JESSICA

JOINT EUROPEAN SUPPORT FOR SUSTAINABLE INVESTMENT IN CITY AREAS

Implementation of the JESSICA financial instrument in Moravia-Silesia (Czech Republic)

EVALUATION STUDY

July 2009

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Evaluation study "Implementation of the JESSICA financial instrument in Moravia-Silesia"

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Potential of projects in the urban development

Our study has shown that the cities in the Moravian-Silesian region are interested in implementing projects leading to development of their region. This is given primarily by the fact that there are a great many regions in Moravia-Silesia that have been neglected following the shut down of industrial activity (coal mining, heavy industry, etc.), while at the same time the effects of the 1997 flooding can also be seen here.

From the perspective of financing it can be stated that the cities in the Moravian-Silesian region currently rely chiefly on grants (be they European or Czech). Nevertheless, these resources bring limitations – from the perspective of the amount of disposable resources and from the perspective of the rules set. It must also be realised that public resources are time-limited (e.g. resources from EU structural funds are bound to the programming period, which ends in 2013) and it is essential to be prepared for the fact that these resources will diminish.

Another specific factor that must also be mentioned is the fact that suitable plots of land for realisation of the projects are often privately owned. This also limits potential utilisation of grant financing.

Legal aspects

Based on our legal analysis we assume that there are no major legal obstacles for implementing JESSICA in Moravian-Silesian region. Nonetheless, few areas should be further examined in more details.

The area of state aid was analysed at three levels – selection of manager of holding fund/urban development fund by the managing authority of ROP MS, selection of projects for financing by the urban development fund and investments of private entities to the urban development fund.

If rules defined in the Public Procurement Act will be followed by the managing authority of ROP MS while selecting the manager of the holding fund or urban development fund the existence of state aid will be eliminated. Also if EIB will be selected as holding fund's manager the state aid would not be an issue.

Further examination of state aid should be conducted in case private institution will invest into the urban development funds. This should be the responsibility of the managing authority of ROP MS in cooperation with the holding fund's manager.

State aid should be examined also at the level of selection of projects and this is the responsibility of urban development fund's manager in cooperation with the managing authority and the holding fund manager. In this case we recommend notifying state aid programme to the EC.

The Czech Public Procurement Act has to be followed in case of selecting the holding fund/urban development fund manager. In case that EIB would be chosen as the holding fund's manager the Public Procurement Act does not have to be followed.

Executive summary (continued)

At the level of selection of urban development fund's manager the procedure has to comply with the Public Procurement Act in case that the managing authority will itself conduct the selection (without using the holding fund in the implementation structure) or if holding fund's manager will be public institution in the Czech Republic or if set in the funding agreement between the holding fund and the managing authority. . We understand that in case that EIB is the holding fund's manager it will follow its internal procurement rules.

Implementation structure

The implementation structure should be set in such a way that it corresponds to the amount of resources that the RC MS currently has available (approximately CZK 500 million). The local specifics and the likely growth in demand for financial resources in the mid term must also be kept in mind.

Although the amount of disposable resources is somewhat small, we recommend that consideration be given to integrating the holding fund into the implementation structure, whose manager would be the EIB. The main benefit in this case is transfer of financial engineering knowledge and know-how. It can also be presumed that in light of the fact that the EIB has already been established as the manager of holding funds in several EU Member States, negotiations on conclusion of financing contracts will not be time-consuming. This period of time will also give RC MS the opportunity to seek potential suitable urban development fund managers and also to work on the information campaign to promote the JESSICA financial instrument while assisting preparation of the project plans.

A suitable implementation strategy seems to be to establish one or, if need be, two pilot urban development funds during the first phase. One urban development fund would be established as a general-purpose urban development fund mandated to provide loans, guarantees or equity to various kinds of urban projects. The second urban development fund could be established with a more focused purpose, based on the specific needs of the region, as determined by the Managing Authority in cooperation with the holding fund manager. The latter urban development fund could, for example, focus on a particular sector or it could be an equity fund where private investors would contribute resources via plots of land. In the case of establishing only one urban development fund, the fund's resources would be made up only of operational programme resources; contributions by private investors could be made, for example, via establishment of an SPV.

Steps leading to implementation of the JESSICA financial instrument

The first, fundamental step leading to implementation of the JESSICA financial instrument in the Moravian-Silesian region will clearly be the decision of the MC to transfer the financial allocation from the ROP MS. Nonetheless, other important steps include the information campaign mentioned above, as well as securing more intensive communication and cooperation between public and private entities. The latter step is of importance chiefly because most projects by their nature require this cooperation; our research also revealed that such cooperation has not heretofore been very intensive.

1. Introduction

1.1 Goals of the study

The JESSICA (Joint European Support for Sustainable Investment in City Areas) financial instrument is an initiative of the EC and the EIB in co-operation with the CEB. Its purpose is to support urban development projects. JESSICA is not a new source of funding, but a new way in which to utilise resources from EU structural funds.

The RC MS considers detaching part of the financial allocation intended for grants within the ROP MS and to use it in the form of a new financial instrument. This will make it possible to finance projects/investment projects in the area of urban development in the form of loans, guarantees or equity. The resources will be invested into projects via the HF or the UDF.

Some of the main goals of this study include the following:

- identification and evaluation of legal obstacles in implementation of the JESSICA financial instrument in the Moravian-Silesian region;
- evaluation of the benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region as an opportunity to increase investment into urban development;
- identification and evaluation of potential implementation structures;
- proposal of an action plan for implementation of the JESSICA financial instrument in the Moravian-Silesian region.

This report has been prepared based on the contract concluded on 10 March 2009 between the European Investment Bank (the "Client") and PricewaterhouseCoopers (the "Contractor").

The Contractor bears no responsibility towards third parties to whom this report may be provided or that become acquainted with its contents in some other way.

1.2 Our methodology

Our approach in preparing this study was based on the verified methodologies of PricewaterhouseCoopers. When elaborating the individual chapters we followed the procedures set out below:

- analyses carried out by PwC employees;
- discussions with representatives of the cities in question and other relevant institutions;
- consultations with representatives of the EIB and the RC MS;
- gathering of data and information about potential projects;
- financial modelling and cash flow;
- analysis of available studies on the JESSICA instrument that have already been completed (these are listed in chapter 8 of this report).

1. Introduction (continued)

During the course of preparation of the study, discussions were held with representatives of the following cities and owners of property in the Moravian-Silesian region:

- Bohumín
- Frýdek-Místek
- Havířov
- Karviná
- Opava
- Orlová
- Ostrava
- RPG RE Management, s.r.o.
- Vítkovice a.s.

The PwC representatives also attended the workshops about the JESSICA instrument that were organised by the RC MS for representatives of Moravian-Silesian cities. A presentation, which was attended by representatives from the EIB and the RC MS as well as from the relevant ministries (the MRD, the ME), was also held.

Consultations with officials from the Ministry of Finance (CA) and the MRD (regional development department) were also used when preparing the study.

1.3 Specifics of the Moravian-Silesian region

In this section we present a description of the conditions that prevail in the Moravian-Silesian region and that region's selected cities with respect to demonstration of the possible demand for funds within the framework of the JESSICA instrument. This report includes a description of the seven Moravian-Silesian cities with whose representatives we had the opportunity to meet personally.

1.3.1. Moravian-Silesian region

The Moravian-Silesian region is situated in the easternmost part of the Czech Republic. The entire region has an area of almost 5 500 km2 and it is the most highly populated region in the CR (its population is over 1.2 million). Its current character has, to a large extent, been influenced by its previous orientation towards heavy industry: the first coal mine was opened here in the 18th century. In the first half of the 19th century, this orientation was expanded even further, and the largest boom was seen during the second half of the 20th century. This had a profound effect on both the social structure of the population and the quality of the environment throughout the region. The current decline of heavy industry in favour of light industries and services is gradually compelling this region to transform. Therefore, the most pronounced problems that the Moravian-Silesian region must currently confront are, first and foremost, structural issues pertaining to the extremely high unemployment rate compared with the rest of the CR. As a result of the current crisis, certain Moravian-Silesian cities now report unemployment of up to 14%; according to labour market analysts' estimations this figure will continue to rise. Other hindrances to economic development in this area also include its peripheral nature and low transport serviceability.

1. Introduction (continued)

One of the ways the Moravian-Silesian region is endeavouring to resolve this issue is via funds drawn from EU structural funds. A total of EUR 716.09 million (approximately CZK 20 billion) has been reserved for the ROP MS for the 2007 – 2013 period. These resources should be invested within the framework of four main axes of the programme, which are Regional Infrastructure and Accessibility, Support of Prosperity of the Region, Urban Development and Rural Development. These comprise particular areas of support that specify in further detail the types of project that can be supported by that programme. This includes, for example, development of transport serviceability, development of tourism, support for utilisation of brown fields, etc. For example, the "Use of Marketing Strategies in Tourism Activities in the MSR" and "A Region of Many Colours and Opportunities" projects, focussing on promotion of tourism in the region, have been successfully realised from this programme in the past.

The Moravian-Silesian region can also draw further support from structural funds thanks to the Integrated Operational Programme (IOP). This focuses primarily on modernising public administration and supporting regional development and tourism. The other standard operational programmes offered by the European Union (e.g. Operational Programme Transport, Operational Programme Environment, etc.) can be also utilised. Last but not least, the MSR can also draw foreign resources from the Swiss Financial Mechanism or the EEA/Norway Financial Mechanisms.

In the past the Moravian-Silesian region has already had the opportunity to draw significant grants at national level. These were aimed primarily at easing the effects of the phasing out of bituminous coal mining and production in industrial plants as well as at ground sanitation after mining shut down.

Considering the difficulties the Moravian-Silesian region has had to confront over the last two decades as a result of heavy industry's markedly reduced significance, we consider the potential efficiency of the funds offered via the JESSICA financial instrument to be high in this region. In the following paragraphs we therefore attempt to describe in more detail their potential use in the largest Moravian-Silesian cities.

1. Introduction (continued)

Diagram 1 Map of the Moravian-Silesian Region

1.3.2. Karviná

Karviná, located right on the border between the CR and Poland, is only 18 kilometres away from Ostrava, the main centre of the Moravian-Silesian region. Its population currently stands at approximately 63 000. This city's advantageous position on the trade route leading from Hungary to the Baltic in the Middle Ages predetermined its future prosperity to a great extent. There was another big boom in the second half of the 18th century, when bituminous coal was discovered in the area. As with the other cities in the region, however, there was a pronounced economic decline in Karviná in the 1990's related to the gradual curtailment of mining and closing down of the coal mines.

The main problem as concerns this city can now be seen in the progressive diminution and ageing of its population, the high level of unemployment, the problematic distance structure of the population, the poor quality of the environment and also, last but not least, Karviná's negative image as an industrial city, which strongly limits its potential for tourism development. Another problematic factor is the fact that one-third of the city's cadastral region comprises land previously used for mining that is privately owned (RPG).

Karviná is currently involved in several projects that are co-financed by European structural funds. It already has Integrated Urban Development Plans (IUDP) prepared for the ROP and the IOP, within whose framework it is counting mainly on revitalisation of problematic housing estate areas, which would help to ensure stability of the socially diverse structure of the population. Karviná has also participated in several cross-border projects in cooperation with Poland that focussed on mutual cultural and economic co-operation to support tourism. Finally, it has also utilised European resources for certain specific investments such as reconstruction of crèche facilities or expansion of the sewer system.

1. Introduction (continued)

PwC's discussions with city representatives revealed that Karviná is interested in investing more than CZK 1.5 billion by 2015. At the same time, the city's budget is approximately CZK 1 billion, but the total volume of grants heretofore obtained is also nearly CZK 1 billion. In addition, the city has a loan for co-financing of projects from structural funds. Going on this information we consider that Karviná is a suitable candidate for utilisation of the JESSICA financial instrument.

1.3.3. Ostrava

This metropolis of the Moravian-Silesian region is the second largest city in the Czech Republic by area and the third largest in terms of its population (approximately 300 000 inhabitants). The first record of settlement in what is today's city dates back to the late Stone Age. The heyday of the Middle Ages was followed by catastrophes: warfare and devastating floods and fires. The discovery of coal seams, together with Ostrava's connection to the railway network and the establishment of Vítkovice ironworks, returned prosperity to Ostrava and the city continued to develop its heavy industry following the Second World War. At that time Ostrava was known as the "city of coal and iron" or the "iron heart of the Republic". After 1989 there was a period of fundamental change: in June 1994 the city's history of mining was brought to a close once and for all, and four years later the ironworks' furnaces went out. Ostrava now focuses primarily on the engineering industry and steel manufacture. It supports creation of industrial areas and clusters with the purpose of facilitating business and promoting an inflow of investment. It is also trying to invest into infrastructure and tourism development as well as into improving the quality of the environment.

To promote business and improve the quality of the living conditions in the city, Ostrava also makes abundant use of grants from EU structural funds. It draws funds from the ROP MS, from the IOP and from the thematic operational programmes. Numerous projects have already been financed from all these resources: for example, realisation of energy savings at several schools and revitalisation of certain city gardens and parks. Ostrava also became involved in the ACT4PPP programme, output of which should be an establishment of a suitable PPP structure for regeneration of the Hrušov brownfield. Moreover, with the help of European funds the city is concurrently preparing two IUDPs. The objective of the first IUDP is to improve the city centre's transport serviceability, revitalise the Ostravice river and develop the activities of the Ostrava zoo. The main objective of the second IUDP is to support education, research and development as well as to resolve the transport infrastructure.

