EUROPEAN INVESTMENT FUND

Joint European Resources For Micro To Medium Enterprises (JEREMIE)

Funded Risk Sharing Product (FRSP)

September 2010

Contents

1 Introduction

1.1 Background

As one of the instruments for the application of monies disbursed under EU structural funds, the "Joint European Resources for Micro to Medium Enterprises" (**JEREMIE**) initiative has been jointly developed by the Commission and the European Investment Fund (the **Lender** or **EIF**) in accordance with Council Regulation (EC) No. 1083/2006 and the Commission Regulation (EC) No. 1828/2006, as amended from time to time.

Competent authorities of a number of different jurisdictions and EIF have agreed to dedicate resources for EIF's implementation of the JEREMIE initiative pursuant to a funding agreement and in the form of a JEREMIE Holding Fund.

Under such funding agreement, the EIF is the entity in charge of the investment of such resources. To this end the EIF publishes calls for the expression of interest to select suitable counterparts for the deployment of financial products.

1.2 The Funded Risk Sharing Product (**FRSP**)

One of the products which the EIF may deploy is a facility programme under which the Lender agrees to make a loan facility available to a selected counterparty (the **Borrower**) for the purpose of supporting the Borrower in making financing available to small and medium-sized enterprises satisfying certain eligibility criteria.

Under such a loan facility, the EIF (acting through and on the account of the JEREMIE Holding Fund) provides liquidity to the Borrower for the development of a portfolio of loans to SMEs (such portfolio to be co-financed by the Borrower), and covers part of the risk of the Borrower relating to such portfolio.

1.3 This document

This document contains a summary of the EIF's standard form facility agreement (**Facility Agreement**) for the FRSP.

<u>**IMPORTANT NOTE:**</u> This Report is by its nature a brief summary of the main provisions of the Facility Agreement, and does not include the detail of many of the provisions described. This Report does not, and is not intended to, replace the need to review the terms of the standard Facility Agreement (or for that matter, the final form of each Facility Agreement entered into with a Borrower), and where necessary, this Report should be complemented by reference to the actual terms of the Facility Agreement. To the extent that there is any doubt whatsoever regarding the actual terms of the standard Facility Agreement or any facility agreement entered into with a Borrower, then the relevant agreement should be referred to instead of this Report.

<u>This Report does not constitute an offer of any nature whatsoever and does not create any binding obligations on the Lender to enter into a contract with any third party on the terms set out in this document or otherwise.</u>

2 Structure and layout of the Agreement

2.1 An even handed, non-aggressive approach, was adopted in drafting the Facility Agreement. The provisions of the Facility Agreement should therefore not appear so onerous to a Borrower as to require significant (or indeed any) negotiation.

2.2 The Facility Agreement is presented as a single document with 2 distinct parts:

(a) a "standard part", applicable to any Borrower, the terms of which are not to be amended; and

(b) a Borrower specific part (Schedule 1 of the Facility Agreement) containing the variables or negotiated terms, specific to the relationship between the Lender and the Borrower.

3 The Facility

3.1 The FRSP is structured as a straightforward term loan facility (the **Facility**). The EIF agrees to make available to the Borrower certain amounts to fund, in part, loans to be advanced by the Borrower to SMEs within a pre-determined period (the length of which is determined in Schedule 1 (Specific Terms)) (the **Availability Period**).

3.2 The percentage of the Borrower's loans to SMEs that is indirectly co-financed by the Lender is equal to the **Risk Sharing Rate** – a variable to be stated in Schedule 1 (Specific Terms). The same Risk Sharing Rate determines the portion of amounts repaid by SMEs as well as of recoveries from defaulting SMEs which the EIF is entitled to receive.

4 SME Loans

4.1 Eligibility Criteria

The Facility is only available to the Borrower to fund, in part, loans to SMEs, which at the date on which the loan is advanced to a SME, satisfies certain eligibility criteria.

