



JESSICA Holding Fund for Sicily: Call for Expressions of Interest

KB-929

**Questions and Answers**

KB – 929 EOI

UDF Selection for the Jessica HF for Sicily

**QUESTION AND ANSWER DOCUMENT**

<b>Nr.</b>	<b>QUESTION RECEIVED</b>	<b>ANSWER EIB</b>
1	<p>What if ERDF resources are not used within December 2015 as required by EU Regulations, in particular: whether the UDF is not liable for the aforementioned case, will it have to pay any penalty? can it be defined the entity of the penalty?</p>	<p>The Call for EoI (Section VIII Point 4.d) presents a timetable for the JESSICA Holding Fund for Sicily's investment in Urban Projects. Applicants are requested to provide during Stage 2 a Business Plan consistent with such time frame. The Operational Agreement signed with the selected candidate will foresee penalties, to be agreed between the parties, in case of failure to meet the agreed targets in the form of, for instance, clawback provisions on the management fees paid or, in some cases, event of default under the agreement which would or may require the UDF to prepay all or any part of the amount received and not invested. In addition, the Operational Agreement shall foresee that the ERDF resources not used for investment in Urban Projects by the final deadline (as defined in the Operational Agreement) are to be repaid back to the JHFS. Also in this case, penalties, in terms of percentage of the amount returned, will be set out in the Operational Agreement.</p>
2	<p>What is the nature of resources given by the Holding Fund to the UDF. In particular in the event of the default of the SpV which the UDF would invest, JESSICA resources will be regarded as risk capital and/or the UDF will have to refund that money to the Holding Fund?</p>	<p>The UDF will be responsible for channeling resources from JHFS to Urban projects in the form of loan and/or equity. As such, unless explicit risk sharing provisions are proposed by the applicant in its Business Plan, the UDF will have in principle no liability on the losses resulting from defaults on the underlying projects or the vehicle in which it would invest, unless such liability is the result of gross negligence or wilful misconduct by the UDF. In such latter case, the UDF shall be liable to the JHFS for any loss caused by its failure to act with due care and/or, as the case may be, by the failure of any of its subcontractors to act with such due care. Likewise, the UDF shall not be entitled to claim payment or reimbursement of any costs, claims, direct or indirect losses or expenses from the JHFS exceeding the amount of JHFS' resources.</p> <p>The Operational Agreement may provide inter alia that, if there is an event of default under the investment agreements (i.e. loan or equity contracts signed with final beneficiaries of Urban Projects), and/or it is included in the default list or is classified as non-performing according to the UDF's standards, the UDF shall inform the JHFS. The UDF shall remain responsible for administration and enforcement of any rights and security interests in respect of the investment agreements and shall remain responsible for administration and utilisation of all collateral or other security arrangement in respect of the affected investment agreements. The UDF shall use the same degree of diligence in recovering amounts due but not repaid under the investment agreements as it would in recovering its own funds.</p>