The regeneration of the Hrušov brownfield mentioned above is one of the projects for which resources from the JESSICA financial instrument could fittingly be used. City representatives claim that the anticipated cost of this project is approximately CZK 750 million, most of which would apparently go towards sanitation of mining damage. In this case also, the ownership structure of the plots of land must be resolved. A prominent owner in this location is the City of Ostrava and RPG, which purchases plots from other owners. It can be stated that in this case the agreed cooperation between the city and the private entity works very well.

1. Introduction (continued)

We also see other opportunities in, for example, investment of funds into the Nová Karolina project (a planned administrative complex with shops, restaurants and parking space whose area would make it one of the five largest administrative buildings in the CR) or the Nové Vítkovice project. The latter project is for construction of a complex of apartments, offices and shops, as well as a research centre and tertiary education premises.

1.3.4. Opava

The city of Opava with approximately 60 000 inhabitants is currently one of the prominent cultural and industrial centres of Czech Silesia. According to documented written records, its history dates right back to the middle of the 12th century. In the past Opava was not a very economically developed city; its connection to the railway network in 1855 brought at least some enlivenment - mainly to the food and cloth industries. There was a stronger upswing during the post-war period, when new residential sectors and industrial plants, mainly for the engineering, paper-making, food and pharmaceutical industries, were built. Opava's economy is also relatively diversified at present, focussing primarily on engineering, pharmacy, printing and manufacture of packaging. To the credit of its high-quality business environment, last year Opava was the Moravian-Silesian city to receive the City for Business award from the prestige Czech economic weekly paper, Ekonom. The unemployment remains steadily above the Czech average, but despite that Opava's unemployment rate has for some time been one of the lowest in the Moravian-Silesian region.

In relation to its plans for future urban development, Opava has presented its Strategic Economic and Regional Development Plan for the 2007 – 2020 period. It is split into five main priority areas (Economy, Infrastructure, People, Environment and Administration of the city and city districts), which are structured into individual measures comprising specific, planned activities including the anticipated duration for their implementation. Opava has also prepared a catalogue of its development regions that includes a representative selection of the most prominent areas determined for new residential and industrial construction or for sports and recreation facilities. Opava is seeking EU financial resources chiefly based on its two IUDPs. The first one is the Attractive City IUDP, which is meant to secure funds from priority axis 3 (Urban Development, support area 3.1 – Poles of Development of the Region). Park regeneration, marking of tourist attractions and repair of the façades of city centre buildings, for example, could be financed from these funds. The second IUDP is the Housing IUDP which focuses on financial resources from the IOP from priority axis 5 (National Regional Development Support). This has already been approved: specifically, it is the Kateřinky IUDP for development of panel housing estates, and Opava has been granted a total of EUR 6.44 million within the framework of this IUDP.

During the PwC employees' discussions with Opava representatives it became clear that almost all the submitted projects are currently at the planning stage and that they are not expected to be realised before 2010.

1. Introduction (continued)

From the financial perspective, it is a relatively conservative city. Last year's trading finished with a surplus and its debt service is around 10%. Nevertheless, Opava has minimal experience in cooperation with private entities. We consider the efficiency of the JESSICA financial instrument in the case of Opava to be high: the city's financial resources are relatively strong; many potential projects are offered here, and implementation of the JESSICA financial instrument could also help Opava to involve many private partners in investments.

1.3.5. Havířov

With its population of over 82 000, Havířov is one of the largest cities in the Moravian-Silesian region. Havířov has one of the shortest histories in the entire CR: it was founded as late as 1947, in connection with the need to provide housing for the miners and metalworkers during Ostrava's industrial boom following the Second World War. The nature and speed of the construction at that time resulted in Havířov being a typical Socialist-style "housing estate" city and, to a large extent, these factors also determine its current character: there is a minimum of industrial and other business here, and the range of industrial sectors is extremely limited. The majority of its economically active inhabitants commute to other locations to work. Since the end of the 1990's the unemployment rate here has been in the double digits, with the largest decline in 2008 (14.08%); however, it can be expected to rise sharply in relation to the current economic crisis.

In view of all the factors mentioned above, Havířov is also making a bid for support of its development via EU structural fund participation. It has also prepared two IUDPs. The first, within the framework of the IOP, presents a plan for regeneration of the Šumbark housing estate and the second, entitled "The Attractive City of Havířov" (within the ROP framework) presents proposals for regeneration of brownfields and public spaces, and for construction and evaluation of the technical infrastructure for sport, work with children and adolescents, culture and other leisure activities. Moreover, in mid-2008 it approved the Strategic Urban Development Plan II, which identifies five main problem urban developmental areas (City, Economy, Infrastructure, Social environment and human resources, and Environment). The new strategy should help to improve the city's reputation as a place to live, improve the quality of its public services, strengthen the infrastructure and, last but not least, support the development of sophisticated industry that does not require large amounts of space and does not burden the environment.

Notwithstanding, any activity in the area of the city's economic development, as in the case of Karviná, runs into obstacles in the form of ownership of suitable plots of land. Most of the plots of land in the city's residential area are privately owned by RPG.

Havířov, too, could become one of the cities that could utilise the resources offered via the JESSICA financial instrument. During discussions with PwC officials, representatives of the city stated that if no financial resources are to be found they will consider the possibility of utilising the JESSICA financial instrument as soon as the precise conditions for provision of support from this framework are known. Examples of suitable projects that are currently being considered for implementation are a leisure activity zone (for approximately CZK 0.5 billion) or construction of a new tertiary education complex.

1. Introduction (continued)

1.3.6. Bohumín

The city of Bohumín has a population of 23 000 and thus belongs among the smaller of the cities selected for our analysis. Its main boons are its advantageous location on the border of two states and at the crossroads of the railway lines, and its proximity to the Moravian-Silesian metropolis. It is characterised on the one hand by abundance of greenery and watercourses, and on the other hand by expanding industry and heavy traffic.

The most significant local employers include numerous manufacturers of iron materials (Bekaert, s.r.o., Bonatrans, a.s., Železárny a drátovny Bohumín, a.s. etc.) and České dráhy. As a result of the current crisis, unemployment also went over the 10% mark here at the beginning of 2009.

Bohumín has many visions for its future development. It has already reserved approximately 15 hectares of space for potential investors close to the future D47 highway that is to pass through the city. The neighbouring Dolní Lutyně region could also potentially become an industrial zone. Consideration is also being given to the possibility of canalising the Oder river and building docks: a highway and railway terminal connected to a wide-gauge railway linking Europe and Asia. The updated strategic urban development plan nominates three main strategic areas (Economic development, Quality of life and The city's image), within which Bohumín's partial problems are identified and ways of resolving them are proposed. Bohumín has also prepared its own IUDP for the IOP. The city would like to establish high-quality housing and revitalise the surroundings, recreational zones and playgrounds in the Nový Bohumín area. Realisation of the goals set out in the IUDP is to take until 2015.

Despite its small population, Bohumín is also a suitable potential candidate for utilisation of resources via the JESSICA financial instrument. The main reason for this is its strategic position, which may help to attract private investors. Another advantage is the fact that Bohumín has experience with PPP project realisation. Moreover, most of the plots of land that could be used for potential investors are owned by the city, and this would significantly simplify potential negotiations concerning purchase of the plots. Bohumín offers several projects that could be involved, such as investment into the National House in Starý Bohumín, which should also comprise regeneration of the adjacent area.

1. Introduction (continued)

1.3.7. Frýdek-Místek

Frýdek-Místek, with its population of approximately 61 000, is one of the larger cities in the Moravian-Silesian region. The city's history is interesting: in the 19th century the two separate cities of Frýdek and Místek experienced fast expansion in textile manufacture and ironmongery. Later, when mining was also added to these lines of business, both cities experienced an economic boom characterised by an influx of new workforce linked to the extensive construction activity. This brought the two cities to life. Frýdek and Místek were joined into one combined unit at the beginning of 1943 by an irreversible decision of the officials in power at the time. The new city was first known as Frýdek; after lengthy discussions, the city's current title was subsequently agreed once and for all in 1955. The city preserved its industrial character right into the 1990's, and it was not until the new millennium that the number of inhabitants employed in iron and steel plants dropped steeply. Nevertheless, for the time being the city has not suffered any significant unemployment: even at the present time, the Hyundai car factory in neighbouring Nošovice continues to provide a sufficient number of jobs.

Frýdek-Místek has also already prepared IUDPs for the ROP and the IOP, unifying the projects planned for co-financing from EU funds. The first of these, entitled "Attractive City", focuses chiefly on support of the following areas: renewal of neglected regions and spaces; a better quality of housing zones; construction and/or improvement of the infrastructure for sport, culture, leisure and tourism; and finally protection and renewal of monuments and use thereof. The second, which is oriented towards regeneration of the Slezská housing estate, comprises complete reparation of the housing estate area, sanitation of the transport and technical infrastructures, construction of non-commercial recreation spaces as well as regeneration of the apartment buildings themselves; i.e. renovation, heating, insulation repair, etc. Thus, it is expected that specific projects will be realised within the framework of both IUDPs that would improve on the city's current appearance. The Slezská housing estate IUDP has already been approved, but not in the full amount envisaged. With the participation of resources from the IOP, the Frýdek-Místek territorial analytic source data were also procured.

Frýdek-Místek could utilise financial resources provided via the JESSICA financial instrument, particularly in connection with the Slezská housing estate IUDP that was recently approved. The city's financial resources are good (its debt ratio is about 6%); moreover, it has abundant experience with regeneration projects. Construction of garage compounds is one of the most suitable potential projects for the JESSICA financial instrument. The city intends to contribute the appropriate land to this investment; otherwise, it is seeking a strategic partner to realise the project and possibly to operate it as well. Another potential project is use of the Palkovická barracks, where the city is only just starting to prepare an efficiency study and has not, for the time being, found a strategic investor interested in the premises.

1. Introduction (continued)

1.3.8. Orlová

Orlová is a city with approximately 32 000 inhabitants. The development of Orlová's history is similar to that of the other large Moravian-Silesian cities. Its significance grew in the 19th century in relation to the commencement of coal mining. Not only mining establishments but also many mining colonies were established here. Together with the developmental changes, the city's population also rose sharply. In addition, Orlová profited in particular from its strategic location on the railway line connecting the big centres of the Austro-Hungarian Empire. At the start of the 20th century, Orlová then became a prominent trade centre for the entire Těšín area. After the Second World War it continued to pursue its focus on coal mining, with the profound negative consequences of mining damage to homes and architecture. For these reasons consideration was even given to elimination of the entire city and relocation of its inhabitants. This was ultimately not done, thanks to the construction of an extensive housing estate in Horní Lutyně to which Orlová's inhabitants from the undermined parts of the city were relocated. The city's economic orientation is currently changing and now tends to focus mainly on light industry and services. Likewise, the historical sites are progressively undergoing revitalisation. A specific of the city of Orlová in relation to economic development is the fact that the majority of its population does not work there. This results in reduced tax income for the city's budget and thus in fewer resources for its investment activity.

So far, in connection with its development plans Orlová has realised from European funds only elaboration of the territorial analytic source data and the IUDP for the IOP. The territorial analytic source data comprise the fundamental strategic document from which all further plans for future development of Orlová should flow. They describe the relevant cadastral region, the limitations on its use, and any other problems to be resolved, including plans for implementation of possible changes. In mid-2008 the city's council also approved the IUDP for the Orlová – Poruba locality, which should facilitate drawing of grants from the IOP. This zone has been selected for revitalisation chiefly in respect of the high rate of social disqualification of its inhabitants pertaining to the high unemployment rate, low education, the high crime rate and the high number of members of national minority groups. The main goal of the IUDP is to improve the quality of public spaces and use thereof, modernise housing in that locality, reduce the energy demand of school buildings and successfully integrate the Roma minority into local life.

In our opinion, Orlová is also a possible candidate for utilisation of the JESSICA financial instrument. Currently, the biggest problem that the city must confront in connection with realisation of its development plans is the ownership of suitable plots of land (owned by private entities OKD, RPG, etc.). However, on the other hand even Orlová is considering several projects within which it would be possible to make use of the JESSICA financial instrument. Examples of these are construction of a parking building, creation of a leisure zone in the vicinity of a bathing establishment or reconstruction of the square, including construction of garages and administrative buildings.

1. Introduction (continued)

1.3.9. RPGE RE, l.l.c.

The group RPG Real Estate was founded on the 1 July 2006 as a result of the restructuring of the non-mining property of the joint-stock company OKD, which is the largest mining company in the Czech Republic. The whole Group is managed by RPE RG Management Company. This company is also responsible for all special projects, to which participation in JESSICA projects is supposed to belong. The company provides services like property and real estate administration and other development activities, for example, company portfolio project development or inquiries regarding new investment possibilities.

RPG RE is nowadays active primarily in the Moravian-Silesian region (in Ostrava, Frýdek-Místek, Opava, Havířov, Karviná, Orlová and other towns and cities). In this region the company owns approximately 44 000 flats, in which roughly 100 000 people are living. These flats are in average 54 years old.

The Group also owns other plots of land in the Moravian-Silesian region, including some brownfields. Specifically, substantial plots of land owner particularly in Havířov, Karviná, Orlová and Ostrava. In Havířov, it owns a full 95% of the city's residential area, as we have already mentioned.

With respect to all these facts, RPG Real Estate Group is a significant player in the area of Moravian-Silesian city regeneration. The Group is aware of its role, as it mentions on its websites: "We have a great capacity to take part in the general development of the Moravian-Silesian region. Therefore, we have already established close relations with regional and municipal representatives and we aim to coordinate our common development and investment plans."

