose

The Fund is the continuation of a pre-existing instrument set up according to the national law n. 663 of 23/12/1996 and is made of several reserves, one of which is the Riserva speciale PON Imprese e Competitivita' (IC), co-financed with ERDF funds and set up on 13/03/2017. The Riserva speciale PON IC can finance direct guarantees, counter-guarantees and co-guarantees, including for portfolios. According to the MA, for 2014-2020 the reserve will mainly finance guarantees on portfolios of loans (max 80% of the single loans capped to 10% of the nominal value of the portfolio). The resources allocated to the FI are EUR 206 million.

According to the operating rules approved for the fund, the verifications before issuing a guarantee are split between the two bodies involved, namely the banks and MCC, in the following way:

1. When selecting the loans to be inserted in the portfolios, the banks should perform the following checks:

a) the possession by the final recipient, of the subjective and objective requisites foreseen by the regulations in force for the access to the guarantee, through the verification of:

- the size of the company,
- the admissibility of the sector of economic activity in which the company operates,

b) compliance with the purposes and characteristics of the loan with respect to the provisions established in the operational rules,

c) the creditworthiness of the company requesting the loan and the guarantee (ensuring a sufficient scoring level).

2. While the financial intermediary MCC, after the reception of the request by the banks for the individual final recipients to be included in the portfolio, should perform additional checks on the respect of the state aid rules and of the maximum amount to be guaranteed by individual final recipients.

The Commission auditors noted that there is no evidence of any verification performed neither by the banks nor by MCC of the specific investment to be financed. Article 5.4 of DM of 13.03.2017 (characteristics of the financial operations) states that the banks should acquire from the final recipients and transmit to MCC a description of the investment to be financed. However, no business plan or equivalent document was present in the electronic file kept by the financial intermediary MCC. There is no evidence that such documentation was requested and kept by the banks either. The only indication about the type of operation financed found by the auditors in the IT system is annex 4 of the requests of admission to the fund in which the final recipients describe the

investment to be financed in very general terms. Some examples of such general description of the investments among the 8 files audited were “payment to suppliers”, “investments in machines and equipment to strengthen production capacity”, “financing for the construction / renovation of an industrial factory”, “investments in works on plant and machinery and equipment plant”.

Furthermore, in the audit file, the EC auditors found evidence of only the assessment of the financial capacity of the entity requesting the loan, with no link to the specific operations financed. The assessment of financial viability of the final recipient is not sufficient. The Commission auditors consider that financial intermediaries should also check the financial viability of the investments (investment costs, operational costs and revenues) and their impact on the company’s finances after the investment.

During the audit, the representatives of MCC confirmed that the fund manager does not check the types of investment proposed to the banks for the loans. It relies on the assessments performed by the banks and it does not request the business plans or equivalent documents presented by the final recipients for obtaining the loans. As a result, there is no evidence:

1. That the investment selected fulfils the specific eligibility rules for the expenditure financed with ERDF funds, including State aid rules;
2. That the potential economic viability of investment projects to be financed (Art. 6.1.a reg.480/2014) was assessed by MCC and/or by the banks providing the loans.;
3. of a proper verification of the use of the funds for their intended purpose (art. 9 of CDR 480/2014). Only in case of investments, the fund manager MCC checks that there are invoices justifying at least 50 % of the loans, while nothing is checked in case of finance provided for working capital. The Commission auditors are of the opinion that without a proper description of the investments at the basis of the loans (i.e. business plan or equivalent document), the compliance with art. 9 of CDR cannot be verified and therefore ensured.

The AA did not raise this issue in its audit.

Action to be taken/recommendation

Recommendation 07.01

The programme authorities should provide evidence that the investments in the portfolios admitted to the fund respect the specific eligibility rules of the programmes financed with ERDF resources, including State aid rules.

In addition, they should provide additional evidence that the potential economic viability of investment projects (Art. 6.1.a reg.480/2014) was assessed by the banks before granting the loans or by MCC before admitting the investments in the portfolios. The MA should also confirm this assessment, re-performing the checks done by the banks/MCC on a sample basis. The programme authorities should also provide evidence of the verifications performed to ensure the use of the funds for their intended purpose (art. 9 of CDR)

In case no checks were done by the banks/MCC, the MA should assess the potential economic viability of all the investment projects supported with the Fund before taking the related expenditure into account for the request of additional advances for the FI. Until this evidence is gathered, the related expenditure cannot be considered eligible and should not be declared as such to the Commission.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 07.01: Partially Accepted

As regards to the existence of conditions for eligibility for ERDF operations and compliance with Community State aid rules, please note the following.

The assessment of the eligibility of the beneficiary and of the financial operation underlying the guarantee of the NOP IC reserve is carried out on the basis of the provisions of the NOP JU and the operational provisions in force, namely the Ministerial Decree of 13 March 2017 and the Ministerial Decree of 24 April 2013, as amended, with specific reference to the guarantees on portfolios of funding. In particular, the applicants shall certify that:

- a. the final recipient's possession of the objective and objective requirements laid down by the reference legislation, through the verification of micro, small and medium-sized enterprise parameters listed in Annex 1 to Regulation (EU) No 651/2014, the eligibility of the sector of economic activity in which the beneficiary operates, the location of the undertaking's operating center within the operational area of NOP IC and, through the verification, at the Central Financial Risk Centre, CREF and other public databases, that the recipient is not classifiable as a firm in difficulty within the meaning of Article 2 (18) of Regulation (EU) No 651/2014,
- b. the extent to which the objectives and characteristics of the financing requested by the final recipient are consistent with Article 5 of the Ministerial Decree and the programme;
- c. the credit quality of the final recipient requesting funding for its inclusion in the portfolio, ensuring that the valuation models and their methodology for their application, as provided for in the current Operational Provisions of the Fund, are complied with.

The additional evaluation activities provided for by the current operative provisions of the Fund, including the determination of the aid intensity, the verification of compliance with the limit on the maximum amount guaranteed by the Fund per consignee, as well as the maximum aid intensities provided for by the Community State aid rules, shall be carried out by the Fund Manager in order to include funding within the portfolios.

The results of these verifications are communicated to the requesting entity and to the final recipient after the inclusion by the Management Board (see letter of beneficiary and

applicant present in the project files). In addition to the checks referred to above, the managing body shall, in accordance with the Ministerial Decree of 2 September 2015, carry out documentary checks on a sample of funds included in the portfolios and, in that case, acquire from the applicant the documentation justifying the expenditure incurred for the investment in order to verify that the investment was carried out in accordance with Annex 4, is eligible for the Scheme and complies with the relevant Community and national legislation, including the State aid rules.

We would also point out that compliance with the rules on state aid is also verified in the context of the first-level controls carried out by the MA. The checklist used for administrative verifications includes a specific control point in relation to compliance with Regulation (EC) No 651/2014 for exempt transactions and Regulation No 1407/2013 for *de minimis transactions*. In view of the recommendations made by the Commission, the MA:

- has updated checklists on a periodic basis (referred to in Annex 1 above.7.1) — to be used for the verifications that will be carried out on the first useful sampling — July 2020 — with a further control point on compliance with State aid rules: — ‘Operation’ — Control Point No 8: *‘In the case of aid requested under the exemption Regulation 651/2014, was the guarantee issued in relation to one of the categories of aid referred to in Articles 17, 21 or 22?’*

- undertakes in future checks to describe even more precisely, in the checklists for which it is responsible, the checks carried out by the various bodies involved in the process of selecting operations in respect of compliance with State aid rules.

In relation to the economic viability of the projects, reference is made to what is stated in finding 5 of the Present report.

As regards compliance with Article 9 of Delegated Regulation (EU) No 480/2014, for investments operations MCC (financial intermediary) checks the realization of the investment on the sample of operation selected for documentary checks.

In this respect, it should be noted that the operational provisions of the Guarantee Fund in force on the date of inclusion of the funds in portfolio No 15, referred to above, provide for the verification of the investment as a whole. It is only if it is not possible to document that it is carried out in full, within the time limits laid down for carrying out the documentary checks, that the guarantee is confirmed when the costs are borne in respect of each partial payment. In the case of balancing payment, the same operational provisions shall provide that at least 50 % of the planned programme have been completed. A lower percentage may be allowed only in cases where the percentage is equal to at least 100 % of the secured funding. If that is not the case, the time limits for completion of the verification shall be suspended until the fulfilment of the condition, which, in any event, must be completed within a further period of 6 months. If the investment is not carried out in accordance with the above percentages and deadlines, the procedure for withdrawing the concession from the final beneficiary shall be initiated.

This forecast has been revised following the entry into force of the operational provisions of 15.03.2019, where the final beneficiaries must prepare a final report, signed by the legal representative containing the list of uses of the guaranteed funding, the description of any substantial changes in the execution of the investment programme submitted, the statement that the planned activity has taken place, and copies of the invoices for the tangible and intangible assets acquired or carried out.

As regards working capital, MCC checks that the guarantee has been used in order to promote access to credit for the companies, ensuring that the loan is actually paid to the final recipient.