Those Eligibility Criteria are:

(a) the borrower of such loan must be an SME in accordance with in the Commission Recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36), i.e. it employs fewer than 250 employees and which has an annual turnover not exceeding Euro 50 million, and/or an annual balance sheet total not exceeding Euro 43 million[1]

(b) the agreement relating to provision of the loan to an SME must be entered into between the Borrower and the relevant SME within the Availability Period;

(b) the loan must be actually lent (i.e. monies disbursed) by the Borrower to the SME;

(c) the loan agreement between the Borrower and the SME must provide for (i) the relevant amount to be disbursed to the SME (by one or a number of tranches) not more than 12 months from its date and (ii) an availability period for drawdown by the relevant SME ending not later than 30 June 2015;

(d) the SME must not be "in difficulty" (within the meaning of Article 2.1 of the Community guidelines on State Aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p.2));

(e) a loan may not be granted to an SME which is directly active in the sectors of arms, tobacco, human cloning or gambling.

Additional eligibility criteria may be specified in Schedule 1 (Specific Terms) to each Facility Agreement. Loans made by the Borrower to SMEs and funded, in part, by the Facility, are referred to as **SME Loans**.

4.2 Continuing Criteria

In addition to satisfying the Eligibility Criteria (at the time a SME Loan is entered into), the SME Loan must continue to satisfy certain additional criteria (the **Continuing Criteria**) throughout its life.

The Continuing Criteria are determined in each case and will be added to Schedule 1 (Specific Terms) of the Facility Agreement.

4.3 Inclusion / exclusion

(a) Inclusion

SME Loans satisfying the Eligibility Criteria are included in the portfolio of SME Loans (the **Portfolio**) upon monies being disbursed to the relevant SMEs.

(b) Exclusion

[1] This criterion can be amended in Schedule 1 (Specific Terms) according to the SME definition in force in each jurisdiction.

If a SME Loan either did not, in fact, satisfy the Eligibility Criteria when that SME Loan was made, or it becomes apparent that that SME Loan no longer satisfies the Continuing Criteria (such SME Loan being a **Non-Conforming Loan**), that SME Loan shall be disregarded and, as such, excluded from the Portfolio.

The Borrower is therefore required to put EIF in the same position as if such Non Conforming Loan was never included in the Portfolio (i.e. return those amounts (principal, management fees) which were paid by the EIF in connection with such Non-Conforming Loan.

4.4 The Credit and Collection Policy

In addition to the Eligibility Criteria and the Continuing Criteria, all SME Loans shall be made in accordance with the Borrower's credit and collection policy. The Borrower's credit and collection policy is to be provided to the Lender at the time of the call for expression of interest organised by the JEREMIE Holding Fund and the Borrower must confirm that no changes have occurred (or provide an update) as a condition precedent to the first drawdown under the Facility.

5 Conditions for borrowing under the Facility

5.1 The Borrower must satisfy certain conditions precedent before being able to utilise the Facility and before each drawdown under the Facility. These are the conditions one typically expects to see in relation to an arms length facility agreement such as this.

5.2 No tranche may be advanced to the Borrower (other than the first) under the Facility unless at least X% of the aggregate amount previously drawn by the Borrower has been committed to SMEs under signed loan documentation and at least Z% of the aggregate amount previously drawn by the Borrower has been disbursed to SMEs as SME Loans co-financed by the Facility, with the variables X and Z being determined in light of the risk requirements of the JEREMIE Holding Fund. This provision aims to discourage the Borrower from drawing more funds than are required at any time and 'stock-piling' the amounts provided under the Facility.

5.3 Loans may only be drawn in a base currency (the **Base Currency** to be specified in Schedule 1 (Specific Terms)). It is anticipated that the Base Currency of the Facility will be Euro, although this may not always be the case.

6 Repayment - Risk sharing

6.1 Repayment

(a) In repayment of money advanced to the Borrower under the Facility, the Borrower must pay to EIF an amount equal to the Risk Sharing Rate of each principal repayment received in respect of SME Loans.