1.3.10. Vítkovice, joint-stock company

Vítkovice, joint-stock company, represents one of the most substantial groups in the area of heavy engineering. Its activities cover more countries in Central Europe. Nowadays, the whole group bears the name of its parent company VÍTKOVICE HOLDING, joint-stock company. The production programme is divided among subsidiaries with respect to eight main pillars of the Group (as for example metallurgy, traffic engineering, heavy engineering, etc.).

Looking at city regeneration problems, the company owns extensive brownfields particularly in Ostrava. One of the areas is also Dolní Vítkovice1. Some architectonic utilisation studies already exist for a part of this brownfield. There are more reasons for development of this zone: it is no longer used for industrial purposes, it is large enough and located near the centre of Ostrava. As one of the municipal representatives mentioned during our interviews, the time for "looking for civil use of an industrial zone" has now come.

[1] Grounds of an area of approximately 150 hectares, where a national cultural sight, mine Hlubinná can be found.

1. Introduction (continued)

1.4 Conclusions and data for setting the rules of the JESSICA financial instrument in the Moravian-Silesian region

1.4.1. Sufficient demand

Based on our research and discussions with representatives of the selected cities, it can be stated that the cities currently have a sufficient number of urban regeneration/development investment plans that are eligible for support by the JESSICA financial instrument (more details in chapter 3.1.1 of this report).

1.4.2. Cities' dependence on grants

From the perspective of project financing it can be stated that both in the past and currently, the cities in the Moravian-Silesian region primarily utilise a large inflow of grants (be they Czech or European – see chapter 2.1 of this report). The fact that these resources are limited both time-wise and in relation to disposable allocation and the rules for drawing them, which are very rigid in many respects, speaks in favour of utilising the JESSICA financial instrument. Some city representatives are already aware that in the future it will be necessary to find other sources of finance for their investment projects.

1.4.3. Reluctance to increase the city's indebtedness

An important factor in setting the JESSICA financial instrument is the fact that city representatives are not willing to increase their city's indebtedness (all the more so during a financial and economic crisis, when there is a very real threat of reduced tax income for the cities' budgets). Nevertheless, in all cases the level of the debt ratios is very good.

1.4.4. Ownership of land suitable for project realisation

Land ownership is another factor influencing project development. Land plots are frequently owned by private entities (RPG, OKD, Vítkovice, etc.). This problem is absent only in Opava, Bohumín and Frýdek-Místek alone. It is therefore necessary for the cities to collaborate closely with these private owners in all planning matters. However, based on the discussions held it was discovered that such cooperation is currently only in the beginning stages and takes place only in respect of housing issues or a small number of projects (e.g. the Hrušov, Ostrava project).

1. Introduction (continued)

1.4.5. Minimal experience in cooperation between the public and private sectors

During our research we also found that the municipalities and cities in the Moravian-Silesian region have very limited experience in cooperation with the public and private sectors. Two separate project lines still exist: projects realised by cities and projects realised by private investors (developers). It appears that both these types of model currently have limited use.

Based on discussions with city representatives and private owners of property, it was discovered that the cities harbour misgivings about potential cooperation with a private entity. It was also found that private owners often have their own plans as to how to manage their property, and that they do not always consult these plans with the city representatives. Thus it can happen that these plans do not correspond to the city's strategic documents (municipal plan, development plan, etc.). In this respect, it will be necessary in future to ensure more intensive communication between city representatives and private owners (ideally by way of an impartial entity facilitating this process).

From the above it can be stated that the following factors will be important when setting the rules for the JESSICA financial instrument in the Moravian-Silesian region:

- simplicity and flexibility of the rules to ensure speedy drawing of funds;
- the conditions under which the funds will be provided, i.e. they should be more advantageous than in the case of standard loans from commercial banks;
- the opportunity to realise projects that comprise entry of a private partner as a property owner;
- change of the rules for IUDPs such that amendment of existing IUDPs or elaboration of new ones would be easier than it currently is (or so that a different document concerning the city's strategic urban development plan could be considered to be an IUDP).

2. Legal conditions for the implementation of the JESSICA financial instrument in the Czech Republic

2.1 Added value of implementation of the JESSICA financial instrument in the Moravian-Silesian region

To determine the added value of implementation of the JESSICA financial instrument in the Moravian-Silesian region, its potential must be compared with other possible sources of finance for the projects at which JESSICA is aimed. There are quite a number of such instruments: these are operational programmes financed from EU structural funds and some other public or private resources.

We therefore set out below a breakdown of them along with a brief description of the characteristics of potential projects and beneficiaries of funds, while always endeavouring to identify the individual areas of the JESSICA financial instrument that offer support to similar projects. These are the following:

1. municipal infrastructure development including transport, waste management, energy and other infrastructures;
2. sustainability of cultural and architectural monuments;
3. sanitation and decontamination of brownfield sites;
4. construction of office space for small and medium-sized enterprises;
5. construction of tertiary school buildings, including facilities specialised for medicine, biotechnology, etc.;
6. increased energy efficiency of premises.

2.1.1. Operational programmes financed from EU structural funds

Regional Operational Programme of the Moravian-Silesian NUTS II Cohesion Region

Of the operational programmes, we must first and foremost mention the ROP MS. As already mentioned in our presentation of the Moravian-Silesian region and its centres of importance, this financing instrument is utilised by Moravian-Silesian cities relatively frequently. At the same time it supports certain areas of support for which resources from the JESSICA financial instrument could also be used. The first of these is increasing the quality of the transport infrastructure and serviceability. Here, resources from the ROP MS can be expended, for example, on construction and modernisation of highways and cycle tracks, construction of by-pass roads or reconstruction of crossroads. Modernisation of public transport vehicles, reconstruction of stops and stations, building of parking lots or introduction of control and information systems for urban mass transportation are also supported. At the same time, the grant recipients can be the Moravian-Silesian region itself on the one hand, and individual municipalities or, for example, the MSR highway maintenance depot or the railway administration on the other. Thus, the opportunity to utilise these resources is basically consistent with the opportunity to use the JESSICA financial instrument, namely its first area of support focussing on financing entire urban infrastructures including transport, waste management and energy infrastructures.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Further specific areas of support may also be financed by the ROP MS, e.g. the public services infrastructure. Included in this category are support of social services, education infrastructures and leisure activities for children and adolescents. These resources can be utilised not only by the MSR and the municipalities but also by state enterprises and state non-profit organisations, education and advice institutions, schools and education facilities, providers of social services and many other entities of that type. Projects that for the time being are realised as part of public services infrastructure development with the participation of the ROP MS could also be co-financed from the first or, if appropriate, also partially from the fourth areas of support of the JESSICA financial instrument.

Finally, the ROP MS can also be used to support tourism activities or for brownfield revitalisation. Again, in the case of tourism this is a classic grant intended for expansion of service trades, revitalisation of monuments and other attractions; in the case of brownfield revitalisation it concerns their decontamination, formation, planting of greenery and reconstruction of existing buildings. The MSR and its municipalities may draw these grants. In addition, state non-profit organisations and state enterprises may also draw grants in support of tourism. At the same time, these areas can also be supported from resources offered by the JESSICA financial instrument, specifically from the second and third areas of support pertaining to reconstruction of cultural monuments or sanitation of brownfield sites.

Operational Programme Environment

Another potential source of financing that could be used in the MSR and which in certain regions more or less overlaps with the areas supported by the JESSICA financial instrument is the Operational Programme Environment. This primarily supports projects that can be supported in the third, or in some cases the sixth, area of support of the JESSICA financial instrument mentioned above (within whose scope it is possible to finance increased energy efficiency of selected buildings). The OPE focuses on curtailment of industrial pollution and reduction of environmental risks, sustainable utilisation of energy sources, or improvement of waste management infrastructures and reduction of flood risk.

The grants may be drawn by many entities, e.g. regional or local authorities and affiliations thereof, organisations established by municipalities and regions, non-profit and contributory organisations, enterprises, etc. The projects that could receive these grants are extremely varied in their focus: they could modernise and intensify water purification plants, they could focus on construction of new and reconstruction of existing facilities to increase utilisation of renewable sources of energy or to increase the quality of heating of selected buildings, etc. The OPE even provides resources for infrastructural development for environmental education, consultancy and further education, the goal of which is investment support of education, consultancy and information centres or creation and publication of specialised materials and aids.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Integrated operational programme

Another operational programme that can also be used in the Moravian-Silesian region is the Integrated Operational Programme. It offers two specific areas of support: for utilisation of potential cultural heritage, and for improvement of the environment in problematic housing estates. Within the first area of support, national methodical centres can be created for selected cultural heritage districts, or model renewal projects can be realised and part of the heritage building fund of the CR can be utilised.

Again, this is a grant that could be drawn by state branches and contributory organisations established by them; non-state, non-profit organisations; municipalities and organisations established by them; and interest groupings of legal entities. At the same time, similar projects could potentially also be supported, specifically with the help of the second area of support of the JESSICA financial instrument.

The IOP focussing on improving the environment of problematic housing estates is currently being utilised in many large Moravian-Silesian cities. It comprises revitalisation of public spaces, regeneration of apartment buildings and, last but not least, pilot projects intended to resolve the issue of Roma communities in danger of social disqualification. The grant can be applied for by individual municipalities and by apartment building owners first hand. Projects realised as part of this IOP area may also be supported by means of resources offered primarily via the first area of support of the JESSICA financial instrument.

Operational Programme Enterprise and Innovations

Moravian-Silesian entrepreneurs may also make use of Operational Programme Enterprise and Innovations for their activity. This programme concentrates on improving the quality of the infrastructure for entrepreneurship, primarily via creation and development of entrepreneurial properties according to European standards. Among other things, for example, it also supports brownfield regeneration. Naturally, the most frequent applicants would be entrepreneurial entities; at the same time it is always checked whether the projects could be financed as part of the PPP. In this area also, it is possible to utilise the potential of the JESSICA financial instrument, particularly the resources offered in the first and third areas of support.

2.1.2. Other public resources

Programmes of the Moravian-Silesian region

Other public resources that could be expended on similar projects to those eligible for support by JESSICA are three programmes financed directly by the Moravian-Silesian region. These programmes are the following:

- Support to the recovery and development of rural areas in the Moravian-Silesian Region in 2009;
- Increasing absorption capacities of towns and municipalities with under 10 000 inhabitants;

Renewal of cultural monuments and protected buildings in the Moravian-Silesian region in 2009.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

The Moravian-Silesian region always announces these programmes for the particular financial year. The amount of disposable resources always depends on the Moravian-Silesian regions' concrete available budget.

Interdepartmental Commission for revitalisation of the Moravian-Silesian region
In this case the resources are provided by the Czech Government for the purpose of removing ecological damage that arose before the mining companies were privatised, in relation to metallurgy restructuring and for revitalisation in eligible areas of the Moravian-Silesian region. This programme has been running since 2002, when the Czech Government decided to detach CZK 20 billion in privatisation income for the above-described activities.

2.1.3. Financial resources provided by private entities

Besides grants, municipalities and cities in the Czech Republic can also make use of commercial resources provided by banks to finance their needs.

Most banks on the Czech financial market currently have two types of product for public-sector institutions in their portfolios. The first type is loans in connection with projects financed from EU structural funds. Banks provide loans for pre- or co-financing of projects and the loan is repaid from the grant that is received. They also provide loans for those project expenses that are not covered by the grant.

The second type of product is a loan for the investment activity of the city in question. Banks provide resources to finance tangible and intangible capital goods (including projects) and renewal of existing capital goods. The aim is to support financially demanding investment activities and to resolve the time discrepancy between the income and expenses in municipal budgets.

2.1.4. Obstacles to procurement of financial resources

Based on the above information it can be assumed that the Moravian-Silesian cities and municipalities have sufficient funds available to finance their projects. Notwithstanding, in order to gain a correct understanding of the financial instruments it is necessary to take into account the obstacles that exist when utilising these resources.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Public resources

The following aspects in particular must be taken into consideration when making use of public resources:

- limited amount of disposable resources – there will always be the issue of the amount of disposable allocation, because urban regeneration projects are financially demanding and one project budget is often several times higher than the potential of the relevant operational programme/priority axis. In the case of structural funds, the allocations are set on the basis of the programme documentation approved by the EC and the budget for the relevant priority axes can be increased only by way of a shift from other priority axes within the given operational programme. This is, moreover, subject to EC approval. In the case of national (or regional) programmes the amount of disposable resources will depend on the available budget of the state (or the relevant region).
- limited period of time – in the case of EU structural funds the resources are bound to utilisation within the programmeming period (taking into account the N+3/N+2 rules). National/regional programme resources are often available for a period of one calendar year because they are bound to the budget period.
- very narrow definition of the subject of support – Urban development projects often exceed the framework of one area of intervention/priority axis or operational programme. It is therefore necessary to split the project objective into several individual parts, and implementation consequently becomes more demanding. In addition, it is often necessary to adjust the purpose and objective of the project so that it conforms to the rules set by the grant provider. The upshot of this fact could be an inability to fulfil the objectives originally planned.
- determination of strict programme rules – the set rules often make it impossible to realise the appropriate objectives for support from the JESSICA financial instrument. Limitations are often determined for projects that embody the potential to generate income, include a private partner or within whose scope property relations must be resolved.

Private resources

The main limitations with respect to use of private resources are embodied within the objectives themselves because they do not tend to be profitable enough to be of interest for financing by private entities. Moreover, as has already been mentioned, the Moravian-Silesian cities and municipalities do not seek this method of financing their activities until they have proved unsuccessful in finding another source.