Evidence that the support provided through the financial instrument has been used for the intended purpose applies to any form of support (loans, guarantees, equity, etc.) and therefore needs to be put into context in relation to the particular nature of the support and the characteristics of the assistance. In the context of the Guarantee Fund, in view of:

- > the objective of Action 3.6.1 to support access to finance;
- > the special nature of working capital as the amount of resources which make up and finance the operational activity of a holding;
- > the main needs for which undertakings require the intervention of the public guarantee (credit to clients; storage of finished goods, processing and raw materials; advances to suppliers; debts to suppliers; debts to employees and third parties).

In view of the fact that the resources set aside for guarantees granted are reimbursed by the ESI Funds, the verification concerns the actual payment of the underlying loan, the same guarantee for the purposes of Article 37 (4) of Regulation (EU) No n.1303/2013.

This is also consistent with the previous programming period and in accordance with the 'Common audit framework for financial engineering instruments under the Structural Funds 2007-2013', which clarified that the verification of the use of funds for the intended purposes, in the case of guarantee funds, would materialize when assessing the existence of the loan and its consistency with the terms of the guarantee.

It is added that in relation to financial transactions to support working capital needs linked to a business development plan, control over the use of resources for the intended purposes should be implemented in a significantly different way in comparison with similar investment control.

In fact, the working capital represents the amount of resources that make up and finance the operational activity of a company, while, under another consolidated concept, working capital is the difference between current assets and current liabilities. This definition includes short-term assets and liabilities that are non-financial, recurrent in business, monetary and non-accounting. Given, therefore, the particular nature of working capital, the detailed verification of expenditure is certainly different from that accompanying the investments, even considering that the financial instrument in question does not provide for the granting of loans to undertakings but intervenes indirectly in order to facilitate their access to credit. This seems to have been explicitly recognized also by the Commission with the recent document EGESIF 20-0006 of 6/5/2020, in which, as regards working capital checks, it is stated, "asking for prices to justify the use of the working capital financing would otherwise not be regulated".

In view of the above, the Programme Authorities consider that:

- the state aid rules and the specific eligibility rules for projects financed from ERDF funds have been complied with;
- the assessment and verification activities referred to in Articles 6 (also counter-arguments referred to in observation Nos 5) and 9 of Regulation (EC) No 480/2014 have been carried out and programme authorities do not therefore need to carry out any further verification activities.

Position of the Commission services:

The recommendation 07.01 is Open

In relation to the controls on eligibility rules and State aid rules, the Commission auditors take note of the clarifications and explanations provided. The Commission auditors also take note of the improvements implemented in the checklists for management verifications, which now include a more detailed control point on State aid.

In relation to the assessment of potential economic viability of investment projects, the Commission auditors take note of the explanations given under finding 5 above.

In relation to the verifications performed to ensure the use of the funds for their intended purpose (art. 9 CDR), the Commission auditors take note of the MA explanations, in particular that the manager of the fund performs, on a sample basis, documentary controls on the implementation of the investment and keeps evidence of its completion.

In the case of investments, the programme authorities should confirm that compliance with the provisions of article 9 of the CDR concerning the use of the intended purpose is verified on the basis of the checks performed by the fund manager.

As regards guarantees given to secure loans to finance working capital, the Commission services note that controls are limited to the fact that the loan is granted to the final recipient. It is noted that the managing authority states that due to the nature of the assistance, the purpose of the fund is the access to financing, which is achieved with the loan and requesting invoices would not be considered a normal practice.

However, after the transmission of the draft audit report, Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020 has amended the provisions in this regard to provide exceptional flexibility for the use of the ESIF in response to the COVID-19 outbreak. According to article 11, where financial instruments provide support in the form of working capital to SMEs, new or updated business plans, or equivalent documents, and evidence allowing verification that the support provided through the financial instruments has been used for its intended purpose as part of the supporting documents, is not required anymore for the remainder of the programming period.

Therefore, the recommendation remains open in relation to the investments and is closed for the part related to working capital.

Finding 08

Category: Financial instruments

Sub-category: Management costs/fees not eligible

FONDO CENTRALE DI GARANZIA

Contract modification and market value of management costs and fees

The fund manager (MCC) was selected following an open procedure launched in 2010 (contract signed in 2012) for the management of the National Guarantee fund. The instrument object of audit is special section of this national fund. The contract with MCC, for a duration of 9 years, has been updated in 2017 to take account of the updated 2014-2020 legal framework.

Article 10 of the funding agreement signed in 2012 establishes the management costs and fees due to MCC. They are calculated in line with the typology of operation fixed in annex 3 of the technical specifications of the tender (disciplinare di gara), following the financial offer provided by MCC. Since at the time of the public procurement procedure it was not planned to admit to the fund portfolios of investments, the financial offer provided by MCC did not contain any indication on the fees in case of guarantees provided on portfolios.

With the additional act signed in 2016 between the Ministry of economic development and MCC, in article 2 the fees recognised to fund manager for the individual operations in the portfolio (new typology not foreseen in the agreement signed in 2012) were fixed at 70% of the fees fixed for the typology of operations in letter o) of annex 7 of the grant agreement of 2012⁴. The Commission auditors could not find evidence of any justification for the level of fixed fees based on a market analysis.

At the time of the audit, an amount of EUR 43 260,91 was paid to MCC for the management of the ‘portfolio 15’ audited. Even if this amount is below the thresholds laid down in Article 13 of Reg. 480/2014, the auditors could not assess the adequacy of the fees recognised to MCC, since they were not included in the original offer by MCC and no justification for the calculation basis of the amounts was provided on the spot.

Action to be taken/recommendation

Recommendation 08.01

The programme authorities are invited to provide evidence of the assessment of the adequacy of the fees recognised to the fund manager MCC for the management of portfolios of guarantees.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 08.01: Rejected

With regard to the comment made, please note the following:

The Convention concluded on 28 March 2012 between the Ministry of Economic Development and the Bank of Southern Italy — MedioCredito Centrale S.p.A. as the holder of the temporary consortium — for the technical, administrative, financial and

⁴ Medium / long-term guarantee operation admitted to the intervention of the Fund for free and presented by regional guarantee funds and co-fidi authorized to certify the creditworthiness of the companies or falling within the cases under letters C, C bis of the current operational operations

accounting management of the Guarantee Fund for small and medium-sized enterprises referred to in Article 2 (100) (a) of Law No 662 of 23 December 1996 and subsequent amendments and additions — in Article 10 (Corto and reimbursements), paragraph 1 provides:

1. Under Article 15 of the specifications, the consideration for the Service, which is the subject of this Convention, shall be determined by multiplying, for each type of operation provided for in the table in Annex No 3 to the tender specifications, the number of transactions handled during the year in question by the Manager in the amount of the fee indicated by the operator in the financial tender (Annex 7). The charges for the service of the Manager, carried out in accordance with the provisions of Article 4 (3) above, are exempt from VAT under points 1 and 9 of Article 10 of Presidential Decree No 633 of 26 October 1972, as amended.

For the definition of the fees granted to MCC for operating on loan portfolios, the MCC note No 4282/16 of 6 April 2016 (Ref. annex 8.1) shows the proposal for revision of fees under Article 11 (2) of the abovementioned Convention of 28 March 2012 (see annex(8.1) new operations of the Fund. This proposal was formulated by MCC based on the legislative changes in the Guarantee Fund, with specific reference to the new types of operations eligible for the guarantee after the conclusion of the Convention of 28 March 2012, including the operations of portfolios of funds. This made necessary to assess the impact of the new requirements in carrying out the investigation of individual guarantee applications in terms of both regulatory *compliance* and administrative activities resulting from the deliberations of the Management Board. In order to proceed with this proposal for a revision of the fees, MCC has carried out a preliminary review of the operation of the Fund during the previous year. In particular, on the financing portfolios, as set out in that Communication, MCC states that:

Or [... [...]] for the loan portfolios and portfolios of mini-bonds, the tasks of the Manager are different from the situations already covered by the present Convention, since such operations include [...].] an investigation of the requests for inclusion of the funds in the portfolio, which is reduced by comparison with that for operations submitted under the 'simplified' procedure in accordance with Part VI — Criteria for the financial assessment of undertakings for the admission of operations — of the current operational provisions, in that, as provided for in Article 12 (1) of the Decree of the Ministry of Economic Development of 24 April 2013, certain evaluation activities are carried out directly by the applicant [...].] In view of the above, for operations relating to portfolios of loans and for mini-bonds, a fee of EUR 262,50 is proposed, corresponding to 70 % of the amount foreseen for the above mentioned type (s) [...].

The above MCC note for the revision of the fees was approved by the MISE by additional act of 15 September 2016 (see letter “n” of the premises of the amendment) to the Convention signed on 28 March 2012 between the Ministry of Economic Development and the Bank of Southern Italy — Medio Credito Centrale S.p.A. (Ref All.8.2). That additional act — approved by Director’s Decree No 5390 on 22 September 2016, registered by the Court of Auditors on 25 October 2016 at No 2584 — provides, in effect, as follows:

Article 2 (Correlated new operations) point 2: *The consideration relating to the new operations, eligible for the guarantee fund under the inter-ministerial decrees referred to in the recitals, portfolios of financing and minibond portfolios, referred to in points (f) and (i) referred to in the preamble, shall be EUR 262,50 equivalent to 70 % of that provided for the type referred to in point (o) of annex 7 to the 28/03/2012 Convention.*

In addition, the MISE formulated a proposal for a revision of the consideration for the service provided for by the Convention (see letter 'r' of the preamble to the additional act) as better defined in Article 3 of the abovementioned amendment, as follows:

Article 3 (Re-determination of charges):

1. For 2016, the total periodic charge for the service of the Manager determined in accordance with the criteria laid down in Article 10 of the 28/03/2012 Convention is reduced by 5 %.