3	<p>About Selection Criteria number 4 “Minimum rating of BBB/Baa2 provided by either Standard &amp; Poor’s Rating Services (a division of The McGraw-Hill Companies Inc.), Moody’s Investors Service Inc. or Fitch Ratings Ltd.”, we would ask you:</p> <p>in the case the proposed UDF would be an “Infrastructure Investment Fund” (Fondo Mobiliare Infrastrutturale) not yet established, that will be managed by an Asset Management Company (Società di Gestione del Risparmio), that will submit the Eol. Who has the obligation to demonstrate the rating required by the ToR, considered that:</p> <ol style="list-style-type: none"> <li>1. the Fund has not yet been created on the date of submission of the proposal;</li> <li>2. the Asset Management Company (Società di Gestione del Risparmio) is a legal entity that in Italy does not hold rating.</li> </ol> <ul style="list-style-type: none"> <li>▪ If the Asset Management Company’s majority shareholder (i.e. simple or qualified majority) is a bank holding group, will the rating be provided by the bank holding group?</li> </ul>	<p>In case the SGR (i.e. asset management company) is backed by a bank or other entity which holds a majority of stakes in the UDF and has the power to direct the management and policies of the UDF, whether through the ownership of voting capital, by contract or otherwise (i.e. Parent Company), the rating of the Parent Company will be taken into consideration for the selection criterion related to the Minimum Rating provided that a letter of support issued by the Parent company confirming it will support the engagement of the UDF under the Agreement is attached to the documentation accompanying the Expression of Interest.</p>
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4	<p>Is it possible to extend to a later date the deadline date for submission of certain certificates or declarations requested as Exclusion or Selection Criteria of Stage 1?</p> <p>The reason for this request is that, for international organizations or large banking groups that recently came through reorganization, merge or management turnaround there might be necessary additional time to obtain relevant certifications and/or signature for document and information required under Exclusion and Selection criteria.</p>	<p>The deadline for submission of Expressions of Interest is December, 21st 2010 and will not be extended. The EIB however, at its own discretion, reserves the right to take into consideration applications that undertake unconditionally to provide part of the supporting documents required under Annex 2 and evidence relating to the Exclusion Criteria as set out in Section IV of Annex 3, within 15 days from the date of opening of submissions, which justify, to the satisfaction of the EIB, the reasons for the delay in the submission.</p>
5	<p>Annex 3 – Section IV A3 – item 3 requests “Experience in the relevant targeted market (...) in the management of equivalent or similar projects”. Please let us know if the call for EoI (“Call”) requires comparable experiences in terms of dimension as per the total amount of the Call (i.e. around EUR 89 mln) or if smaller projects covering the same area or kind of investments can also be quoted. With this regard, is there a minimum size foreseen in terms of projects’ experience to be showed? Additionally, we would like to know if examples of experiences must only cover projects already completed or under completion or if these experiences can also relate to recently assigned projects not yet started.</p>	<p>The comparability is not restricted to projects of the same financial size than the Call. In addition, the Call does not foresee any minimum size for the individual projects composing the portfolio. Notwithstanding, the candidate has to show that it would be able to manage a portfolio of projects for an overall amount equivalent or similar to the one granted under the Call for Expression of Interest. With regard to the type of experiences to be provided, experiences on newly assigned project can be accepted.</p>

6	<p>Is the minimum rating required under Annex 3 – Section IV A3 applicable to all the parties represented in the consortium or is referred to the leading party only?</p>	<p>Should the applicant be a consortium, the leading party only is requested to provide the rating indicated in the above paragraph 4 Annex 3 – Section IV A3.</p>
7	<p>The local presence foreseen under Annex 3 – Section IV A3 paragraph 6 “a minimum of two structures operating in the Region (e.g. local offices, branch or representative office, etc.), of which at least one is located in Palermo and another one in a city with over 30,000 inhabitants or a provincial capital” is referring to the leading party or can be ensured by any of the member of the consortium?</p>	<p>The selection criterion referring to the current or future establishment of a local presence can be met by any of the consortium members.</p>

8	<p>Selection criteria A.3. n. 4 (minimum rating) A company, which has not a rating itself, is a wholly-owned subsidiary of the parent company which complies with this criteria. Is it possible for the subsidiary to apply for the EoI also as a sole or leading applicant relying on its parent company's rating?</p>	<p>As mentioned in the answer n. 3, the rating of the Parent Company will be taken into consideration provided that a letter of support issued by the Parent company confirms it will support the engagement of the UDF under the Agreement and that the subsidiary has financial capability or suitability to be involved in the management of equivalent or similar projects to those foreseen in this Call for EoI.</p>
9	<p>Experience A. 3 n. 3 May the applicant provide the relevant experience of its parent company and/or of companies belonging to the same group as the applicant's group? If so, is it necessary other companies, whose experience is provided, be part of the consortium which submits the EoI?  In other words, can the applicant claim as its own the experience of its parent company and/or companies within the same group of the candidate without making a consortium?  In this case, what would be the correct format of EoI?</p>	<p>In principle, experiences quoted in the application shall refer to the applicant itself. Experiences of other members of the consortium or the parent company or other companies of the group will only be relevant to the extent that these other entities are <b>directly</b> involved in the delivery of the services to which the quoted experiences relate to or to the extent that the applicant will be able to directly benefit from the quoted experiences when performing the required services under the EoI. If the latter is the case, the applicant shall provide sufficient evidence that operational and governance mechanisms are in place to allow it to directly benefit from - and apply to the project - the experiences of the consortium members or of the other companies the group.</p>