At this point it must be mentioned that limited access to private sources of funds is currently augmented by the ongoing financial crisis, as banks and other financial institutions are more cautious when it comes to lending money.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

2.2 Legal obstacles in implementation of the JESSICA financial instrument in the Moravian-Silesian region

2.2.1. State aid

Based on Article 87 et seq. of the EC Treaty, state aid is understood to mean favouring of a certain undertaking at the expense of public resources provided this poses the risk of distortion of competition and could affect intra Community trade. With certain exceptions (e.g. aid to make good the damage caused by natural disasters), state aid must be granted by the EC prior to being provided. When considering applications for authorisations the EC compares the positive and negative implications of the aid in question. Certain generalised state aid that the EC previously generally found to be compatible with the common market may be provided without the EC's prior permission[2]; in the case of some other common types of state aid the EC publicises the perspectives that it will examine during its review[3].

The state aid rules are also applied in the case of utilisation of resources from EC structural funds - even within the framework of the JESSICA financial instrument[4]. If these rules are breached the beneficiary, the managing authority and the state must return the aid provided.

In order to elaborate a general overview of the legal issues with respect to application of the state aid rules, we drew on the following understanding of those relevant characteristics of the workings of the JESSICA financial instrument:

- One of the reasons why certain projects should be supported by investments from structural funds is the inaccessibility of these projects to capital for market conditions. It is therefore highly probable that the managing authority will, via urban development funds, invest under conditions that would not be acceptable to a private investor dealing on the market.
- The amount of the investment for individual projects is not limited in advance.
- The investments will be in the form of equity capital, loans and guarantees depending on the requirements and circumstances of the particular project.

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[2] See in particular Regulation (EC) No. 800/2008 (the General Block Exemption Regulation) and Regulation (EC) No. 1998/2006 (on *de minimis* aid).

[3] See in particular the Community Guidelines on state aid in the form of risk capital investments in small and medium-sized enterprises (OJ C 194, 2006) and the Commission Communication on state aid in the form of guarantees (OJ C 155, 2008). For an overview of the basic rules on awards of state aid see, for example, the handbook on state aid rules for small and medium-sized enterprises available on the Commission's website http://ec.europa.eu/competition/state_aid/overview/index_en.html

[4] See, inter alia, point 26 of the preamble to Regulation (EC) No. 1828/2006 and point 2.8 of the document entitled "Rules and conditions applicable to actions co-financed from Structural Funds and Cohesion Fund - An overview of the eligibility rules in the programmeming period 2007-2013" from February 2009.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

- JESSICA should support participation of private investors in financing appropriate projects. The extent to which private investors participate and the spread of risks and remuneration among the managing authority and private investors is not set in advance and may vary.
- Managers of holding funds and urban development funds should administer the resources invested into them in return for payment.

Based on the characteristics of the JESSICA financial instrument mentioned above, we consider it realistic to assume that the state aid rules will apply to realisation of this initiative. The RC MS, as the managing authority of the ROP MS, should therefore ensure that the existence of state aid rules is examined and that the rules are adhered to, particularly on the following levels of implementation of the JESSICA financial instrument:

- Selection of fund managers and determination of the conditions for their activity;
- Selection of private investors and determination of the conditions for their participation in funds and projects;
- Selection of projects.

Selection of fund managers and determination of the conditions for their activity

The RC MS should investigate whether and, if necessary, to what extent the conditions under which urban development funds and holding funds will be administered differ from market conditions (remuneration of management, the degree to which remuneration is dependent on the profitability of the fund, etc.), and thus whether state aid should be granted to managers and, if need be, in what amount. Selection of fund managers in the way set out in the Public Procurement Act and application of indicative limits to the management costs set by Community law5 should eliminate the existence of state aid at this level. In the case of establishing a holding fund, these facts should be examined primarily by the manager of that holding fund in relation to urban development fund managers based on the instructions of the RC MS.

Selection of private investors and determination of the conditions for their participation in funds and projects

The RC MS should investigate whether and, if necessary, to what extent the conditions under which private investors are to participate in urban development funds (and possibly a holding fund) and in individual projects are more favourable than the conditions for participation of the RC MS (e.g. in relation to sharing of risks and remuneration), and thus whether state aid should be granted to the other investors and, if need be, in what amount. In the case of establishing a holding fund, these facts should again be examined primarily by the manager of that fund in relation to participation of private investors in urban development funds based on the instructions of the RC MS.

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[5] Article 43.4 of Regulation (EC) No. 1828/2006. See also the document entitled "Note of the Commission services on financial engineering in the 2007-13 programmeming period", no. DOC COCOF/07/0018/01-EN FINAL, point 3, where the Commission expresses its conviction that fund management costs in the amount set by Article 43.4 of Regulation (EC) No. 1828/2006 in principle exclude the presence of state aid at this level, even in the case that managers' remuneration is to be paid out unevenly over time (a greater proportion of remuneration at the beginning and a lesser proportion during later phases of the cooperation) [point 2c) of the document].

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Selection of projects

Finally, the RC MS should investigate to what extent the conditions under which urban development funds invest into individual projects differ from market conditions, and thus whether state aid should be granted to the beneficiaries of the capital invested and, if appropriate, in what amount. These facts should be examined primarily by the manager of the relevant urban development fund based on the instructions of the RC MS.

The existence of state aid and, in some cases, the obligation to notify the EC about this aid before it is granted and to seek approval must be examined on a case-by-case basis. One of the fundamental ideas behind JESSICA is investing (as opposed to the donation of) public funds in projects that have difficulties finding capital on the capital market. Due to the inherent connection of this idea with the concept of risk capital, the RC MS (and possibly the manager of the holding fund) could use Regulation (EC) No. 800/2008 for guidance. This regulation sets the conditions under which state aid is allowed in the form of risk capital without requiring the EC's prior approval (although even in such a case, the duty per Article 9 of Regulation (EC) No. 800/2008 to inform will apply).

Under the Regulation, aid in the form of risk capital will be permitted a priori if the fund in question is established for the purpose of making a profit and is managed on a commercial basis; the investment is to be provided for the benefit of small and medium-sized enterprises; the investment tranches do not exceed EUR 1.5 million per enterprise per twelve-month period; and the investment is in principle limited to provision of initial capital, will primarily be in the form of equity or near-equity capital and at least 50% of the financing will be provided by private investors[6]. As regards guarantees provided by urban development funds, it can be expected that the EC considers a guarantee provided by an enterprise not in difficulty to be permitted if such guarantee is bound to a particular financial transaction, is limited with respect to the period of validity and the amount, covers a maximum of 80% of the financial obligation, is reduced proportionately via repayment and the beneficiary pays the normal market price for the guarantee[7].

[6] For the complete conditions for application of this block exemption, see the provisions of Article 28 et seq. of Regulation (EC) No. 800/2008. For certain national procedures relating to application of Community state aid rules, see Act No. 215/2004 Coll. Note: At the time of preparing this legal opinion, this law is in the process of being amended (Parliamentary Press No. 481).

[7] See the above-mentioned Commission Communication on state aid in the form of guarantees (OJ C 155, 2008).

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Due to the inherent complexity of characteristics of individual projects, as well as the state aid legislation, we consider that examination of the existence and, if necessary, the amount of state aid during individual stages of implementing the JESSICA financial instrument may require a comprehensive legal analysis of the application of the appropriate legal regulations. As stated above, on general terms, the difference between the co-operation conditions negotiated and market conditions will play an important role in these analyses. However, it must be emphasised that non-observance of the market conditions alone by no means indicates that the aid is not permitted. In the aforementioned Regulation (EC) No. 800/2008, the EC acknowledged the existence of market failure in the risk capital sector. Going on this premise, we consider that even investments carried out by urban development funds and in co-operation with private investors under conditions that are not entirely like those found on the market have a good chance of being approved by the Commission, if the Regional Council or the manager of the holding fund is able to prove that state aid is called for due to a risk capital market failure and will facilitate a generally beneficial and the necessary better availability of risk capital from private investors.

We recommend that the RC MS or the manager of the holding fund focus thoroughly on the existence of state aid during implementation of the JESSICA financial instrument and, if entirely unambiguous conclusions as to the non-existence of aid or application of the current block exemptions fail to be drawn, that they approach first the Office for the Protection of Competition and then, if necessary, the EC with a request to review the considered approach from the perspective of the state aid rules. The potential need for such a review must also be taken into account in the time schedule for implementation of the JESSICA financial instrument.

2.2.2. Public procurement

The Community rules for public procurement were implemented into Czech law by way of Act No. 137/2006 Coll. (the Public Procurement Act) and Act No. 139/2006 Coll. (the Concession Act), as amended[8]. The purpose of these rules is to ensure that public funds are utilised as efficiently as possible, i.e. that the public purchaser pays as little as possible for the goods, services and construction work purchased.

[8] Interpretation of the current wording of the Concession Act is the subject of some controversy, and the wording is to be amended. At the time of preparing this opinion, the amendment was not yet publicly available.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

In order to elaborate a general overview of the legal issues with respect to public procurement, we drew on the following understanding of those relevant characteristics of the workings of the JESSICA financial instrument:

- The purpose of the JESSICA financial instrument is to enable the RC MS to allocate part of the funds from the ROP MS that it administers to investment into more closely specified projects, rather than providing it in the form of non-refundable grants. The investments should be carried out by way of urban development funds established for that purpose or, as the case may be, the managers of such funds, under the conditions set in the financing contracts concluded between the RC MS and the funds. Managers of urban development funds must, therefore, provide a service to the RC MS in the form of management of the investments into the appropriate projects.
- The RC MS may decide that for the purpose of selecting urban development funds and further co-operation with them, it will avail itself of the services of a holding fund, or its manager, again under the conditions defined in the financing contract concluded between the Regional Council and the holding fund.

Based on the characteristics of the JESSICA financial instrument mentioned above, we consider it realistic to assume that the rules for public procurement will apply to realisation of this initiative. In our opinion, the RC MS should ensure application of the appropriate procedures, particularly on the following levels of implementation of the JESSICA financial instrument:

- Purchase of services from the manager of the holding fund;
- Purchase of services from managers of urban development funds.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Purchase of services from the manager of the holding fund

If the RC MS decides to use the services of the EIB or the EIF, it can purchase these services without a selection procedure according to the Public Procurement Act, namely on the basis of the provisions of Article 44(c) of Regulation (EC) No. 1083/2006[9].

If, however, the holding fund is to be administered by an entity other than the EIB or the EIF (the bank with which the funds are deposited on a special account, or an external investment advisor who is to administer the funds contributed to a newly established legal entity - the fund), then in our opinion the RC MS is obliged to proceed according to the PPA when submitting these contracts. In such a case the Regional Council will have the status of a public purchaser in accordance with the provisions of Article 2.2(d) of the Public Procurement Act (a legal entity for meeting needs in the general interest and predominantly financed or controlled by another public purchaser).

[9] Let us for the moment leave aside the issue of whether, in such a case, the EIB or the EIF would have to establish a branch in the Czech Republic in order for the Regional Council to be able to deposit allocated funds on an account subordinated to the Treasury in the sense of the provisions of Article 33.7 of Act No. 218/2000 Coll., on Budgetary Rules, as amended. We consider that this is not the case. Based on our interpretation of the Act on Budgetary Rules, we are of the opinion that once the respective funds are paid by the Czech state (via the "National Fund" of the Ministry of Finance) to the RC MS, they will cease to be part of the "Treasury funds" as defined in Article 3 (h) of the Act, therefore cease to be subject to the regime set by Article 33.7 of the Act (also compare with, e.g., Article 14.7 describing the process of return of the funds from Regional Councils to the National Fund). We believe this interpretation of the Act also reflects the requirement of the indirect effect of the Community law – we would find it difficult to reconcile the conclusion that EIB, being a proper Community body with inherent Community-oriented tasks, would need to establish its branches in each Member State to carry out the function of the Holding Fund, with the requirement of proper functioning of the Internal Market and sincere cooperation & loyalty principles between Member States and the Community. This conclusion also corresponds to the informal conclusions of the personnel of the Ministry of Finance and the Ministry of Regional Development which we asked for an opinion on the matter (telephone calls to Mr Pastucha of the Dpt. of National Fund, Mr Prancl of the Dpt. of Regional Development of Ministry for Regional Development). For the purpose of legal certainty, we recommend that the Regional Council resolve this issue further, if required, in co-operation with the Ministry of Finance of the CR.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Purchase of services from managers of urban development funds

Depending on the implementation structure chosen, the following alternatives must be differentiated between:

(i) The Regional Council does not use the services of a holding fund manager

If the RC MS will be requesting the services of urban development fund managers first hand, then we consider that the situation will be similar to that mentioned above, i.e. the Regional Council as the public purchaser will be obliged to proceed according to the Public Procurement Act.

(ii) The RC MS uses the services of a holding fund manager

a) The holding fund manager is a financial institution

- If the holding fund manager is the EIB or the EIF, then we consider that these institutions will not be obliged to request the services of urban development fund managers according to the Public Procurement Act, namely in keeping with the provisions of Article 18.1(q) of that law. Thus, the EIB or the EIF will proceed according to their own rules.
- If the holding fund manager is a different financial institution within which the fund originated as a separate block of finance, then we consider that the issue of application of the Public Procurement Act will depend on whether, under the financing contract concluded between the RC MS and the holding fund manager, the appropriate funds are to remain allocated from the operational programme in the ownership of the RC MS or whether, to the contrary, they are to pass into the ownership of the fund manager. If the funds remain in the possession of the Regional Council then it will continue to have the status of a public purchaser [Article 2.2(d) of the Public Procurement Act] and will proceed according to the Public Procurement Act. If the funds pass into the ownership of the fund manager (financial institution), then application of the Public Procurement Act will depend on whether this manager has the constituent elements of any of the types of public purchaser under this law. If, for example, the institution is the ČMZRB, then it will be obliged to proceed according to the PPA. If the institution is a commercial bank, then in our opinion it will not have to proceed according to the Public Procurement Act.

b) The holding fund is established as a separate legal entity

If the holding fund is to be established as a separate legal entity then the issue of application of the Public Procurement Act will depend on the extent to which this fund is to be financed and controlled by the RC MS. If the fund is to be financed or controlled predominantly by the Regional Council, then we consider that it will again have the status of a public purchaser in accordance with Article 2.2(d) of the Public Procurement Act and that this law will apply to it.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

We believe that in the case of investments made by urban development funds they will not be obliged to proceed according to the Public Procurement Act, regardless of the status of these funds from the perspective of that law, because these funds will not be purchasing goods, services or construction work but will be investing into projects with a view to the economic return and profitability of the investment.