(b) Optional currency SME Loans

(i) If funds borrowed by the Borrower are to be advanced by the Borrower to SMEs as SME Loans denominated in a different currency (an **Optional Currency**), the rate of conversion from the Base Currency to the Optional Currency is fixed when funds are advanced by the Borrower to a SME. The Borrower is required to maintain records of the rate of conversion applicable to each SME Loan advanced in an Optional Currency.

(ii) Repayments to the EIF (whether from recoveries or principal repayments) are made in the Base Currency – and the EIF is entitled to receive its proportion of each recovery or principal repayment converted to the Base Currency at the initial exchange rate that applied when the SME Loan was advanced to the SME.

6.2 Risk Sharing

(a) One basic principle of the FRSP is that the Lender shares the risk in relation to the loans advanced by the Borrower to SMEs. This means that if any SME Loan becomes a **Defaulted SME Loan** (ie, a loan in respect of which the relevant SME become insolvent, or in respect of which payments are overdue by more than 90 days, or in relation to which a restructuring of the SME Loan has taken place), then the obligation of the Borrower to repay to the EIF amounts borrowed under the Facility Agreement is reduced by the **Loss Amount** (as defined in paragraph 6.2(b) below) applicable to that Defaulted SME Loan.

(b) The Loss Amount is the principal amount of a Defaulted SME Loan, multiplied by the Risk Sharing Rate[2].

6.3 Final repayment

Other than the amounts which do not need to be repaid due to the risk-sharing mechanism set out in 6.2 above, the Facility must be repaid at a termination date (to be specified in Schedule 1 (Specific Terms)).

[2] For all Defaulted SME Loans denominated in an Optional Currency, the Loss Amount refers back to the initial foreign exchange rate applied to that SME Loan denominated in an Optional Currency. See paragraph 6.1(b) above.

7 Recoveries

Recoveries obtained by the Borrower in relation to any Defaulted SME Loan, are shared between the EIF and the Borrower. The proportion of each recovery which is to be paid to the EIF is equal to the Risk Sharing Rate.

8 Illegality and cancellation

8.1 The Facility Agreement contains a straightforward provision requiring the Facility to be repaid in full in the event that it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by the Facility Agreement.

8.2 A Borrower may cancel all or part of the facility which the Lender has committed to provide to the Borrower but which has not yet been lent to the Borrower on giving the EIF not less than 60 days' notice.

9 Interest

9.1 Facility amounts advanced to the Borrower but not yet disbursed to SMEs

The Facility Agreement provides for interest to accrue on amounts disbursed by the EIF but which the Borrower has not yet applied in the financing of SME Loans at an interest rate (to be specified in Schedule 1 (Specific Terms)) (the **Interest Rate**). Interest at this rate is to be paid to the EIF on each **Payment Date** (i.e. 7 January, 7 April, 7 July and 7 October in each year) for the preceding calendar quarter.

9.2 Facility amounts disbursed to SMEs by the Borrower under SME Loans

The Lender is entitled to receive a share of the interest which the Borrower receives in relation to each SME Loan. The proportion of interest which is to be paid to the EIF is equal to the Interest Sharing Rate of each amount of interest received by the Borrower. The Interest Sharing Rate will be specified in Schedule 1 (Specific Terms) of each Facility Agreement[3].

9.3 Amounts repaid by SMEs to the Borrower and not yet repaid to the Lender

The Facility Agreement has built into it a delay between the receipt of monies by the Borrower which should be paid on to the EIF, and actual payment of those monies to the EIF. The Facility Agreement provides for interest to accrue on those amounts at the Interest Rate and for that interest to be paid on each Payment Date to the EIF.

[3] For SME Loans denominated in an Optional Currency the Borrower must pay to the Lender the Interest Sharing Rate amount of the margin element of each amount of interest paid by a SME to the Borrower, and the Interest Sharing Rate amount of the base rate or cost of funds element of each amount of interest paid by a SME to the Borrower. Amounts to be paid to the EIF will be paid in the Base Currency – and will be converted from the relevant Optional Currency to the Base Currency at the European Central Bank's spot rate of exchange between the relevant currencies at the time of receipt of the relevant amount by the Borrower.