2. From 1/01/2017 and for each year until the natural end of the 28/03/2012 Convention, the total periodic consideration for the service of the Manager determined in accordance with the criteria set out in Article 10 of the Convention shall be reduced by 5 % to the extent of reaching the threshold of 110.000 operations permitted. If that number of eligible transactions is exceeded, the consideration accruing in the year, after reaching that threshold, shall be reduced by 15 % to the total of all types of transactions.

On the basis of the above, please find attached the table (see annex 8.3) reconciliation of EUR 43.260,91, of which EUR 39.927,09 and EUR 3.333,82, paid to the Fund manager, in respect of the 182 transactions dealt with in 2017 and included in portfolio No 15, in accordance with the thresholds laid down in Article 13 of Regulation (EU) No n.480/2014 and the above provisions.

In particular, the compensation of EUR 43.260,91 for the Manager's service in respect of the portfolio of loans granted in 2017 to the Guarantee under the NOP IC Reserve is composed as follows:

- EUR 25.187,38 (EUR 249,38 * 101 operations):

EUR 249,38, equivalent to 70 % of the compensation provided for the type referred to in point (o) of Annex 7 to the 28/03/2012 Convention, with a reduction of 5 % for the transactions authorized in 2016 (point 101)

- EUR 18.073,53 (EUR 223,13 * 81 operations):

EUR 223,13, equivalent to 70 % of the compensation provided for the type referred to in point (o) of Annex 7 to the 28/03/2012 Convention, with a reduction of 15 % for operations taken during the year after 110.000.

In this regard, it should be noted that the above threshold in 2017 was exceeded, in the Fund, in the 06/12/2017 management council as a whole, with the admission of operation 780120; in the specific category of the PON IC Reserve, this has been the case with the admission of operation No 783258 (see Annex 8.4, Decision of the Management Board).

In order to further substantiate the above, please find attached (see Annex 8.5) the following documentation:

- Communication of 27/04/2018 by the MCC temporary consortium to the Ministry of Economic Development: the annual management statement for the financial year 2017, the statement of the minutes of the Council of 26/04/2018 for the approval of that statement, the detailed statement of the management committees of the Fund and of the NOP IC reserve;

- Letter from the Ministry of Economic Development No 228869 of 13/06/2018 authorizing the Fund to issue invoices to the Ministry in accordance with the procedures laid down in Article 10 (5) of the above Convention, in view of the results of the checks carried out by the MA in respect of the 2017 accounts;

- Electronic invoice No 5 of 19 June 2018 including the amount under the NOP IC reserve (see points 6.1 and 9.2 of the Report on Management at 31 December 2017);

- Note No 0241309 of 2/07/2018 authorizing the payment of the invoice.

Position of the Commission services:

The recommendation 08.01 is Open

The Commission services take note of the agreement between medio-credito centrale (MCC) and the managing authority in relation to the fees recognised for the management of the portfolio. In particular it is noted that after the proposal of the new fees by MCC (70% of the fees fixed), the managing authority has attained a further reduction of costs (from 5% up to 15%).

However, the Commission services still consider that no evidence has been submitted in relation a potential market price of the fees in the absence of a public procurement procedure, and that even after the negotiation between MCC and the managing authority, the fees appear to be fixed arbitrarily.

The above situation falls by analogy under irregularity 1 of the Commission decision C(2019)3452 on guidelines for determining financial corrections for non-compliance with the rules on public procurement, which refers to unjustified direct award (i.e. unlawful negotiated procedure without prior publication of a contract notice). Therefore, the management fees declared to the Commission for this operation have to be corrected with a flat rate of 100%.

The ineligible expenditure amounts to EUR 43 260,91 and the financial correction should also be applied to the additional expenditure to be declared for this operation. Therefore, the recommendation is **open** until confirmation is received that the required financial correction was implemented.

Finding 09

Category: Financial instruments

Sub-category: Absence of/inconsistency of investment strategy with programme's objectives

FONDO CENTRALE DI GARANZIA

Definition of multiplier ratio

The ex-ante assessment refers to the multipliers for guarantee funds in the previous programming period. There is no analysis related to the appropriate multiplier ratio. The current instrument is set-up with a multiplier of 10 for the portfolios of guarantees, while there is no justification in the ex-ante assessment which would explain the different multiplier of the guarantees under the 2014-2020 period (i.e. 10), compared with the multiplier achieved in the 2007-2013 period (i.e. 19, as reported in the ex-ante assessment).

Action to be taken/recommendation

Recommendation 09.01

The OP authorities are requested to provide a justification for the adoption of the multiplier set at 10 for the portfolios of guarantees. Please also refer to finding and recommendation No 1.

Importance: Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 09.01: Accepted

With regard to the mis-alignment between the value of the multiplier for the 14-20 programming period and the value of the multiplier for the period 7-13, it should be noted that on *page 42 of the ex-ante assessment (annex 3) it is reported the following: 'In particular, the portfolio guarantee, which has been operational since 2014, has proved to be particularly effective, having allowed, after one year of activity, to guarantee 7 portfolios of funding, for a volume of new loans granted to SMEs amounting to EUR 1,24 billion, as compared with EUR 65 million of resources allocated, and thus recording, a particularly high multiplier effect (approximately 19)'*. This refers to the recorded value on the financing portfolios eligible for the Guarantee of the 'National Fund', and not to the value established in the 2007-2013 programming period for the reserve PON R & C (approximately 7.4 %), the operation of which, in accordance with the so-called 'Graan by loan' reserve, has, *in contrast* to the current PON IC Reserve, provided for, exclusively, the grant of the guarantee on individual funds throughout the period of implementation of the instrument.

While relying on the same operational mode of the Fund, the PON IC Reserve recognizes a higher guarantee (10 % of the nominal value of the portfolio) compared to that issued by the National Fund (7 % of the nominal value of the portfolio) precisely because of the type of portfolios eligible for the same reserve. In fact, these are financing portfolios, whose operations are limited to less developed and transition regions, with an intrinsic risk higher than that associated with national portfolios for two reasons:

- a) are territorially limited, with a greater concentration of risk;
- b) undertakings in the least developed and transition regions, which are the beneficiaries of the assistance in question, have a higher average risk (rather than double) than that of the undertakings present on the rest of the national territory.

It follows that a higher level of the multiplier corresponds to a higher guarantee.

In the case of ex-ante assessment, precisely because of the significant experience with the previous PON R & C reserve, it was considered to give a multiplier effect that would be as close as possible to that of the reservation itself (7.4 %).

However, the discrepancy between the latter value and that actually provided for in the instrument (10 %) is due to factors occurring after the assessment period, which led the Administration and the Manager to calibrate the PON IC Reserve in accordance with the new evidence, in any case without deviating from the framework set out in the ex ante assessment itself.

It should also be borne in mind that Article 37.2 (c) of Regulation (EU) No 1303/2013 refers to an estimate *of additional public and private resources that the financial instrument may collect, up to the level of the final recipient (expected leverage effect)*, which is therefore likely to change on the basis of factors affecting the initial context.

Therefore, any imbalances that occur between the content of ex-ante assessment and the implementation facility of the financial instrument should be assessed with reference to the changes in the planning phase compared to the ex-ante evaluation phase.

In this connection, we would point out that, as explained in the counter-arguments to observation 1, the programme authorities consider that ex-ante assessment should be understood as a context and guidance study, finalized in an evaluation document, instrumental to the decision-making and administrative process, but not as a programming act.

Position of the Commission services:

The recommendation 09.01 is Closed

The Commission services take note of the explanation of the managing authority, which clarifies that the instrument targets the less developed areas of the country and therefore the most risky. It is noted that this element has required a higher level of guarantee of the nominal value of the portfolio, which has been reflected in a smaller multiplier.

The recommendation is **closed**.

Finding 10

Category: Missing supporting information or documentation

Sub-category: Lack or incomplete audit trail

FONDO CENTRALE DI GARANZIA

Final recipient “Cartotecnica Srl”

The enterprise “Cartotecnica Srl” requested a guarantee under article 17 of GBER. However, the financial intermediary approved the operation as “*de minimis*” without proper explanations to the final recipient. The MA and AA performed the respective verifications and controls under “*de minimis*”.

The Commission auditors observe a lack of communication between the body implementing the FI and the final recipient.

After the audit mission, MCC decided to change the regime of aid to be adhered to the one requested by the final recipient and transmitted a communication to the financial intermediary and to the final recipient rectifying the nature of the State aid granted (article 17 of GBER). The same modification was reported in the national register for State aid.

The MA has transmitted to the Commission auditors the above-mentioned two communications, which were dated 19 November 2019. However, no evidence of the additional controls performed due to the different types of State aid granted (see the following finding for “Franco Giuseppe Srl”) nor evidence of the communication to the AA were provided.

We conclude that there is a risk that compliance with State aid rules is not sufficiently checked and monitored.