In the case where a holding fund or the manager of a holding fund is not obliged to proceed according to the Public Procurement Act, we nevertheless recommend considering the possibility of proceeding according to this law or selecting the urban development fund manager via a different form of open competition due to the reduced potential for the presence of state aid (see above)[10].

In the case of implementation of the JESSICA financial instrument, the Concession Act will apply if the appropriate urban development fund with the status of a public purchaser and the private entity agree to collaborate together on realisation of the appropriate project. Such a project would be rendering of services or carrying out of works by a private entity in return for the opportunity to receive the benefits arising from the provision of services or from utilisation of the completed works, and possibly also for monetary payment. Whether the urban development fund will have the status of a public purchaser will depend on the extent of financing and control by the municipality, the RC MS or other public purchasers.

2.3 Possible legal forms of the holding fund and the urban development fund

In order to identify potential and suitable legal forms for the holding fund and the urban development funds, we drew on the following understanding of those relevant characteristics of the workings of the JESSICA financial instrument and the status of the RC MS:

- Both types of fund can be established either as separate legal entities or as separate blocks of finance within an existing financial institution. In the latter case the financial institution is obliged to keep separate accounting in relation to the allocated funds[11]. We consider that Community law does not stipulate a priori whether funds allocated from the operational programme must pass into the ownership of the fund (financial institution) within which the allocated funds are managed as a separate block of finance. We are therefore manipulating both possible alternatives (i.e. the alternative where the financial institution only manages the funds owned by the RC MS or the holding fund, and the alternative where the funds become the property of the financial institution).

[10] This approach is also advisable in relation to the provisions of Article 43.7 of Regulation (EC) No. 1828/2006, according to which the Regional Council must adopt preliminary measures to minimise distortion of competition on risk capital and loan markets.

[11] Article 43.3 of Regulation (EC) No. 1828/2006.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

- The conditions under which contributions from the operational programme will be transferred to the appropriate fund should be set in the financing contracts. The conditions under which entities co-finance the activities of the relevant funds should be set in the business plans. The RC MS is to evaluate these business plans and check that they are adhered to. Among other things, the business plans should set the rules for exit from investments and for dissolution of the appropriate fund12. Whether the fund (separate legal entity) is to be established for a definite or an indefinite period thus depends on the wording of the deed of foundation and the financing contract.
- The funds will carry out their activity for the purpose of supporting urban development in the Moravian-Silesian region. Fund administration costs should not exceed the ceiling set by Community law or such other limit as is common on the market. This does not alter the fact that the economic purpose of the funds' functioning will be the economic return and profit from the investments. In the case of funds as separate legal entities, these will thus have the character of legal entities established for entrepreneurial purposes13.
- The holding fund should identify suitable urban development funds to contribute to, and carry out other activities primarily of an advisory, supervisory and informative nature. The urban development funds should invest into suitable new projects using equity capital, loans or guarantees. The urban development funds should not create further financial instruments (risk capital funds, etc.)14.
- For the purpose of payment of contributions from structural funds, the statement of expenditure must show the total expenditure incurred on creation of funds or on contributions to funds. Only upon partial or final conclusion of the operational programme do eligible expenses represent the combined total of all payments from the funds for specific investments, all guarantees provided and eligible fund management costs15.

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12 Articles 43.2, 5 and 6 and Article 44 of Regulation (EC) No. 1828/2006.

13 See also the response to question no. 12, page 19, in the document entitled "Guidance note on financial engineering", no. COCOF 08/0002/03-EN issued by the Commission of the EC, in which the Commission emphasises that urban development funds should ideally provide financing to several projects, i.e. they should function on a continual basis and should not therefore be established for the purpose of one-off investment into one project.

14 Article 46 of Regulation (EC) No. 1828/2006.

15 Article 78.6 of Regulation (EC) No. 1083/2006.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

- The RC MS is a legal entity established under Act No. 248/2000 Coll., on Support to Regional Development, as amended. It is a legal entity governed by public law that has a legal personality limited by the purpose for which it was established16. The RC MS is the managing authority of the ROP MS being realised in the current programme period of 2007 – 2013. The task of the RC MS is to manage and conduct the given operational programme, e.g. to ensure that projects are selected based on the appropriate criteria and in accordance with the legal regulations, to check whether co-financed products and services were delivered, etc17. The RC MS may also use the public funds allocated to the appropriate operational programme in the form of financial engineering instruments18. When using these instruments the Regional Council must, among other things, evaluate and check the business plan of the partners participating in financing the relevant investment funds and conclude financing contracts that set the conditions for allocation of contributions from the operational programme to the relevant investment funds. One of the ways of establishing financial engineering instruments (funds) is to establish independent legal entities19. Based on the above, we consider that the legal personality enjoyed by the Regional Council under the law also comprises the entitlement to establish financial engineering instruments as independent legal entities within the framework of the given operational programme.

Based on the characteristics of the JESSICA financial instrument and the RC MS mentioned above, we consider that the appropriate funds may have the following legal forms in particular; we also recommend these as conforming to the above-mentioned characteristics:

Funds as resources allocated within a financial institution

We consider that commercial banks and public banks (EIB, EIF, and ČMZRB), in particular, can be included under the term "financial institution"[20]. Community law does not stipulate whether allocated resources are to pass into the ownership of the financial institution with which they are deposited or whether they should remain in the ownership of the RC MS/holding fund. In the latter case, the manager of the relevant fund would not invest its "own" resources, but resources owned by the RC MS/holding fund under the conditions set in advance in the financing contract.

16 Regarding the theory of limited subjectivity see, e.g. Hendrych, D. et al. Administrative law. General section. 6th edition. Prague: C.H. Beck, 2006, page 106 et seq. See also Jehlička, O., Švestka, J., Škárová, M., et al. The Civil Code. Commentary. 9th edition. Prague: C.H. Beck, 2004, page 155.

17 Article 60 et seq. of Regulation (EC) No. 1083/2006.

18 Article 44 of Regulation (EC) No. 1083/2006.

19 Article 43 et seq. of Regulation (EC) No.1828/2006.

20 In the sense of the provisions of Article 43.3 of Regulation (EC) No. 1828/2006.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

Funds as legal entities

(i) Limited-liability company, joint-stock company

Funds may be in the form of stock trading companies established in accordance with the Commercial Code and doing business within free fields of activity, branches of activity no. 60 (advisory and consulting activities, elaboration of special studies and reports)[21] and no. 70 (administrative services and services of an organisational and economic nature)[22]. The choice between these two forms of fund will depend primarily on the anticipated extent of involvement of further investors. The more of these investors there are and the greater the anticipated fluctuation, the more benefits the joint-stock company will provide. An advantage of the limited-liability company and the joint-stock company is that no set number of founders is necessary (it is possible to have just one partner, e.g. the Regional Council). These forms are also suitable in the event the urban development funds are to be established by municipalities or regions[23].

For the purposes of this opinion we do not assume that the funds' activity would comprise collection of financial resources from the public for co-investment in the sense of the provisions of Article 2a of Act No. 189/2004 Coll., on Collective Investments, as amended. Nevertheless, we consider it important to point out the need to examine whether, under certain specific circumstances of the selected functioning of the funds, the conditions for application of the Act on Collective Investments would be fulfilled, since in such a case the funds would have to have the form of "funds" in the sense of that law and, unlike "ordinary" limited-liability companies or joint-stock companies, would be subject to many regulatory obligations.

(ii) Special fund of qualified investors

The funds can also have the form of a special fund of qualified investors in accordance with Article 56 of the Act on Collective Investments. The advantage of this form is the focus on collection of resources from qualified investors for subsequent investment into the appropriate urban development projects, and certain tax allowances. Its disadvantage is the complicated nature of the set regulatory framework and the corresponding higher administration costs (the necessity for a permit from the Czech National Bank; determination of the minimum up-front investment amount; the limited circle of investors, which clearly excludes, for example, municipalities or regions; etc.).

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[21] Among other things, this trade includes consulting services in financial matters (provision of loans, capital appreciation, etc.), entrepreneurial activities, economic issues in business matters, etc.

[22] Among other things, this trade includes provision of loans by non-banking entities from their own resources, provision of guarantees by non-banking entities for bank loans, provision of services when carrying out contracting activities for public procurement, etc.

[23] Municipalities and regions can establish urban development funds in keeping with the provisions of Article 35a of the Act on Communities, Article 14 of the Act on Regions and Article 23 of the Act on Municipal Budgetary Rules.

2. Legal conditions for implementation of the JESSICA financial instrument in the Czech Republic (continued)

We have not included in the list of potential and advisable fund forms those forms that we consider generally do not correspond to the legal presumptions and characteristics of funds described in this opinion. Thus, we do not mention here, for example, the public benefit corporation (whose profit may not be used for the benefit of the founders), the trust or the endowment fund (which may not do business in their own name; a trust utilises income from the trust equity and an endowment fund all its assets to achieve the purpose for which they were established, thus making it impossible for the founder to draw on profits) or the interest grouping of legal entities according to the Civil Code (some doctrines maintain the opinion that the form of interest grouping should not be substituted for the forms of legal entities, which should be established expressly for a specific purpose, i.e. an interest grouping should not, for example, substitute a business company established for entrepreneurial purposes). Also not mentioned in the above list are forms that we do not consider to be realistic for practical reasons (establishment of a holding fund under a special law, etc.). Finally, the specific conditions of potential cooperation with the EIB, the EIF and the ČMZRB mentioned above were not the subject of our research. In order to establish cooperation with these and other existing entities (e.g. external fund managers – see below), the specific conditions of such cooperation must be determined.

We would also like to point out the possibility of outsourcing the pertinent advisory services from funds (legal entities) to an external consultant. Community law does not regulate this possibility in any way, and thereby also does not exclude it. In the case of allocating operational programme resources to a fund (legal entity) we thus consider that it is possible to have such resources administered by an external provider of consultancy services (external fund manager). The rules for provision of state aid and public procurement will then apply to cooperation with this external fund manager in the same way as described above (it must be investigated whether state aid is provided to this external fund manager and in what amount, and in those cases his services must be requested in the way set out in the Public Procurement Act).

Finally, we would like to point out the fact that the above-mentioned organisational and legal structure alternatives for implementation of the JESSICA financial instrument enable and require the needs of the relevant entities involved (particularly the Regional Council, funds, fund managers, municipalities, developers and other beneficiaries of capital) to be taken into account. It will be necessary to define the appropriate conditions for co-operation between these entities very carefully in the deeds of foundation of the funds (legal entities), in the financing contracts and in the business plans.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region

3.1 Needs assessment of the financial engineering instrument

3.1.1. Definition of demand

The study carried out among the municipalities of the Moravian-Silesian region showed that there was sufficient demand for funding sources of the JESSICA financial instrument type with regard to the resources that the RC MS has earmarked at this time.

More than 40 projects from 11 municipalities in the Moravian-Silesian region were submitted in the framework of the study. For the sake of comparison, we evaluated the projects according to the following criteria:

Criteria set out in European Commission Regulations:

- Focus on development of deprived zones, urban regeneration (development);
- Ability of project to generate revenue;
- Inclusion of the project into the IUDP, or the possibility for its inclusion.

and ancillary criteria:

- Current state of implementation of the project;
- Possibility to develop cooperation between the public and private sectors.

Table 1 describes each assessment criterion in detail.