10	<p>What is meant exactly by “a separate block of finance within a financial institution”? Is it a “patrimonio separato” as defined in art. 2447 bis of Italian Civil Code ?</p> <p>To which extent it should be clearly segregated from the other assets? From an accounting point of view or also from a legal point of view?</p>	<p>EU Regulations require under Art. 44 of EC Regulation 1083/2006 the creation of a separate block of finance within a financial institution mainly for the purpose of auditing and reporting in order to allow a clear identification of the capital contributed from each Operational Programme and/or each Priority Axis to the UDF and the expenditure which is eligible under the Structural Funds. It is up to the applicants to seek legal advice as to the legal ways in which the “separate block of account” may be implemented under national law.</p>
11	<p>Is it possible for a company to apply for this EoI also on behalf of its Group without constituting a consortium in advance but after stage 1 of this call? Is it possible for an applicant, after the submission of this EoI, to create a consortium with new members who did not apply for this EoI or to enlarge the initial consortium, or to find other subcontractors than those indicated in the EoI?</p>	<p>In case the EoI is to be submitted by a consortium, the EoI requires to submit during Stage 1 all information requested in section 1.1 of Annex 1 for each of the members of the consortium, as well as to have already signed a cooperation agreement detailing the organization and the participation of each member of the consortium in the Call for EoI.</p> <p>In principle, the text of the Call for EoI does not therefore allow to create a consortium during Stage 2 if the applicant has not indicated this intention at the time of submission of the EoI.</p>

12	<p>How many projects, eligible for Jessica funds, have already been submitted to the Managing Authority? Have they already been classified according to Regional Integrated Plans and Priority Axis, also in terms of funds requested, in total and for each project? Will a specific call be made for the selection of other projects, subsequent to the selection of the UDF?</p>	<p>As indicated in the Call for EoI, details on the projects submitted by the Sicilian territorial coalitions under PISU/PIST will be provided only to the selected applicants during Stage 2. Notwithstanding, an outline of the results of projects presented at the time of the first submission of the negotiation/assessment procedure carried out by the Managing Authority is publicly available on the following website: <a href="http://ec.europa.eu/regional_policy/funds/2007/jji/doc/pdf/jessica/20100325_sicilycase.pdf">http://ec.europa.eu/regional_policy/funds/2007/jji/doc/pdf/jessica/20100325_sicilycase.pdf</a></p> <p>Projects presented within the PISU/PIST procedure already indicate the target Priority Axis and the Activities associated.</p> <p>The process for selecting new projects, to be added to the ones already presented during the PISU/PIST procedure, will be agreed between the selected UDF, the EIB and the Managing Authority based also on the methodology indicated by the candidate in its Business Plan. No specific call will therefore be launched for the selection of other projects.</p>
13	<p>Has the declaration in Annex 2, to be signed by all the members that have the power of legal representation for the applicant and/or consortium or this can also be done by only one of the persons having such power?</p>	<p>The declaration has to be signed by a person or persons that has/have been legally and duly authorized to submit the EoI on behalf of the applicant and the consortium. It is not necessary that all the persons having power of legal representation for the entity sign together the declaration.</p>