Action to be taken/recommendation

Recommendation 10.01

The MA should improve its procedure ensuring compliance with State aid rules and the corresponding audit trail and should report whether or not similar cases are present for the expenditure declared for final recipients so far. The fund manager should be informed of the updated procedure to follow and sample controls should be performed. The MA should provide a description of the improved procedure.

Importance: Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 10.01: Accepted

As regards the recommendation on improving verification procedures on compliance with State aid rules, please refer to the details in the counter-arguments referred to in point 11 below.

With reference to the final “*Cartotecnica*” recipient, we would point out that the type of aid granted was also raised by the AA as part of the audit of the operation on the financial instrument Guarantee Fund Central Guarantee Fund — PON IC Reserve (ref. no 0019704 of 05-12-2019).

The AA, in particular, following the submission by the MA with a letter of 25-11-2019 of the requested assurances and evidence of adequate checks on compliance with Article 17 of Regulation (EU) No 651/2014, as well as the operational provisions in force, with particular reference to part XI — paragraph A, ‘Investment aid for SMEs’, and requested that, in addition, under Article 6 of the GBER ‘*incentive effect*’, the ‘date of commencement of work’ was after the date of submission of the request for the aid to the Fund on 5 December 2017 (see Annex 10.1).

Following the contradictory procedures and follow up procedures (see attached follow-up report No 0006036 of 18-05-2020 on SFC), the feedback and the documentation provided by the MA in letter ref. 17527 of 24-1-2020, and in particular through the feedback (see Annex 10.2):

- the documentation submitted in connection with the granting of the aid pursuant to Article 17 of Regulation (EU) No 651/2014;
- the documents forwarded, with particular reference to the purchase order of 22/12/2017 to the supplier KOMORI issued after the application for admission to the customer’s guarantee was made on 5/12/2017;
- The MA’s statement that ‘the investment is fully realized. On the basis of a grant of EUR 1.000.000,00, the expenditure incurred by the final recipient, as evidenced by the invoices of the supplier KOMORI No 7280412 of 29.12.2017 (invoice on account for EUR 253.000) and SA No 73300718 of 30/07/2018 (EUR

1.012.000,00), is equal to the amount indicated in the purchase order to the supplier KOMORORI (EUR 1.265.000,00).’

The AA considers that there are sufficient guarantees regarding compliance with State aid rules for the final recipient” *Cartotecnica*”.

As regards the recommendation on the occurrence of similar cases in the declared expenditure, we would point out that this aspect was also the subject of a recommendation by the Audit Authority in the context of the above-mentioned audit of the operation. During the *inter partes* hearing, the MA then carried out checks on an additional sample of transactions in portfolio No 15 in order to ascertain, when applying for admission to the guarantee, compliance with the *de minimis thresholds*.

In the context of these checks, the MA did not identify any discrepancies between the type of aid referred to in Annex 4 (request for aid) and the type referred to in the decision approving the Fund’s management.

The AA and the MA therefore consider that these verifications are sufficient to demonstrate that the error found for Cartotecnica srl is not systemic and therefore it is not necessary to carry out further control activities.

Position of the Commission services:

The recommendation 10.01 is Closed

The Commission auditors take note of the changes implemented in the procedures of the managing authority and audit authority as described in the reply of the Member State to finding 11.

It is also noted that the audit authority has carried out additional verification on the final recipient concerning compliance with State aid rules which concluded that operation ‘Cartotecnica’ is indeed compliant with State aid rules.

The Commission auditors also take note that following their and the audit authority’s recommendations, the managing authority has performed additional verifications on a supplementary sample of 15 final recipients, without identifying any breach of State aid regulations.

The recommendation is therefore **closed**.

Finding 11

Category: State Aid

Sub-category: Other State aid

FONDO CENTRALE DI GARANZIA

Final recipient “Franco Giuseppe Srl”

The guarantee to the enterprise “Franco Giuseppe Srl” was granted under article 17 of GBER.

The Commission services noted that both the management verifications and the audit checklists do not contain specific control points for State aid granted under GBER.

In addition, while the AA correctly identified the type of aid, the MA assessment was unclear since it reported a positive answer to the control point n.6 (test for aid intensity if the aid is granted under “*de minimis*”)

The abovementioned shortcoming is observed in the absence of specific control points related to other aspects of the GBER regulation like the incentive effect, the aid intensity and the cumulation.

Specifically, for the aid granted to “Franco Giuseppe Srl” the Commission auditors identified a possible breach of Article 6(2)(b) (start and end dates of the projects) and of Article 6(2)(d) (list of project costs) of GBER.

Action to be taken/recommendation

Recommendation 11.01

The MA should submit additional documents in respect of the final recipient Franco Giuseppe to confirm compliance with Article 6(2)(b) and of Article 6(2)(d) of GBER and the MA and the AA should also enhance their checklists to cover also State aid granted under the GBER and submit this new checklist to the Commission.

The MA should supervise the activities carried out by the financial intermediaries as regards State aid checks. The template to be filled in by the final recipient, in case of State aid granted under the GBER, should be more detailed. The MA should submit to the Commission the revised form.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 11.01: Accepted

With regard to the request made by the Commission services to provide additional documents for the final recipient Franco Giuseppe Srl, to support compliance with Article 6 of the 2 (b) GBER (description of the project, including the start and end dates) and (d) (list of project costs), we refer to what the AA has given in the final report on the audit of the operation for the accounting year 18-19 on the FPIC Reserve (ref. Annex).11.1 — Audit report ref. 0019704 of 05-12-2019 — findings. NO 2):

During the hearing, the MA confirmed that:

- the aid is granted free of aid under Article 17 of Regulation (EC) No 651/2014 and that, owing to a clerical error, the periodic check list shows an affirmative answer to point 6;

- in accordance with Article 6 of the “incentive effect” of the GBER, the investment was initiated by the final recipient on 15/11/2017 (which corresponds to the date of the first purchase order set out in the invoice of supplier CAMS Srl No 21701599 of 21/12/2017, as already in the documents of the Commission, which, in any event, is annexed (Annex11.2) — after the date on which the grant application was submitted to the Fund on 11/10/2017, and that it complies with the conditions laid down in Article 17 of Regulation (EC) No 651/2014. It should be noted that the investment of EUR 1 000 000 is fully realized as shown by the invoices already in the EC acts.

The AA, in the context of its final decision, notes that the aid is granted in accordance with Article 17 of Regulation (EC) No 651/2014 and confirms that the conditions laid down in Article 6 of Regulation (EC) No 651/2014 have been met, having verified that the date of the first purchase order (15/11/2017) is after the date of the application for the relief (11/10/2017) and that the investment is fully covered by the invoices submitted by the recipient.

As regards the MA's checks, we would point out that both the checklist for administrative checks and the check on periodic inspections, as part of the EC acts, already provided for a specific control point on compliance with State aid rules. In particular:

- in the checklist for administrative check checklist — 'implementation' section — control point No 4 (previously referred to as '12'): "When implementing the financial instrument, has the Community state aid framework been verified in accordance with Regulation (EU) n.1407/2013 and Regulation (EU) n.651/2014?";
- in the checklist format periodic checks for the individual positions — section "operation" — control point No 9 (previously point 18): "For an investment under an exemption scheme, has the operator verified that the date of commencement of the works took place after the date of submission by the final recipients of the application for the concessions referred to in Annex 4?"

With a view to putting in place actions to improve first-level checks on compliance with State aid rules, please note the following:

- in order to consider all elements of State aid granted under the GBER, in the new version of the Check List Periodic Controls (see Annex11.3) — which will be used for the verifications that will be carried out on the first useful sampling — July 2020 -, the MA has implemented an additional control point on compliance with State aid rules: — 'Operation' — Control Point No 8: "in the case of aid requested under the exemption Regulation 651/2014, the guarantee was issued in respect of one of the categories of aid referred to in Articles 17, 21 or 22."

- As a result of the audit carried out by the AA in the accounting year 18-19 (Ref. Annex11.4 — The Follow-up Report no. 0002607 of 21/02/2020—No 2: follow-up — AA conclusions), revised the way the first-level checks on recipients were carried out, for all of the sampled operations, the procedures laid down in the operational provisions/operational rules governing access to the Guarantee Fund will be complied with, the eligibility requirements for operations under the NOP IC Reserve and all the relevant aspects of the operations accepted as collateral were met, by analyzing appropriate supporting documents and with uniform verification procedures for all transactions sampled independently of the checks carried out by MCC.

As regards the audit tools of the AA, in line with the need for improvement expressed by the EC, the AA has supplemented the section 'Verification of aid aspects' of the Guarantee Fund's 'Checklist Addresses', with appropriate items of check on compliance with the rules on state aid granted under the GBER.

In particular, in addition to the control points already included in those checklist, aimed at verifying the aspects related to the aid granted, such as the methods of calculation of the gross grant equivalent (GGE), the applicable aid scheme, the national aid registration records and consequently compliance with the thresholds laid down in the GBER and, consequently, compliance with the prohibition of accumulation for de minimis aid, in the updated version of that checklist (Ref. Annex(11.5) control points for compliance have been inserted:

- Article 17 of Regulation (EU) No 651/2014;
- Article 21 of Regulation (EU) No 651/2014;
- Article 22 of Regulation (EU) No 651/2014;
- Article 6 of Regulation (EU) No 651/2014.