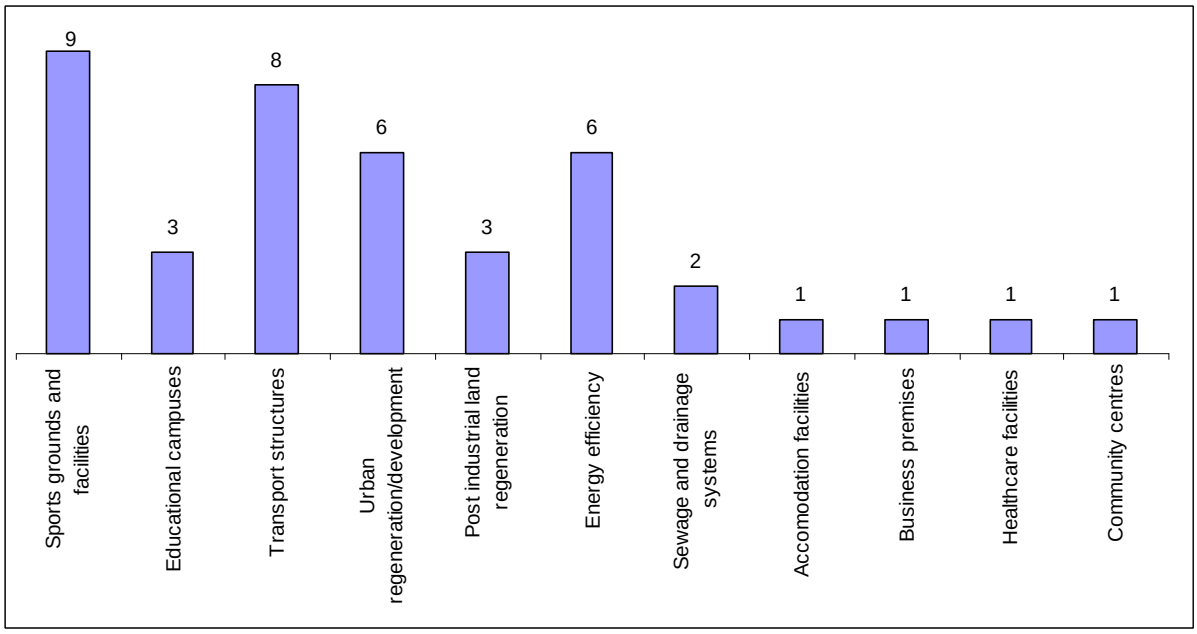
3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

Criterion	Explanation
Development of deprived zones	This criterion will be used to assess whether the project is focused on comprehensive solutions for the development of deprived zones located within the municipalities or only on partial solutions (e.g., insulation of one building). The more complex a project is, the more suitable it is for the JESSICA instrument.
Ability of project to generate revenues for the purposes of paying back the loan	This criterion will be used to assess whether the presented documentation contains information about the project's potential revenues or whether the project is able to generate revenue. Fulfilment of this criterion is important with regard to the fact that the JESSICA financial instrument is not a classical form of aid, but funding that must be paid back.
Potential cooperation between the public and private sectors	This criterion will be used to assess whether the project can be implemented through the cooperation of both public and private sector institutions (e.g., in the form of a PPP). Cooperation between the public and private sectors is certainly advantageous with regard to the fact that such cooperation is difficult to finance from Structural Funds, and JESSICA should allow the realisation of projects that would otherwise not be financeable.
Possibility to include project into IUDP	This criterion was used to assess whether the project is part of the current IUDP or whether it would be possible to include the project in the IUDP or whether it would be necessary to prepare a different strategic document. (*Note: According to Article 44 of General Regulation 1083/2006, the JESSICA financial instrument can be used to support projects that are part of the integral urban development plan. Nevertheless, when setting up the rule for utilising resources, it is possible to modify the rules of the IUDP.)*
Project implementation stage	This criterion was used to assess the stage of implementation of the project based on the information provided (e.g., has the project documentation been drawn up, have zoning decisions been issued, and so on). In this case, it is important that the projects are able to be implemented as soon as possible with regard to the duration of the programmeming period.

Table 1 Description of assessment criteria

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

The municipalities that were addressed submitted projects that encompassed a wide range of themes. Graph 1 provides a breakdown of the projects according to theme. Based on the above criteria, the construction of school campuses, sports and leisure time facilities, and post mining/industrial land regeneration in general are among the most favourable themes.



Graph 1 Number of projects according to theme

Among all the submitted projects, those applying to Moravia-Silesia Regional Operational Programme dominated. Some projects applied to Environment Operational Programme and one project applied to Operational Programme Enterprise and Innovations and one to Integrated Operational Programme.

The submitted projects differed in terms of the complexity of their approach to the development of the given area. Projects dealing with only one sub-area (e.g., transport accessibility) as well as projects dealing comprehensively with the development of a certain area were submitted in the framework of the study. The projects submitted by the City of Ostrava (Nová Karolina, Hrušov, Dolní Vítkovice) are among the more comprehensive ones.

The submitted projects also differed in terms of budget, which could also be due to the varying degree of comprehensiveness of the approach to development of the given area. Although over 50% of the projects had a budget of up to approximately CZK 150 million, some projects had budgets exceeding CZK 1 billion. In the latter case, the projects were much more complex in nature. The project that stands out from the others is the project in the area of Dolní Vítkovice, where it is estimated that up to CZK 60 billion in funding could be used up.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

It is clear that the submitted projects exceed the financial possibilities of the addressed municipalities. Representatives of these municipalities indicated that it would be necessary to seek sources of funding from outside their budgets to be able to implement the projects. It was apparent from the interviews that efforts are being made to prevent any increase in the level of indebtedness on the part of the municipalities, which means that aid from the programmes mentioned in Chapter 2.1 of this report will be sought first. Refundable sources of funding (including the JESSICA financial instrument) will only be considered if it is not be possible to obtain any aid or where the grant sources are not appropriate for the project. Nevertheless, the conditions under which the funding will be provided will always be decisive.

There are numerous factors contained in the submitted projects that limit the use of aid sources: namely complex ownership relations (the land in question is in the hands of private ownership) and/or the size of the budget. With regard to these factors and to the available allocation from ROP MS, no problems should thus arise in terms of demand for funding.

The study also showed that the municipalities have only a partial understanding of the JESSICA financial instrument. Some of the submitted projects are entirely grant-oriented in nature without the possibility of generating revenue. We are of the opinion that municipality representatives often submitted projects for which grants were not approved. We consider that identification of projects able to generate revenue would be the key to the success of this instrument in the Moravian-Silesian region. For this reason, we recommended focusing more on the information campaign.

Related in part to the previous point is the fact that a number of submitted projects fail to consider the possibility of including partners from the private sector (in the form of a PPP and so on). We expect that this due to the limited experience of public sector entities with projects of this type (see Chapter 1.4.5).

Most of the projects are not included in the current IUDP. It can be assumed that that funding has already been secured for those projects that have already included in the IUDP. This also points to the fact that the IUDP is not considered to be a strategic document by the municipalities, but rather as a necessary step to obtaining aid from the Structural Funds.

Last but not least, it was discovered that the projects had been submitted in various stages of completion, from simple project outlines without basic documentation (architectural studies, feasibility studies) to projects ready for implementation.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

3.1.2. Availability of funding resources

As already stated in Chapter 2.1 above, the municipalities of the Moravian-Silesian region can make use of resources from ROP MS as well as from some other operational programmes funded from the EU Structural Funds and from other programmes funded from public sources at the national level for the investment plans. Nevertheless, in this case they will always come across limits to funding allocations, as projects in the area of urban regeneration/development are financially very costly and in most cases exceed the stipulated allocation in the individual priority axes/operational programmes. The rules set for the mentioned programmes are another limiting factor. Most of the projects consider the possibility of including a private sector partner (namely for the reason that the project is being realised on land owned by a private sector entity), which is highly problematic in terms of SF rules.

As regards making use of commercial sources, banks in the Czech Republic include investment financing products for cities and towns in their portfolios. Nevertheless, the limiting factor in this case will be the unwillingness of municipality representatives to increase the level of indebtedness of their municipalities during the financial and economic crisis even though the debt service index is at a very good level in all cases.

3.2 Financial benefits of implementation of the JESSICA financial instrument

It is important to note that the resources which the Regional Council Office is expecting to release/transfer to JESSICA from the Regional Operational Programme (approx. CZK 500 million) at this time are relatively limited with regard to preliminary demand. In order for JESSICA to be successful and for both the financial and non-financial benefits to be multiplied, we believe that what will be important is whether it will be possible to convince the relevant stakeholders of the merit of this instrument in such a way as to allow the scope of the fund's resources to be expanded. From this perspective it will be important to "send a positive signal" with respect to

- Demand side of the funding – this includes both the private and public sector;
- Supply side of the funding – namely the providers of other resources from the operational programmes (Ministry of the Environment, Ministry for Regional Development and so on).

3.2.1. Grant Funding cash flow

In the case that financial resources will be used through grant financing, we argue they will be successively exhausted during the programmeming period. Cash flow depicted in Table 2 shows a demonstrative case of such funding. There amounts presented in this table were chosen solely for illustrative purpose as there was no outlook of all calls for project proposals in the area of intervention 2.3 Brownfields regeneration support at the time of elaborating this study.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

(mil CZK)	Programmeming period 2007 – 2013			
	2010	2011	2012	2013
Earnings– resources of fund	**500,00**	**300,00**	**100,00**	**0,00**
Operational programme resources	500,00	300,00	100,00	0,00
Expenditures	**200,00**	**200,00**	**100,00**	**0,00**
Project expenditures	200,00	200,00	100,00	0,00
Resources remaining at the end of each period	300,00	100,00	0,00	0,00

Table 2 Cash flow for grant funding

3.2.2. JESSICA cash flow

Preparing cash flow analysis of financial engineering instrument JESSICA, we have concentrated on the possibility of holding fund establishment. All parameters, chosen again with illustrative purpose, are mentioned in the following text. Cash flow for JESSICA is to be found in the annex of this report.

Holding fund

- Setting up of the fund: We suppose the Agreement with EIB (proposed administrator of this fund) should be discussed and agreed till the end of 2009. Followingly the holding fund should start its activity at the beginning of 2010.
- Transfer of resources into holding fund: After being agreed by the monitoring committee, the amount of 500 000 000 CZK would be transferred into the fund from the Region operational programme Moravia – Silesia, area of intervention 2.3 Brown fields regeneration support. The model does not take into account any other resources (operational programmes, private resources etc.). For this reason there would be no leverage of resources on the fund level.
- Transfer of resources into urban development funds: During 2010, urban development fund/s appropriate for JESSICA implementation would be chosen and established. At the beginning of next year, financial resources would be transferred from the holding fund into the urban development fund/s (together 485 000 000 CZK).

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

- Close-down of the holding fund: The fund would be active until the end of 2012. After establishment of urban development funds, it would monitor their activity, asses its performance and report it to managing authority. In the cash flow model is depicted that before the holding fund will be closed down (i.e. before the end of 2012) all the initial resources should be allocated for individual projects. After the close down of the holding fund in 2012, the remaining capital of the fund (1 200 000 CZK) will be transferred into urban development fund/s.
- Administration fee for management of the fund: The model takes into account a 2% fee per year from the bulk of resources transferred from the operational programme. In the case of allocation of 500 000 000 CZK, the administration fee would amount for 10 000 000 CZK. With respect to the holding fund operational profit in the first year of its existence emerging due to obtained interest, the allocation of initial 500 000 000 CZK would be divided as follows: 13 800 000 CZK would be set aside for fund administration, while remaining 486 200 000 CZK will be transferred to urban development fund/s.
- Further, the model considers deposit interest rate equal to 4% and its tax rate equal to 19%.

Urban development fund

- Set up of the fund: Urban development fund/s should be established at the beginning of 2011.
- Allocation of resources to individual projects: Initial sum allocated to the fund/s would be transferred to individual projects during 2011 – 2012. This would assure that at the end of programmeming period, all resources can be considered as spent and they will not have to be returned. Our model takes into account all possible financial instruments that could be used by the fund/s – debt, equity, guarantee and mezzanine. The ratio of resources used through these instruments in our model is depicted in Table 3. We argue debt will be the most prevailing instrument. The sum of our ratios exceeds 100%; the reason is that if a guarantee is used, there is no cash outflow from the fund/s.

Debt financing	60
Provided guarantees	20
Mezzanine financing	20
Equity financing	20

Table 3 The ratio of resources used through different financial instruments (%)

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

- Interest rate and maturity of loans: All parameters for individual financial instruments used in the model follow in Table 4 and 5.

Debt financing	10
Mezzanine financing	5
Equity financing	5

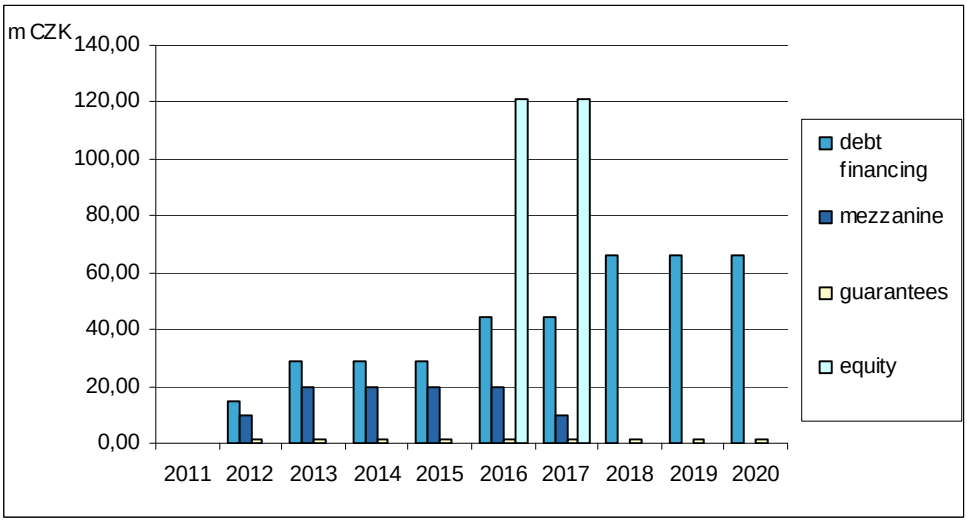
Table 4 Average maturity of individual loans/ exit period in equity financing

PRIBOR	3
Debt margin	2
Mezzanine margin	7
Debt interest rate	5
Mezzanine interest rate	10
Full margin for a guarantee	1,5
Requested equity rate of return	20

Table 5 Interest rates and other financial instruments parameters (%)

- The cash flow model depicts different impact of mentioned financial instruments on the fund cash flow. The same situation is depicted also in Graph 2. Both debt financing and mezzanine guarantee continuous fund recoverability due to instalments and interests. Possible instalment postponement is one year. Mezzanine differs from a typical loan in its shorter repayment period and higher interest rate. So it generates higher fund revenues in time. If resources are provided through equity, until the time of exit there is no cash flow from projects to the fund. The model does not consider any dividend payments to fund holders. Considering this financial instrument has the highest requested rate of return, total fund earnings are in this case the highest. In case of a guarantee, the model considers this financial instrument to generate continuously only income, i.e. does not include any expenditures (unpaid loans grated to third parties, for which guarantees were provided).