10 Management fee

10.1 A quarterly management fee is payable by the EIF to the Borrower. The management fee for a quarter shall be a percentage (specified in Schedule 1 (Specific Terms)) of the arithmetic average principal amount outstanding of all SME Loans included in the Portfolio on the first and the last day of the relevant quarter, multiplied by the Risk Sharing Rate.

10.2 The aggregate amount of management fees payable by the EIF to the Borrower is comprised in the overall amount of the Facility. Hence, payment of management fee reduces the undrawn Facility amount (the "**Available Commitment**") correspondingly.

10.3 The aggregate management fee payable by the EIF to a Borrower in any twelve month period is capped.

11 Representations

The Facility Agreement contains some standard representations given by the Borrower to the Lender.

12 Undertakings

12.1 Financial undertakings

The Facility Agreement contains only one financial covenant, namely that each Borrower will maintain a Capital Adequacy Ratio at a percentage to be set out in Schedule 1 (Specific Terms). Additional financial undertakings may be specified in Schedule 1 (Specific Terms), depending upon the Lender's credit analysis of the Borrower.

Note however that certain triggers (referred to as "Trigger Events") may, if breached, trigger the early cancellation of the Available Commitment and the early termination of the Availability Period. Trigger Events include a capital adequacy ratio, a minimum credit rating for the Borrower, a gearing ratio, a ratio requiring the proportion of SME Loans which become Defaulted SME Loans to be below a specified level, and a trigger requiring a minimum amount to be borrowed by the Borrower under the Facility within a certain period of time. Other triggers may be specified in Schedule 1 (Specific Terms).

12.2 Non-financial undertakings

The Facility Agreement contains a number of standard non-financial undertakings, including a negative pledge, a restriction on making disposals, and a restriction on incurring financial indebtedness. These restrictions are however subject to permitted exceptions which, for each Borrower, are to be detailed in Schedule 1 (Specific Terms) and are to be determined in light of the EIF's credit analysis of the Borrower.

12.3 Information undertakings

(a) The Borrower undertakes to provide certain financial information to the EIF. This includes audited financial statements for each financial year as well as quarterly financial statements of the Borrower.

(b) The Borrower also undertakes to supply a quarterly report to the Lender not later than 15 days after the end of each Financial Quarter. The form of the quarterly report is annexed to the Facility Agreement.

(c) The Borrower's credit and collection policy, which underpins the proposed Facility, may not be materially amended without the consent of the Lender, and the Borrower must notify the Lender any material amendment proposed in relation to the Borrower's credit and collection policy.

12.4 Other undertakings

(a) Visibility and promotion

(i) The Borrower is required to carry out adequate information, marketing and publicity campaigns, focussed in its territory in which SME Loans will be offered, aimed at making the JEREMIE initiative known to SMEs in that territory and more generally to respect promotion requirements set out in applicable legislation.

Such promotion measures include the requirement to reflect in all agreements documenting SME Loans the fact that the relevant SME Loan benefits from financing made available under the JEREMIE initiative and may include the obligation to use a specific JEREMIE logo on such agreements as well as on promotional material marketing the programme.

(ii) In addition, if financing under the Facility procures a financial benefit to SMEs, the Borrower undertakes to use such financial benefit as a marketing tool when promoting the advancement of SME Loans to be included in the Portfolio.

(b) State Aid

The Borrower is required to comply with all applicable EU state aid rules. Because of the public nature of the funds made available under the Facility Agreement, funding provided to SMEs is to be taken into account by the SMEs benefiting therefrom when considering EU state aid rules.

13 Events of Default

The Facility Agreement contains certain standard events of default, including non-payment, breach of obligation, cross default in relation to other financial indebtedness, insolvency, illegality, credit down grade and material adverse change.

Occurrence of any of the Events of Default entitles the EIF to cancel the Facility and to demand immediate repayment of all amounts advanced and outstanding under the Facility.

14 The Accounts

14.1 The Borrower is required to open and maintain a Utilisation Account for the purpose of the Facility.

14.2 Monies advanced by EIF under the Facility are paid to the Borrower into the Utilisation Account.

14.3 Monies received by the Borrower (from SMEs) in relation to the SME Loans are to be regularly transferred to a Proceeds Account to be maintained by the EIF .