Finally, with regard to the recommendation on the use of a more detailed module for the final recipient in case of aid granted under the GBER, it should be noted that, as already explained in the 5 finding of this report, a new facilitation claim form (Annex 11.6) has been established, in use since 15 March 2019. On page 1 of page 3 of this form, a specific section on information and data concerning the investment projects underlying the secured financial transactions was inserted.

Position of the Commission services:

The recommendation 11.01 is Closed

The Commission auditors take note of the additional audit work carried out by the audit authority in relation to the guarantee to the enterprise “Franco Giuseppe Srl” and of the conclusion reached about compliance with article 17 of the GBER.

The Commission auditors also take note of the modifications implemented by the managing authority and the audit authority to enhance their checklist in relation to the compliance with State aid rules.

The Commission services also acknowledge that, following a request of the audit authority, a new improved procedure for the verifications on the final recipient has been approved and transmitted to the Commission auditors.

The recommendation is **closed**.

Finding 12

Category: Financial instruments

Sub-category: Final recipient not eligible

FONDO CENTRALE DI GARANZIA

Final recipient “S.I.CON” - guarantee provided for a loan financing working capital

The auditors could not find evidence of the description of the financial project approved by the bank (see also finding 7 above related to shortcomings on checks on financial investments). The only indication of the type of investment is included in the application form submitted by S.I.CON. It states that the operation is payment of suppliers (working capital), with no further indication about the soundness of the operation (i.e. analysis of the financial situation of the company, its strategy, the reasons for the requested support, the expected results, etc.).

In addition, the company S.I.CON has its registered office (sede legale) in Milan (Lombardy), outside the eligibility area of the FI (which is limited to less developed and transition regions).

Considering that there is no evidence of the business plan for the financial operation and taking into account the nature of the investment (i.e. working capital), it cannot be excluded that the funds have been used outside the eligibility area of the FI and are therefore ineligible.

Action to be taken/recommendation

Recommendation 12.01

The programme authorities are requested to provide evidence of the eligibility of the expenditure declared for this operation. In particular, they should demonstrate that:

- a) The operation is located within the eligibility area of the programme,
- b) The potential economic viability of investment projects to be financed (Art. 6.1.a reg.480/2014),
- c) the funds were used for their intended purpose (art. 9 of CDR 480/2014).

Otherwise, the operation should be considered ineligible and the expenditure cancelled from the fund.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 12.01: Accepted

The financial transaction underlying the guarantee is aimed at a working capital for suppliers. In particular, as stated in the file submitted by the applicant Unicredit to the operator's own address on 30.03.2018, containing the data and information relating to the positions subject to the request for inclusion in the portfolio of 15, the bank funding is used by the company for liquidity needs linked to a development plan consisting of the 'restructuring of the warehouse'.

In view of the above, we wish to make the following comments on the recommendations made:

Point a)

It should be pointed out that although the registered office is located outside the area of eligibility of the programme, the company's administrative headquarters and the only production site are located in Mela (Messina) — see Chamber of Commerce, Industry, Crafts and Agriculture (see Annex all).12.1).

We point out that 22 persons out of a total of 23 employees are employed at the premises of Messina, whereas there is only one employee at the registered office in Milan. In view of the type of intervention, as set out in the description of the project provided by the bank, in view, moreover, of the prevailing economic activity by the final recipient

‘processing of the paper and production of plastic packaging and other packaging’, as it has provided evidence of the location of the production plant, and thus of the storage and processing site for raw materials/stocks, it is considered that there is sufficient evidence to confirm the reference of the operation to the site which is located in an area eligible for the programme and therefore the eligibility of the related expenditure.

Point b)

In relation to the potential economic viability of investment projects to be financed (Article 6(1)(a) of Delegated Regulation (EU) No 480/2014), please refer to what has already been represented in reply to 5 of this audit report.

Point c)

Regarding the use of the funds for the intended purpose (Article 9 of Delegated Regulation (EU) No 480/2014), please refer to what has already been represented in reply to 7 of this audit report.

Position of the Commission services:

The recommendation 12.01 is Closed

The Commission auditors take note of the additional documents provided by the managing authority, namely the extract from the chamber of commerce, which shows that the legal entity has its main activities in Messina and therefore in the eligibility area.

Points b) and c) have been addressed in the related findings no 5 and no. 7 above.

The recommendation is **closed**.

Finding 13

Category: Financial instruments

Sub-category: Investments not eligible

FONDO CENTRALE DI GARANZIA

Completion of the investment at the time of the request of support

For Centro di Riabilitazione Lars - guarantee provided for a loan financing an investment in machinery and equipment to strengthen production capacity (EUR 820 000) under the *de-minimis* regime.

Among the documents to justify the investment, MCC provided three invoices for the purchase of machinery and equipment totalling to EUR 658 800, i.e. 80 % of the loan requested. The EC auditors noted that all these invoices were issued before 26.02.2018, date of the request of the guarantee by the final recipient.

Since most of the machines being part of the investment were already purchased before the request of support to the fund, the Commission auditors consider that there is a high risk that:

- a) the operation is not a new investment, but represents the re-financing of an existing one
- b) the investment was already completed by the time of the request of support to the fund.

Regarding point b), after the audit on the spot the MA sent a self-declaration signed by the director of Centro di Riabilitazione Lars stating that no further invoices are available at this time.

Considering that the programme authorities did not provide any additional documents, the Commission auditors cannot confirm the eligibility of the operation and cannot confirm that the operation was not already completed at the time of granting the loan.

The auditors consider that there is a high risk that this operation is not eligible.

Action to be taken/recommendation

Recommendation 13.01

The programme authorities are requested to provide evidence that:

- a) the financial instrument supported an investment which is financially viable and did not give rise to sufficient funding from market sources (article 37(1) CPR),
- b) the investment was not completed at the time of the request for support,
- c) the funds were used for their intended purpose.

Otherwise, the auditors consider that there is a high risk that this operation is not eligible.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 13.01: Rejected

As regards the recommendations under (a) and (b), please note the following.

In the case of portfolio operations, the guarantee shall be issued on a multiple amount of funding, equal to the notional value of the portfolio. Individual operations shall be progressively included, starting from the date of the approval decision of the Management Board and at the request of the applicant, within a period of time, defined as up to 18 months, which may be extended up to a maximum of 24 months. For the purpose of inclusion, funding must be granted after the portfolio has been accepted to the guarantee and disbursed no later than the planned closing date. During the period of the construction of the portfolio, the guarantee of the PON Reserve is operational and thus effectively for the purposes set by the relevant action of the programme, the intermediary/bank relies on the public guarantee obtained for the assessment of the claims, thereby benefiting the final recipients in terms of better conditions than market solutions (lower interest rate, May amount of credit granted, etc.). The resources of the programme are therefore formally and substantially committed for contracts outstanding from the date of admission of the portfolio to the guarantee. This shall be without

prejudice, at the end of the period of rump up, to a realignment of the consolidated data at the close of the portfolio.

For the recommendation under point (b), we would also point out that in the present case, since we are speaking of the final beneficiary, the verification should confirm that “the investments to be supported through the financial instruments are not physically completed or fully implemented on the date of the investment decision (ref. Article 37.5 of the CPR), and not with regard to the submission of the application for funding by the beneficiary to the MA, as required by Article 65 (6) of the CPR.

In view of the above, with reference to recommendations (a) and (b), we would point out that:

- The portfolio No 15, which constitutes the undertaking, was admitted to the guarantee by a resolution of 8/9/2017;
- The invoices and the relevant purchase orders referred to therein, which were already included in the file sent to the Commission services, are subsequent to the date of 8/9/2017 of admission to portfolio No 15;
- On the date of admission of portfolio No 15 to the guarantee (8/09/2017), the operation was neither physically nor financially completed as indicated in the cost estimation documentation No 839/19 of 22/10/2019, issued from ‘to Circle s.p.a.’ (see Annex 13.1).
- On the basis of the above-mentioned document for 22/10/2019, the operation is neither physically nor financially completed, even if the inclusion of the beneficiary’s Centro Riabilitazione Lars S.r.l. within the portfolio was dated 9/5/2018.

With regard to the recommendation referred to in point (c), taking into account the arguments set out in points (a) and (b), the funds are considered to have been used for the intended purpose, in this case they were used for an investment in machinery and equipment aimed at strengthening the production capacity of the final beneficiary.

Position of the Commission services:

The recommendation 13.01 is Open

The Commission services have analysed the explanations and observations made by the audit authority in response to our recommendation.

First, it is noted that the evidence provided by the audit authority is not sufficient to ensure that the financial instrument has supported an investment that was financially viable and did not give rise to sufficient financing from market sources (Article 37(1) CPR). For the Commission auditors the risk that the transaction is not a new investment is confirmed and there is evidence indicating that it is a refinancing of an existing investment. Indeed, the three purchase invoices issued by the supplier ‘a CIRCE SpA’ of the undertaking, namely invoice No 1530 of 21/11/2017, No 1435 of 24/10/2017 and No 1530 of 30/11/2017, specified that:

- the payment is through ‘bank credit transfer of date invoice’ (pagamento vista fattura),
- are linked to the order proposal number 526 of 3/10/2017.