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)



Graph 2 Fund earnings for different financial instruments

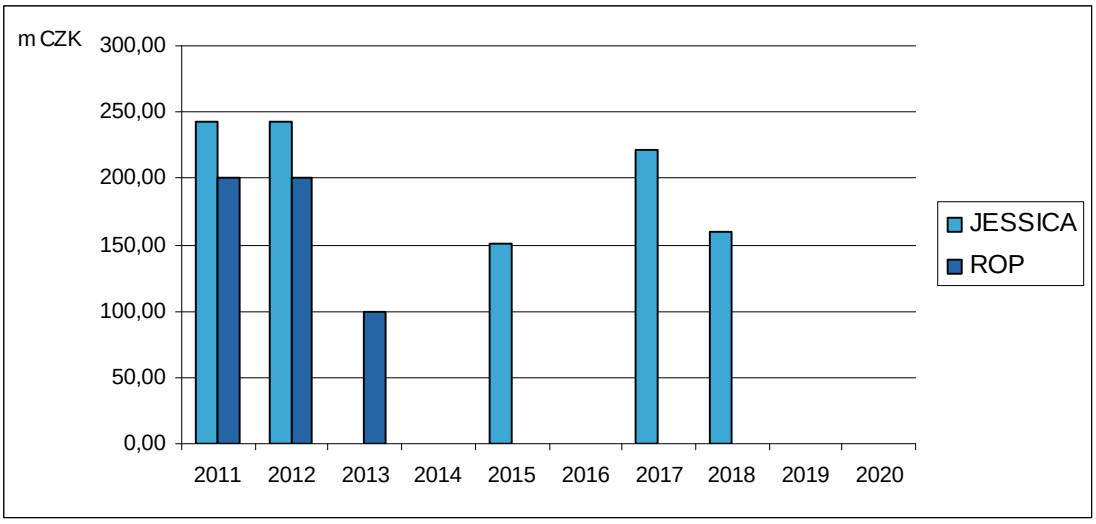
Remember that financial amounts allocated to different financial instruments are not same. In 2011 and 2012 the sums are allocated in the ratio depicted in Table 2. In next years, our model considers for simplicity only debt financing.

- Resources of urban development fund/s are fully spent in 2011 and 2012. The model also supposes that whenever deposit capital in the fund exceed the amount needed for financing of an average project (given level 120 000 000 CZK), they will be used for financing again. Resources in 2015, 2017 and 2018 are allocated this way. For simplicity they are considered to be provided as debt financing.
- Administration costs of urban fund/s: The model considers administration fee 3% of resources transferred from operational programme per year. If 486 200 000 CZK will be allocated in urban development fund/s, the administration fee will amount to 14 590 000 CZK in total.
- The model does not consider the case resources will not be repaid into the fund. This is the same situation as in the case of a guarantee: the model does not consider the situation in which a client is not able to repay his commitments and UDF should cover unpaid loans to third parties. Even though we expect that borrowers will be the mostly highly rated clients, i.e. with a low level of risk, we highly recommend discussing this issue further, so that appropriate measures can be taken. Nowadays, there are no special guidelines according to which a risk model of the fund could be prepared.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

3.2.3. Financial Impact Analysis

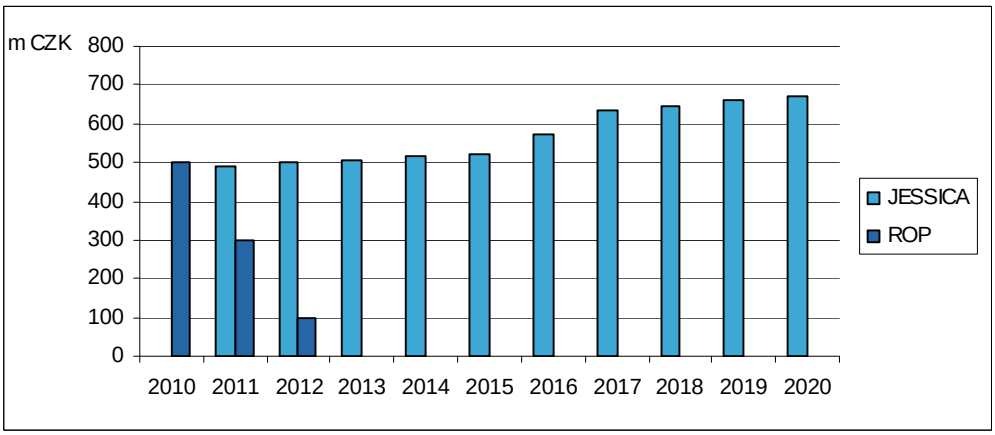
Our cash flow analysis shows that the main impact of JESSICA implementation can be seen after the end of programmeming period. Due to the revolving character of this financial instrument resources will be "recycled" and municipal regeneration projects can be financed even after the end of programmeming period. This is depicted in the Graph 3.



Graph 3 Regeneration projects expenditures: comparison of grant financing and JESSICA

The main financial impact has the fact that financial resources intended for municipal regeneration projects will not become exhausted, as it is the case of grant financing, but will revolve (see Graph 4). In urban development funds they will be further appreciated due to mounting of capital fund. The model shows that in 2020 there will be around 672 000 000 CZK. Considering all possible risks of the investment, we can argue that not all debts etc. will be fully repaid. For this reason the final fund capital will be probably slightly lower.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)



Graph 4 Municipal regeneration project resources: capital balance

By comparing grant financing to the instrument JESSICA we also found out that projects financed by JESSICA will probably be provided with a short delay of about 1 year in comparison to grant financing.

3.3 Non-financial benefits of implementation of the JESSICA financial instrument

With regard to the recovery of the funds invested from the JESSICA financial instrument, it will be possible in the timeframe exceeding the 2007-2013 programme period to use the funds for **a greater number of projects** than would be the case if grant financing alone were to be used.

JESSICA should also **make it possible to finance types of projects that do not have the support of financing through existing instruments at this time**, for example there where public and private sector interests cross or where there is the need to include both public and private players in the project as, for example, investors or negotiators. An example of this could be the area of Dolní Vítkovice, whose northern part is focused purely on tourism (technological monument Hlubina mine and adjacent smelters) and does not generate sufficient profit for the private owner to compensate him for the costs associated with upkeep and maintenance.

Promoting public and private sector cooperation in the area of urban regeneration/development can be seen as another benefit of this instrument.

Use of the JESSICA instrument can also be a new funding model and method of **determining the manner of use of the area in question** through concerted dialogue between the public and private sector. Hitherto practice with respect to extensive urban wholes has been to sell the land to a private investor/developer based on an architectural and urban study. However, there are certain negative aspects that can be associated with this, such as the inability of the municipalities to have a say in the appearance or use of the area. At this time of the financial crisis, which is having a particularly strong impact on real estate, the sale of land under poorly set up contractual conditions could lead to the postponement of construction. An example of this is the Nová Karolina project in Ostrava, where the developer suspended work shortly after excavating the first foundations.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

Projects implemented in the framework of the JESSICA financial instrument can also be expected to have higher added value, as projects with a complex structure will have a **"superior configuration"**. Use of the JESSICA financial instrument demands either that revenue be generated already while the project is being implemented (in connection with loan financing) or that the project be appreciated at the time of exit (in connection with equity-type financing). An integral part of project preparations thus has to be sufficient analysis of the rate of return of the investment, which includes superior configuration of project management.

It can be expected that projects implemented through the JESSICA financial instrument will be greater in volume than projects implemented through the standard grant financing. Greater volume will offer investors greater profit in absolute value and allow savings to be achieved from the scope of the project. Implementation of projects of a more significant volume can be expected especially in the case of an increase in resources in the urban development fund/holding fund itself. In connection with the initial investment under consideration of approx. CZK 500 million, the significance of this impact is, nevertheless, limited.

From the perspective of RC MS, the use of financial engineering through the JESSICA instrument will mean increased administrative demands including increased demands on professional capacity in connection with selecting the funds and setting up the so-called funding agreement. This negative impact can be minimised by involving professional advisors and qualified fund managers. Establishing a holding fund should also lead to a reduction of the administrative burden.

3.4 SWOT analysis

When preparing the SWOT analysis, we tried to address all aspects in terms of the MB of the ROP MS, the aid beneficiary, and the HF/UDF.

Strengths

- Resources are not paid out using the payback (refund) mechanism as in the case of the Structural Funds (ex-post financing, i.e., based on eligible and incurred costs that actually arise), but before the actual implementation of the activities. This method is more suitable for the public sector, as resources need not be secured for pre-financing.
- It allows for the leverage of funds from the Structural Funds (public sources) in the Region.
- The method of financing urban development projects is prepared even into the future, where it can be expected that financial resources for the Czech Republic will be reduced after 2013 (recycling of resources).
- Filling in gaps in the market – there is the possibility to finance projects that are difficult to finance through grant sources and for which it is difficult to find private sources.
- The funds can be used over a wider timeframe, i.e., even after the 2007-2013 programme period ends.
- Proactive approach and RC MS competency.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

Weaknesses

- Zero experience with similar types of instruments in the Czech Republic in connection with financing urban development projects (very limited possibilities for making use of experience from other countries, e.g., due to different rules for utilising resources from Structural Funds or due to different legislation).
- Little and often negative experience of the public sector with private sector cooperation.
- Most projects are in the initial stages (e.g., prior to zoning proceedings).
- Need to adhere to the rules laid down by ROP MS in connection with the first use of funds.
- Later implementation of financial instruments in the framework of the 2007-2013 programme period (start no sooner than the second half of 2009, financing of the first projects no sooner than the second half of 2010).
- Relatively few resources available at this time for the JESSICA instrument (in comparison with the value of the potential plans).

Opportunities

- Developing cooperation between the public and private sector and utilising synergies arising in this way (experience of the private sector with implementing and managing large projects).
- Possibility to set more flexible rules for the allocation of resources from the Urban Development Fund than from the EU Structural Funds.
- Greatest concentration of brownfields in the Czech Republic and the need for their regeneration.
- Broader and more comprehensive approach to resolving urban regeneration.
- Sufficient demand for funding resources – thematically suitable projects can be found in all municipalities.
- Municipality representatives show interest in regeneration.
- Low indebtedness of municipalities – debt ratio is negligible in most cases.
- Potential for combining the JESSICA financial instrument with aid instruments.
- Increasing resources for funding urban development projects during financial crisis and reducing funds of main players (e.g., developers, main property owners) in the development of the area towards private loans.
- With the help of experience with this instrument, prepare for the next programme period when it can be expected that instruments of the development fund type will be more widespread.

3. Benefits of implementation of the JESSICA financial instrument in the Moravian-Silesian region (continued)

Threats

- Areas suitable for implementing thematically suitable projects are often not in the ownership of the municipalities, but in the ownership of private subjects.
- Attempts at developing cooperation with the private sector may end up not being successful.
- Unwillingness on the part of the municipalities to make use of recoverable (refundable) resources (too much reliance on aid sources).
- Transfer of funds for use in the JESSICA instrument not approved by the Monitoring Committee.
- Time demands of setting up the implementation structure and the related possibility of late commencement of funding of the project through the urban development funds.
- Decline in the level of interest of the municipalities in the funds due to the excessively stringent rules (in the event the approach to fund allocation is inflexible).
- Most projects are in the initial stages (e.g., prior to zoning proceedings), which could threaten their implementation within the 2007-2013 programmeming period.
- Unclear method of transfer of the funds from the operational programme to the development fund in relation to the fund-flow procedure (certification, state aid, and so on).

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region

4.1 Proposal for a suitable implementation structure and assessment thereof

4.1.1. Basic framework of the implementation structure of the JESSICA financial instrument

This part of the report discusses the general background for setting up the implementation structure of the JESSICA financial instrument that is based on valid legislation, namely the General Regulation, Implementing Regulation, and the preliminary EIB study.

Based on the MC's approval, the Managing Authority will transfer a part of the allocation of the operational programme that is designated for urban regeneration/development to the holding fund, with which it will then conclude a funding agreement. In the event that this optional component, i.e., establishment of a holding fund, is not established, the resources will be transferred directly to the urban development funds. The urban development funds can be supplemented further with additional resources (e.g., from private investors, municipal councils, or financial institutions). The resources can also be supplemented by resources from other operational funds. The urban development funds can then make their resources available through loans, guarantees, and equity.