15 Maintenance of records, monitoring and audit

15.1 Monitoring of the Borrower

(a) The Borrower is required to maintain and provide upon request information necessary to enable the Lender, the European Commission (including the European Anti-Fraud Office – OLAF), the European Court of Auditors and national authorities to verify the correct use of the Facility's funds and compliance with the terms of the Facility Agreement. The Borrower is therefore required to maintain records relating to the Facility Agreement throughout the life of the Facility Agreement and for up to 3 years following its termination or expiry.

(b) The Borrower must also allow the Lender, the European Commission, the European Court of Auditors and national authorities to carry out controls and inspections at Borrower's premises in connection with the monitoring and audit rights set out above.

15.2 Monitoring of the SMEs

(a) The Borrower is required to ensure that the Lender, the European Commission (including the European Anti-Fraud Office – OLAF), the European Court of Auditors and national authorities have these same monitoring and audit rights in respect of SMEs receiving, through the Borrower, financing under the Facility. To this end, the Borrower is required to ensure that each SME undertakes to maintain relevant records for an equivalent period as the Borrower.

(b) The Borrower is required to insert in their agreements documenting SME Loans the following standard text:

"The counterparty acknowledges that the European Investment Fund (the "EIF"), the agents of the EIF, the Court of Auditors of the European Community (the "ECA"), the Commission and/or the agents of the Commission including OLAF (the "Agents") and all other European Union institutions or European Union bodies, which are entitled to verify the use of EU Structural Funds and any competent national or regional authority of ("National Authorities"), including their duly authorised representatives, shall have the right to carry out audits and controls and to request information in respect of this agreement and its execution. The counter party shall permit monitoring visits and inspections by the EIF, the agents of the EIF, the ECA, the Commission, the Agents and National Authorities of its business operations, books and records. As these controls may include on the spot controls of the counter party, the counter party shall permit access to its premises to the EIF, the agents of the EIF, the ECA, the Commission, the Agents and National Authorities during normal business hours."

16 The Guarantee

16.1 The Facility Agreement provides that if, following an Event of Default (other than an Event of Default for non-payment or insolvency):

(a) the Borrower has repaid the Facility in full; and

(b) the Borrower requests that a guarantee feature be activated,

the EIF guarantees the payment to the Borrower of the Guarantee Principal Amount.

16.2 The Guarantee Principal Amount is an amount equal to the Risk Sharing Rate of the principal amount of all SME Loans which remain outstanding and unpaid on the date upon which the guarantee feature becomes effective. So, e.g., if the Risk Sharing Rate were 50%, and the principal amount of all SME Loans on the date on which the guarantee became effective was €100,000,000, the Borrower would have the benefit of a guarantee in relation to a principal amount of €50,000,000 of that portfolio on a SME Loan-by-SME Loan basis, notwithstanding that the Borrower had gone into default under the terms of this Facility Agreement.

16.3 The obligations of the EIF under the Guarantee continue until the earlier of (i) a new Event of Default occurring or (ii) the Termination Date. The Termination Date is a date to be specified as such in Schedule 1 (Specific Terms).

17 Transferability

17.1 The Borrower may not assign any of its rights or transfer any of its rights to a third party under the Facility Agreement or related finance documents.

17.2 As a general principle of the JEREMIE programme, it is anticipated that the assets and liabilities of the JEREMIE Holding Fund, such as the rights and liabilities of the EIF under the Facility, be, at the request of the relevant EU Member State, transferred to a successor entity.

With a view to allowing such transfer with respect to the Facility, the Facility Agreement provides that the EIF may assign any of its rights or transfer by novation any of its rights and obligations under the Facility Agreement and related finance documents to a third party.

17.3 The mechanism for transfer by the EIF is set out in the Facility Agreement.

18 Governing law

The Facility Agreement is governed by the laws of England and Wales and English courts shall be the exclusive venue for any dispute brought by the Borrower against the EIF.