The Commission services request the programme authorities to transmit the order proposal No 526 of 3/10/2017, the related order confirmation and the bank evidence related to the payment of the above invoices (i.e. invoice No 1530 of 21/11/2017, No 1435 of 24/11/2017 and No 1530 of 30/11/2017) in order to assess the specific details for this case.

The Commission auditors also note that the installation of the equipment was carried out at the same time as the delivery of the machine and at the same time that a half a day training was provided by specialised staff. In this particular case, it is noted that the equipment ordered with the proposal order no. 526 of 03/10/2017 were delivered on 10/10/17 (invoice No 1435 of 24/10/2017), 14/11/2017 (invoice No 1530 of 21/11/2017) and 29/11/2017 (invoice No 1618 of 30/11/2017), for each of which an acceptance document should have been issued by the supplier. The Commission auditors thereby retain that the investment was completed before the time of the request for support. The Commission auditors request the audit authority to submit the acceptance document (documento di collaudo) issued by the supplier for each of the pieces of equipment referred to in the above invoices as well as the evidence of the training courses carried out for their use.

Furthermore, the Commission services consider that the order proposal (Commessa) number 526 of 03/10/2017 linked to the above-mentioned invoices does not appear to be linked with the proposal No 839/19 dated 22/10/2019 of “a Circle s.p.a.” (see Annex 13.1 of AA reply) which represents rather a normal renewal of equipment and machinery necessary for the business activities.

From the desk analysis of the submitted documents, it is clear that the purpose of the investment is to purchase machinery and equipment intended to strengthen the production capacity of the final beneficiary. Thus, the Commission auditors take note that the funds have been used for the intended purpose.

In conclusion, the Commission auditors consider that there is evidence indicating that the investment has been completed before the request for support, which occurred on 26 February 2018.

The Commission auditors thereby invite the programme authorities to withdraw the ineligible guarantee equal to EUR 600 000 from the list of eligible expenditure and to verify that this withdrawal has no impact on the 60% / 85% threshold laid down in Art. 41. (c) CPR.

Finding 14

Category: Financial instruments

Sub-category: Other financial instruments

FONDO CONTRATTI DI SVILUPPO

The fund is the continuation of an instrument introduced with the national law n.112 of 2008 to encourage large investments to strengthen competitiveness in the southern regions through loans (within the limits of 75% of the admissible costs) and grants (for the remaining part).

The original funding agreement was signed on 29/11/2012 and updated (atto aggiuntivo) on 7/07/2017 to set up the instrument to be financed under the ERDF OP IC 2014-2020. In this additional document, it is clearly stated that the instrument will also be used to finance retrospective projects (progetti coerenti) which are financed with the national complementary programme POC IC. Annex I of the “atto aggiuntivo” of 7/07/2017 presents also the updated strategy for the instrument, which however is vague and does not explain, for example, market failures, the financing gap and the related need of ERDF contribution for the instrument. In addition, the ex-ante assessment proposed an instrument of EUR 150 million. The instrument was set up with an original amount of

EUR 84 945 000 increased to EUR 218 667 716.23 after the decision to admit retrospective projects (progetti coerenti) to the Fund. The fund was increased following two national decrees N. 375 of 5/02/2018 and 2417 of 25/07/2018. However, the auditors did not find any justification/reason for the increased amount.

Furthermore, after the decision to increase the allocation of the fund to EUR 219 million and the request from the MA to identify retrospective projects, on 10/10/2018 the in-house company managing the fund, Invitalia, communicated to the final recipient RIVECO Generalsider SpA the transfer of the national financing with the ERDF from the programme. In this regard, the obligations for the RIVECO Generalsider Spa increased to comply with ESIF regulation (respect of Article 71 of CPR on durability of operations, Article 115 on Information, communication and visibility, Article 125 4b on separate accounting system Article and Article 140 on retention of documents) compared to its previous obligations arising from the national programme. The Commission auditors take note that as indicated by the AA, at the time of the transfer to the ERDF OP IC, the beneficiary RIVECO had already received payments from the National complementary programme POC for an amount of EUR 10 514 740,07 (first advance of EUR 7 168 810,20 and I SAL EUR 3 345 929,87). The payments received by RIVECO from the national programme POC were used to justify the use of 60% of the first tranche requested for the ERDF OP IC and the related request of a second tranche of EUR 5 683 179,57 for the regions in transition. On 21/09/2018, Invitalia requested a transfer of funds (giroconto) from the bank account of the complementary programme POC to the bank account of the OP IC to compensate for the transfer of the operation.

On this operation, the auditors noted the following issues:

- 1) In the case of the Fund Contratti di Sviluppo, it is not clear whether the decision to admit retrospective projects was done in full respect of the provisions of Title IV of CPR.
- 2) According to the Commission auditors, the payments to the final recipient RIVECO that have been provided before the formal set up of the FI in accordance with the provision of Title IV of CPR are not eligible. The payment of EUR 10 514 740,07 to the final recipient RIVECO (first advance of EUR 7 168 810,20 and I SAL EUR 3 345 929,87) is ineligible.
- 3) Following the increase of the fund from EUR 85 million to EUR 219 million, the MA requested additional tranches to top up at 25% of the final fund amount. These top-up payments were considered still as first tranches, therefore for the above additional request of EUR 5 683 179,57 the MA verified the eligible disbursement of 60% of the funds, instead of 85 % as interpreted by the Commission services (see Q&A on top-up payments). Even if for the specific case RIVECO there is no impact due to the fact that also the 85% threshold was reached, it is still a systemic issue and the MA should adapt its procedures to be in line with the Commission services interpretation regarding the payment of tranches following the top-up of the instrument.

Action to be taken/recommendation

Recommendation 14.01

The programme authorities are requested to withdraw the ineligible payment to RIVECO from the amount of eligible expenditure declared to the Commission.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Recommendation 14.02

The programme authorities are requested to provide supporting evidence that in case of retrospective projects included for the FI ‘Contratti di Sviluppo’, the support was granted to investments which:

1. were expected to be financially viable;
2. did not give rise to sufficient funding from market sources and that the support did not replace pre-existing national financing, i.e. there was no investment under ESIF foreseen at the moment of granting the support
3. the ex-ante assessment confirmed a market failure / suboptimal investment situation existing at the moment of granting the support

The programme authorities are requested to withdraw any irregular amounts and report these corrections.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Recommendation 14.03

The programme authorities are requested to reassess the eligibility of the tranches declared to the Commission. In case the thresholds fixed in Article 41 of CPR are not respected anymore, the declaration of expenditure should be adjusted accordingly.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Recommendation 14.04

The programme authorities are requested to update their procedures (both MA first level control, and audit) to ensure compliance with the Commission guidance and interpretation regarding the achievement of thresholds for triggering additional tranches in case of top-up of the instrument.

Importance: Very Important

Body responsible:

MA - Ministero dello Sviluppo Economico – Direzione Generale per gli incentivi alle imprese – Divisione IV

AA - Nucleo di verifica e controllo (NUVEC) - Agenzia per la coesione

Deadline for implementation: 3 months

Position of the Member State:

Recommendation 14.01: Rejected

As pointed out in the final audit Note No 0016363 of 17-10-2019, Decree No 1441 of 10/3/2017 approves the amendment to the 7/3/2017 Convention, which, by permitting the implementation of the financial instrument of the Contratti di sviluppo (hereafter “CDS) also through the resources of the NOP JU, ordered the setting up at Invitalia Spa for a revolving fund intended to grant funding to the enterprises benefiting from the facilities provided by the CDS in the context of the NOP axes which require them to be used. The Additional Act has been annexed to the Strategy Paper and Implementing Provisions for the Revolving Fund for the granting of subsidised loans via the CDS, relying on the resources of the NOP Enterprise and Competitiveness 2014/2020 Axes I, III and IV.

The Strategy, together with the Additional Act, constitutes, in compliance with Article 38 (7) of Regulation (EU) No 1303/2013, the Financing Agreement, hereinafter referred to as FA (see Article 2 (2) of the Additional Act).

The AA therefore considered the FA signed on 7/3/2017 as the act of establishment (set-up) of the financial instrument CDS, as a result, verified, with a positive result, that the payments made to RIVECO relating to the advance (results between 25/5/2017 and 1/6/2017) and the SAL (results between 9/7 and 12/7/2018) were subsequent to the date of FCDS’s set up (7/3/2017), in accordance with the provisions of Article 2 (9) of Regulation (EU) No 1303/2013 as regards the definition of ‘operation’ for financial instruments (in the context of financial instruments, an operation consists of financial contributions from a programme to financial instruments and the subsequent financial support provided by those financial instruments).

As regards the legality of the decision to allow retrospective projects in compliance with the provisions of Title IV of the CPR, raised by the EC, the AA considers that this decision is fully in line with Community legislation as:

- The Fund is operational from the 2007-2013 programming period and, therefore, the provisions of Article 38 (3) (b) of the CPR may apply;
- The general rules (Ministerial Decree 14/2/2014 and 9/12/2014) and the reference notice for the selection of the investment programme carried out by Riveco (Directorial Decree 29/04/2015) provide for the possibility of EC co-financing;

- In compliance with the provisions of Article 37 (5) of the CPR, at the date of the investment decision (MA note of 26/9/2018), the RIVECO project had not yet been completed, since the beneficiary submitted, on 6/8/2018, the request for an extension to 31/12/2019 (found to be granted and communicated by the implementing party to the company on 6/2/2019).

We consider that the assessment of ineligibility of the disbursements made in favour of Riveco depends on the fact that the EC services took into account an incorrect date of the Financing Agreement (7/7/2017 instead of 7/3/2017), as the statement “before the formal set up of the FI” could only refer to the date of the establishment of the fund. Taking into account the correct date of the Financing Agreement (7/3/2017), all disbursements are eligible, as they have taken place in the following (subsequent) dates: 26-29-30-31 May 2017, 1st June 2017 and 10-11-12 July 2018.

The AA concludes that the payments to the RIVECO certified to the EC are eligible since the MA has operated in accordance with the regulatory provisions laid down in Title IV of the CPR.

Recommendation 14.02: Partially Accepted

With regard to the RIVECO investment project — the only retrospective project certified during the accounting period covered by the Commission’s audit financed under the FCDS — please find below, in addition to the information provided in the replies to points 1 and 2, the counter-arguments for the individual points raised by the EC:

1. Financial sustainability:

as indicated in Article 9 (4) (b) and (d) and (f) of Ministerial Decree No 9/12/2014, the managing body, in the case of investment programmes relating to industrial development projects (such as the one, submitted by RIVECO SpA), is to assess the economic viability of the development programme with the relevant employment impact, the financial viability of the investment, the condition of the construction site, the relevance and general adequacy of the costs envisaged. In accordance with Article 9 (4) (a) of the Ministerial Decree, Invitalia also assesses the technical, economic and financial reliability of the undertaking which is applying for funding.

Therefore, based on the preliminary investigations carried out by Invitalia (see Annex 1 — Technical report, Cap. 3 and Cap. (4) and the positive assessment of the operator (see Annex 2 — Report on Technical Screening, Cap. 6 — conclusions) that the investment programme submitted by RIVECO SpA has the characteristics of economic viability and financial viability, as can be seen, moreover, most recently in the Decision approving the 9/11/2015 Development Contract (see Annex 3) providing adequate qualitative and quantitative elements to appreciate the overall positive judgement issued by the managing body. Similarly, as regards the sustainability aspects of the undertaking concerned, it was found that the total financial needs were covered by the capital injections indicated in the diagram on page 44 of the approval decision mentioned above.

2. It has not given funding which would have covered by sufficient market sources and the support has not replaced pre-existing national funding: as indicated in the ex-ante assessment, the MA indicates a gap in financial coverage from ordinary market sources of approximately EUR 2 billion to be covered with the additional resources of the Community programming 2014-2020 with the aim of contributing to the achievement of the EUROPE 2020 objectives: See p. 28 for the Development Contract Fund for the CDS instrument Priority I, p. 63 for the same instrument Axis III and page 77 for Axis IV.

3. The ex-ante assessment confirmed a market failure/sub-optimal investment situation when the support was granted: to complement the previous reply, see pp. 32-37 for instrument Axis I Development Contracts, pp. 64-66 for Priority CDS II and pp. 80-84 for Priority CDS IV for the measures taken to minimise market distortion, in addition to the design choices, the selected implementation modalities, the type of products and the type of recipients and the implications for State aid.

Therefore, we do not consider it necessary to further analyse the retrospective projects included in the FCDS, considering that for the only verified retrospective project — RIVECO — the eligibility conditions (carried over in the previous one finding) are met and that the expenditure accounted for this investment programme is regular in terms of the financial viability of the investment.

Recommendation 14.03: Rejected

In view of the counter-arguments provided for the two previous recommendations, the AA considers that the expenditure certified by the MA for the RIVECO project is regularly eligible and therefore the authorities of OP does not consider necessary to re-examine the eligibility of the tranches declared to the Commission during the certification by the MA.

Recommendation 14.04: Rejected

With regard to the recommendation made by the Commission, please note the following.

First, it is considered that point 11 of Annex II to EGESIF 15-0006-01 of 08/06/2015 is only a clarification concerning the possibility for the MA of a programme to decide to increase the financial envelope of a financial instrument, and cannot in any way modify, either in formal or substantive terms, as the provisions laid down in Article 41 of the CPR. Thus, in paragraph 11, the requirements to be complied with are set out in the case where the MA decides to increase a fund, in particular that the MA is required to:

- A. comply with Article 41 (a), namely “the amount of the programme contribution paid to the financial instrument contained in each application for interim payment submitted during the eligibility period, shall not exceed 25 % of the total amount of programme contributions committed for the financial instrument” reiterated in the FAQ with the following statement “With the next payment application the basis for calculating the maximum amount tranche (25 %) will be the total increase commitment in the funding agreement”;
- B. “For the calculation of the progress in implementation the total amount included in the previous applications (including the application for payment of 25% of the additional commitment) should be taken into account”.

In addition, the specific reference to Article 41 (1) (a) of the CPR, contained in point 11 of Annex 11 to EGESIF, implies that the additional payment following the increase is to be considered as a first payment to the Fund and not as a second payment as interpreted by the Commission in this observation. It is stated that “This additional payment to the FI may in accordance with Article 41(a) CPR trigger a payment application for up to 25% of the additional committed amount (the difference between the total amount committed in the modified funding agreement and the amount committed in the initial funding agreement).

Finally, the application of the position expressed by the Commission would constitute the following:

- give priority to the principle of staggered payment claims laid down in Article 41 (1) of the CPR, to the detriment of the mechanism of the application thresholds for the submission of applications for reimbursement laid down in Article 41 of Regulation (EU) No 1303/2013 and, therefore, contrary to the content of the same article, which lays down both conditions as necessary for the submission of payment claims affected by expenditure relating to financial instruments.

- generate potential problems in the financial flows of the same financial instrument, putting at risk the actual disbursement of resources to the final recipients, where the utilisation threshold of 85 % foreseen in point (c) point ii should be reached without the Member State receiving the corresponding reimbursements from the Commission. This would be in conflict with Article 132 of the CPR and, in particular, with the principles of sound financial management in the shared management of the resources of the Community budget referred to in Article 63 of Regulation (EU, Euratom) 2018/1046.

In view of the above, we consider that the assessments made by the AA in the audit report of the “Revolving Fund for Development Contracts” (see Note No 0016363 of 17-10-2019) are in line with the provisions of Article 41 of the CPR. As already noted by the Commission during the audit, in any event, the payments made to the final recipient Riveco Generalsider SpA, referring to the financial instrument ‘Revolving Fund for development contracts — Axis III — Transition regions’, allow the 85 % threshold laid down in Article 41 (c) (ii) of the CPR to be met, thus ensuring the eligibility of the expenditure declared to the Commission.

In the light of the above, the Programme authorities consider that the Commission’s interpretation of point 11 of annex II of EGESIF 15-0006-01 of 08/06/2015, representing an innovation compared to the provisions of Article 41 of the CPR, is not acceptable.

The programme authorities do not consider necessary, therefore, to update the respective audit trail for the purposes of verifying compliance with Article 41 of the CPR on the basis of the Commission’s interpretation of the achievement of the thresholds triggering subsequent tranches in the event of a top-up of the financial instrument.

Position of the Commission services:

The recommendation 14.01 is Closed

The Commission auditors have reviewed the additional explanations provided by the audit authority about the eligibility of the aids paid to RIVECO. Indeed, the Commission auditors have checked that the correct date of the financing agreement is 7/3/2017 and therefore all disbursements paid to RIVECO are eligible, as they occurred on 26-29-30-31 May 2017, 1st June 2017 and 10-11-12 July 2018.

It is also noted that the audit authority provided also adequate information about the compliance of retrospective projects with the provisions of Title IV of the CPR, in particular adequate evidence has been provided for the project RIVECO.

This recommendation is **closed**.

The recommendation 14.02 is Closed

The Commission auditors have reviewed the further explanations provided by the audit authority and in particular the evidence provided to ensure that in case of retrospective projects included in the FCS the support was granted to investments where the eligibility conditions required were met.

In particular, the Commission auditors take note of the evidence about the project RIVECO based on which it is ensured that the project is financially viable, it does not constitute a replacement of pre-existing national financing and the ex-ante assessment confirmed the market failure at the moment of the granting the support. Indeed, in the case of RIVECO the fact that the total financial needs of the project were covered by the capital injections indicated in the diagram on page 44 of the approval decision issued by INVITALIA, constitutes adequate assurance that the financial viability is ensured.

In conclusion, as the RIVECO project met the eligibility conditions, the Commission auditors do not consider necessary to further analyse retrospective projects.

This recommendation is **closed**.

The recommendation 14.03 is Closed

The Commission auditors note that the explanation provided by the audit authority in respect of finding 1 and finding 2 give adequate assurance that the expenditure certified for the project RIVECO are eligible and therefore no correction is needed. As consequence, the Commission auditors do not consider it necessary to re-examine the eligibility of the tranches declared to the Commission services. In fact, the payment received by RIVECO justifies the use of 60% of the first tranche requested for the ERDF OP IC and the related request of a second tranche for the regions in transition.

This recommendation is **closed**.

The recommendation 14.04 is Closed

The Commission auditors take note of the additional explanations and clarifications provided by the programme authorities with reference the possibility for the managing authority to decide to increase the financial envelope of a financial instrument and the compliance with the provision laid down in Article 41 of the CPR. The Commission auditors also confirm that, as indicated in point 11 of EGESIF 15-0006-01, the additional payment to the FI may in accordance with Article 41(a) CPR trigger a payment application for up to 25% of the additional committed amount (the difference between the total amount committed in the modified funding agreement and the amount committed in the initial funding agreement). In this case, following the increase of the fund, the Commission auditors note that the managing authority requested additional tranches to top up at 25% of the final fund amount, as reported below:

ASSE	Azione	Categoria di regione	Strumento attuativo	Dotazione (*)	Periodo contabile 16/17 DPI n.1 del 28 luglio 2017	Periodo contabile 17/18	Periodo contabile 18/19 DPI n.1 dell'8 novembre 2018	Periodo contabile 18/19 DPI n.2 del 21 dicembre 2018	Totale Cumulato
	1 Azione 1.1.3 LDR	LDR	FCDS - Fondo Contratti di sviluppo	41.892.000,00	10.473.000,00	-			10.473.000,00
	3 Azione 3.1.3 LDR	LDR	FCDS - Fondo Contratti di sviluppo	52.902.683,44	5.211.832,95	-	8.013.156,74	595,56	13.225.585,25
	3 Azione 3.1.3 TR	TR	FCDS - Fondo Contratti di sviluppo	22.732.716,23	0,00	-	5.683.179,06	5.683.179,06	11.366.358,12
	3 Azione 3.2.1 LDR	LDR	FCDS - Fondo Contratti di sviluppo	43.294.182,84	5.551.417,05	-	5.271.680,55	391,81	10.823.489,41
	3 Azione 3.3.1 LDR	LDR	FCDS - Fondo Contratti di sviluppo	17.446.133,72	0,00	-	4.361.162,71	324,14	4.361.486,85
	4 Azione 4.2.1 LDR	LDR	FCDS - Fondo Contratti di sviluppo	40.400.000,00	0,00	-			0,00
Totale Generale				218.667.716,23	21.236.250,00	-	23.329.179,06	5.684.490,57	50.249.919,63

The Commission auditors noted that the managing authority has applied the tranches and related thresholds in relation to the category of region and priority axis and not at fund level.

The Commission auditors note that the cumulated payments as of accounting year 2018/2019, corresponding to EUR 50 249 919,63, is lower than the cumulated threshold of 25% for the fund as laid down in art 41(a) CPR (equal to EUR 54 666 929,06), allowing the managing authority to verify the eligible disbursement of 60% of the funds. In addition as the payments made to the final recipient Riveco Generalsider SpA is

eligible, it is to highlight that even the 85 % threshold laid down in Article 41 (c) (ii) of the CPR is met.

Therefore, the Commission auditors consider this recommendation closed.

7. AUDIT CONCLUSIONS AND OPINION

7.1 AUDIT CONCLUSIONS

The selected financial instrument(s) and files, as detailed in annex II, were audited in accordance with the scope and objectives set out in the sections 2 and 3 of this report.

The audit covered 5 financial instruments, thereof for 2 of them 16 files from final recipients, and management costs and fees co-financed by the audited programme in order to verify that adequate systems are in place to ensure conformity with the requirements of the Articles 125 and 127 of the CPR.

The level of the assurance obtained with regard to the audited part of the system, as indicated in section 3 of this report (audit scope), can be classified as **Category 2 “Works, but some improvement(s) are needed”** of the “Guidance on a common methodology for the assessment of management and control systems in the Member States 2014-2020 programming period”⁵, except for the aspects mentioned below in the audit opinion.

Final assessment of the audited key requirements concerning the parts of the management and control system involved in the implementation of financial instruments:

Audited KRs	KR 4	KR 15	KR 16
Category	2	2	2

Following the above findings, the Commission auditors estimate that the irregular expenditure corresponds to EUR 43 240,91 of the total expenditure supporting the already submitted application for payments. This irregular expenditure can be replaced with eligible expenditure until the closure of the operational programme, in line with Article 40(5) CPR.

7.2 AUDIT OPINION

Qualified opinion with limited impact: Based on the audit work performed as described in chapter 3 (Scope) of the audit report, the Commission auditors have obtained reasonable assurance that the management and control systems put in place with

⁵ Cf. Guidance on a common methodology for the assessment of MCS in the Member States for 2014-2020 programming period (EGESIF 14-0010-final of 18/12/2014).

Category 2. Works, but some improvement(s) are needed. Some deficiencies were found. These deficiencies have a moderate impact on the functioning of the assessed key requirements / authorities / system. Recommendations have been formulated for implementation by the audited body.

regard the key requirements 4, 15 and 16 function properly at the level of audited body, managing authority and fund managers.

Signatures of the EC audit team and date

Luca Baldin

Carmine Mollica
Simone Brogi
Vladislava Glietz

(Principal auditor)

(Associated auditors)

Brian Debattista

Rafael López Sánchez
Lothar Kuhl

Approved by (Head of sector)

Approved by (Heads of units)

ANNEX I - IMPORTANCE OF RECOMMENDATIONS

System findings

Critical: Corrective action is needed to address a fundamental weakness in key controls, which puts in question the reliability of the whole or part of the management and control systems, and has led or may lead to widespread irregularities. There is a substantial risk to the reliability of (financial and other) reporting for the programme, the effectiveness and efficiency of the operations and activities and the compliance with national and EU regulations.

Very Important: Corrective action is needed to address a significant weakness in key controls, affecting the reliability of a significant part of the management and control systems, which has led or may lead to irregularities. There is a high risk to the reliability of (financial and other) reporting for parts of the programme, the effectiveness and efficiency of some of the operations and activities and/or the compliance with national and EU regulations.

Important: Corrective action is needed to address a weakness or deficiency in the management and control systems, which has a moderate impact at the programme level but which, combined with other weaknesses, may lead to irregularities. Improved controls would benefit the implementation of the programme and/or allow for greater effectiveness and/or efficiency.

Project findings

Critical: Corrective action is needed to address a serious irregularity (including irregularity of systemic nature) with high financial impact.

Very Important: Corrective action is needed to address an irregularity with medium financial impact.

Important: Corrective action is needed to address a weakness or an irregularity with no or limited (potential) financial impact

ANNEX II – TABLE OF AUDITED FINANCIAL INSTRUMENTS/FINAL RECIPIENTS

Fund ID	Financial instruments	Expenditure declared up to 30/06/2018	Presence II and III tranche (YES/NO)
(1)	FFCS - Fondo Crescita Sostenibile	39.122.848,00	NO (Art. 38(4)CPR)
(2)	Fondo Smart & Start	9.142.500,00	NO
(3)	FCG - Riserva PON Fondo Centrale di Garanzia	50.000.000,00	YES
(4)	Fondo L. 181/89	18.575.000,00	NO
(5)	FCDS - Fondo Contratti di sviluppo	21.236.249,00	NO

Fondo Crescita sostenibile

#	CUP	Final recipient	Loan (€)
1	B69J17000610008	Italtel Spa	2,536,779.09
2	B69J17000620008	Italtel Spa	2,645,116.16
3	B69J17000650008	SA Documents Srl	639,476.40
4	B18I17000450008	EKORU Srl	1,000,562.68
5	B68I17001150008	Victory Design Srl	233,083.33
6	B48I17000460008	Le Verdi Praterie	336,729.41
7	B18C15000070008	REPL Italia Srl	133,912.48
8	B15F16000100008	DOMPE' FARMACEUTICI SPA	286,174.75
	Total		7,811,834.30

Fondo Centrale di Garanzia

#	Project ID	Final recipient	Loan (€)	Guarantee (€)	Certified Expenditure (€)
1	790487	Franco Giuseppe Srl	1,000,000.00	800,000.00	100,000.00
2	798109	Casa di Cura Macchiarella Spa	1,000,000.00	800,000.00	100,000.00
3	798132	Cartotecnica Srl	1,000,000.00	800,000.00	100,000.00
4	813833	Palumbo Costruzioni Srl	500,000.00	400,000.00	50,000.00
5	827323	S.I. Con.	1,000,000.00	800,000.00	100,000.00
6	836501	Centro Riabilitazione Lars	820,000.00	656,000.00	82,000.00
7	864393	Immobiliare Nappi Srl	1,000,000.00	800,000.00	100,000.00
8	778116	Ardito Srl	500,000.00	400,000.00	50,000.00
		Total	6,820,000.00	5,456,000.00	682,000.00

ANNEX III - SUMMARY OF IDENTIFIED IRREGULAR AMOUNTS

Finding N°	Amount on irregular expenditure in € (Basis for calculation of financial correction)	% Rate of assistance	ERDF/CF/ESF/EMFF expenditure	% Financial correction	Amount of financial correction in €
8	43 240,91	100	43 240,91	100	43 240,91
TOTAL	43 240,91		43 240,91		43 240,91

ANNEX III BIS – OTHER AMOUNTS TO BE WITHDRAWN FROM LIST OF GUARANTEES

Finding N°	Amount to be withdrawn from list of guarantees
13	600 000
TOTAL	600 000