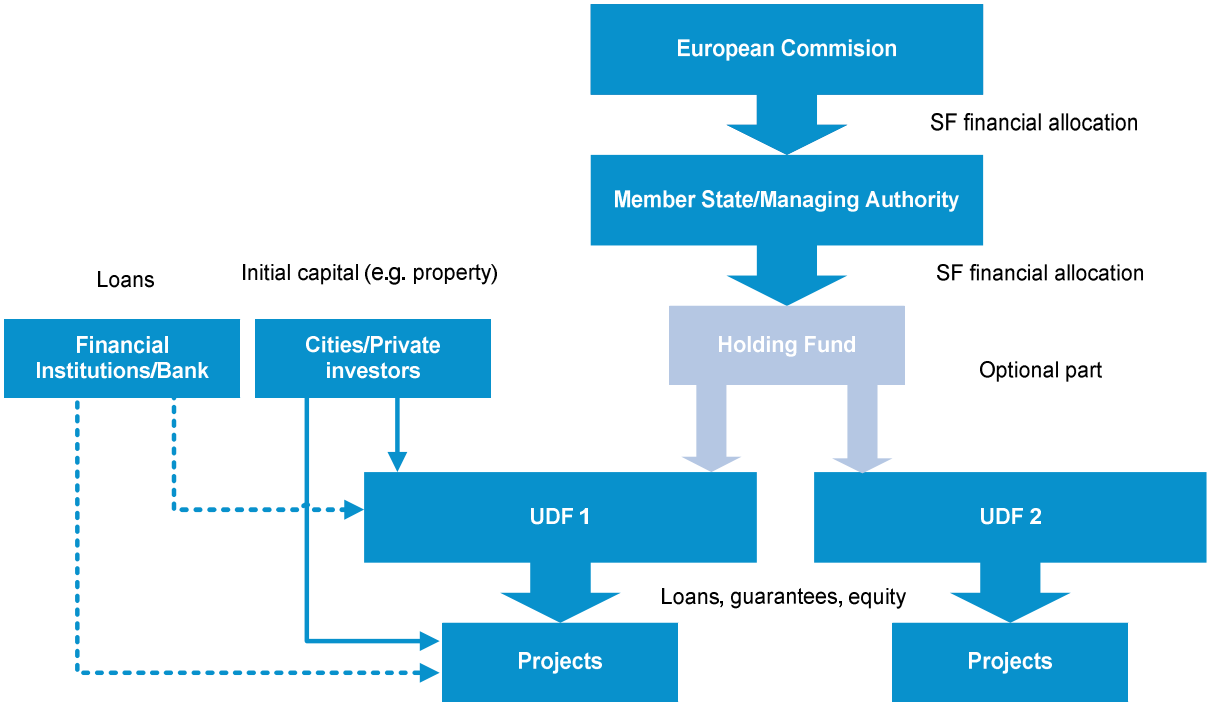


Diagram 2 Basic framework of the implementation structure of the JESSICA financial instrument

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

4.1.2. Role of each component of the implementation structure

The tasks and responsibilities of each component of the implementation structure are based in particular on the Implementing Regulation. Below is an overview of these tasks.

Role of the Managing Authority

- Adoption of decisions on earmarking part of the funding allocation of its operational programme and using it in favour of the JESSICA financial instrument;
- Adoption of decisions on establishing a holding fund;
- Selection of a holding fund/urban development fund manager;
- Setting and approval of criteria based on which the holding fund will select and invest in the respective urban development fund (or set criteria based on which the urban development fund will invest into particular projects);
- Conclusion of funding agreements with the holding fund, or the urban development fund if no holding fund has been established.

Pursuant to Article 43(5) of the Implementing Regulation, the **funding agreement** will define the conditions of contributions from the operational programme(s). The agreement will be concluded between the authorised representative of the holding fund/urban development fund and RC MS.

The funding agreement should contain the following particulars:

- Investment strategy and planning;
- Determination of the obligation to monitor the fund's activities or specification thereof;
- Rules for using resources from the operational programme to ensure that they are used in compliance with the OP rules;
- Method how the operational programme resources will be detached from the financial instrument (e.g., in the event that they will not be allocated to a project before the closure of the operational programme and must be returned);
- Rules for handling the resources that are returned to the fund through payment instalments so that these funds are reused for urban development projects;
- Rules for winding up the fund.

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

Role and tasks of the holding fund (or the Managing Authority if the holding fund is not established)

- Preparation of the holding fund's investment strategy and project plan;
- Management of the holding fund's finances;
- JESSICA marketing initiatives aimed at potential investors (e.g., private owners, developers, financial institutions);
- Conducting further legal analysis on forms and other issues concerning implementation;
- Monitoring of new urban development funds and calls for their establishment;
- Negotiations, evaluation of proposals for establishing urban development funds;
- Conclusion of agreements with the urban development funds;
- Monitoring and continuous provision of information to stakeholders/providers of resources for the holding fund (ROP's Managing Authority or others) on the activities and attained results of both the holding fund and the urban development funds;
- Provision of advisory to the urban development funds, e.g., on eligible costs, state aid, and selection of projects generally.

Role of the urban development fund

- Identification and final selection of projects suitable for funding;
- Allocation of resources to selected projects;
- Selection of payment instalments and interest rates with respect to loans/profit from equity and their allocation to fund contributions;
- Monitoring of the implementation of projects and progress and reporting thereof to the holding fund or Managing Authority;
- Organisation of separate accounting in the event that not-eligible costs are also financed through the fund;
- Bookkeeping and financial reporting generally.

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

In the following diagram, we depict a possible financial flows, monitoring and supervision scheme.

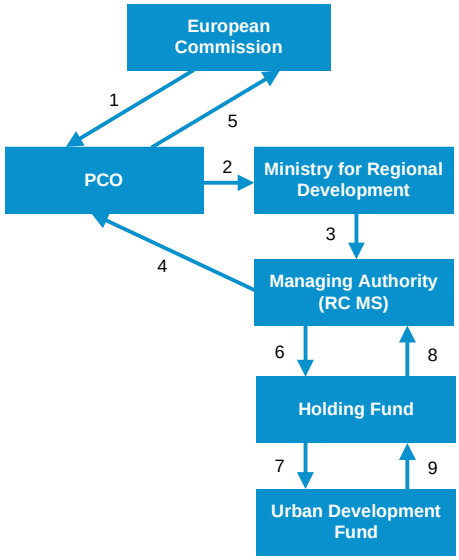


Diagram 3 Financial flows and monitoring

1. Payments – deposit, continuous payments and final balance
2. Transfer of resources for financing Moravia-Silesia Regional Operational Programme into the budget of Ministry for Regional Development (in accordance with rules effective in the Czech Republic)
3. Transfer of resources into the budget of RC MS
4. Aggregate requests for payment to PCO
5. Request for payment (continuous, final balance) to European Commission
6. Transfer of resources to Holding Fund, activities supervision and monitoring in accordance with funding agreement
7. Transfer of resources to Urban Development Fund, activities supervision and monitoring in accordance with funding agreement
8. Information about HF and UDF activities provided to Managing Authority
9. Information about ODF activities provided to HF

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

4.1.3. Proposed options for the implementation structure of the JESSICA financial instrument in the Moravian-Silesian region

This part of the report focuses on the proposed options for the implementation structure of the JESSCIA financial instrument in the Moravian-Silesian region.

The proposed options for the structure were compiled only on the basis of an analysis of the situation in the Moravian-Silesian region without consideration of whether JESSICA will be implemented in other regions of the Czech Republic. In the event of a broader nation-wide option, it would be appropriate to consider the synergies that would arise from such structure. The reason why we only took into consideration the configuration of the JESSCIA financial instrument within the borders of the Moravian-Silesian region is that the other regions have so far not expressed an active interest in this instrument (e.g., the evaluation study was compiled for the Moravian-Silesian region only) and so it is uncertain whether they will make use of this financial engineering opportunity. We also do not deem it advisable to delay the implementation of this instrument in the Moravian-Silesian region just in order to wait for the other regions to decide where they stand.

An evaluation of each of the options is provided below.

Option A - one urban development fund without a holding fund

The first of the options under consideration concerns the creation of one urban development fund focused generally on regeneration without the inclusion of a holding fund. This is the simplest possible implementation structure. This fund should support 3–5 projects (with regard to the initial amount of the allocation – approximately CZK 500 million). The projects would be implemented in cooperation with the municipality (public sector) and a private entity (property owner), for example by the establishment of an SPV.

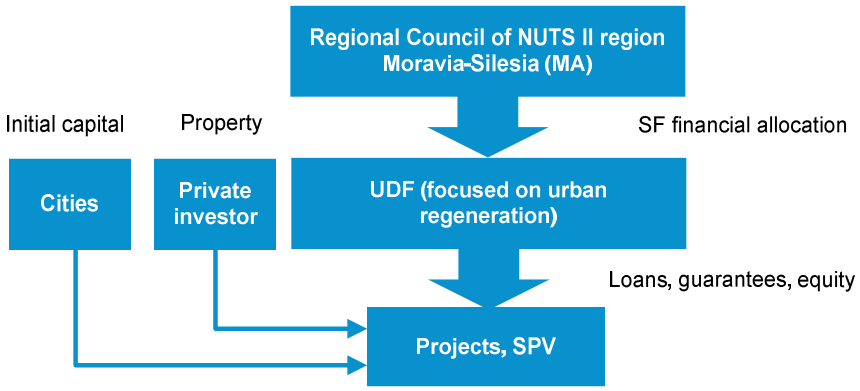


Diagram 4 Option A one urban development fund without a holding fund

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

Option B - one urban development fund with a holding fund

Just like the first option, the second option under consideration counts on the establishment of one urban development fund focused generally on area regeneration, with the only difference being that a holding fund would also be established.

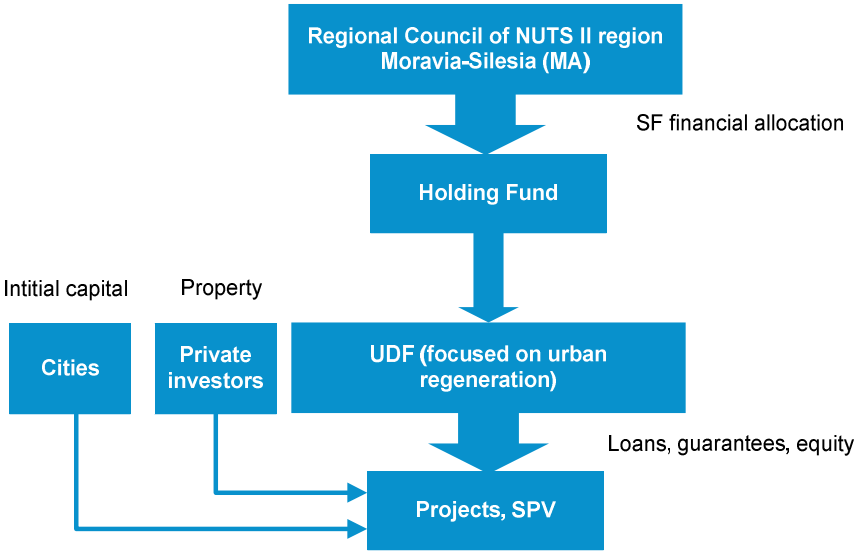


Diagram 5 Option B - one urban development fund with a holding fund

Option C - creating a number of thematically focussed urban development funds with a holding fund

The diagram below shows another option, which is essentially the creation of three thematically focussed urban development funds. Due to the initial allocation available to RC MS, each urban development fund could initially support a maximum of 1 – 2 projects.

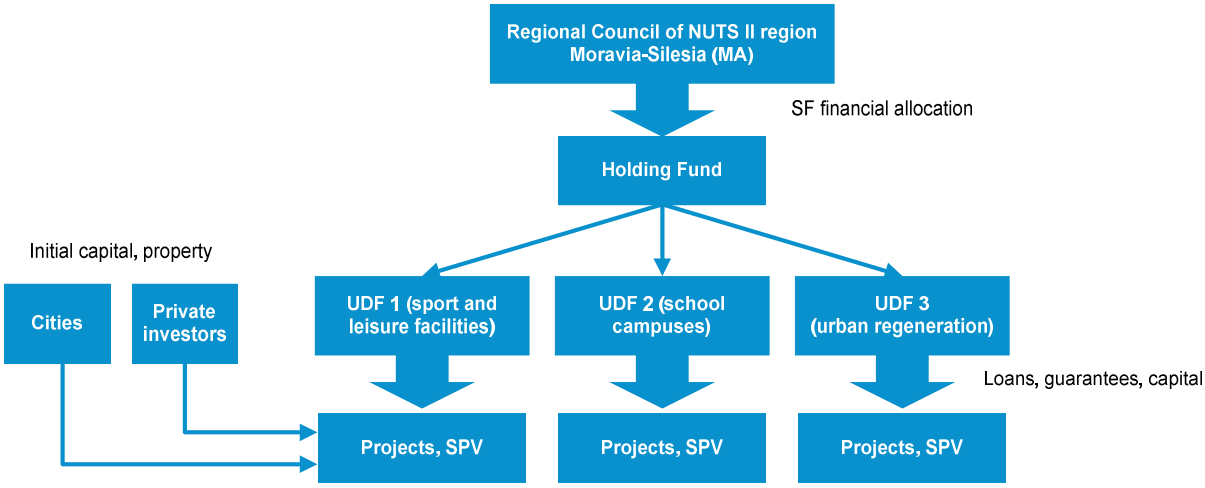


Diagram 6 Option C - a number of thematically focussed urban development funds with a holding fund

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

This option appears suitable there where it would be appropriate to utilise resources from a number of operational programmes, i.e., assistance providers from other operational programmes (e.g., OPE or OPRDI) in additional to the planned resources from the ROP MS. As the rules for use of the resources from the operational programmes vary, the creation of a number of urban development funds would make it possible to separate these resources and use them for projects that comply with the conditions of each programme.

Option D - creating a number of urban development funds structured according to financial instrument with a holding fund

Establishing a number of urban development funds would be advisable also there, where a number of financial instruments would be utilised. In the framework of the JESSICA financial instrument, it is possible for resources to be allocated through loans, guarantees, or equity. Each of these instruments requires different management from the perspective of the financial fund and it would be advisable to modify the implementation structure accordingly. This also confirms the current experience of investment banks. Managers of funds oriented towards providing loans primarily concentrate on evaluations and hedging their products. On the other hand, equity fund managers actively follow market trends and take part in managing companies in which equity has been transferred.

This option would allow the resources within some urban development funds to be expanded to include private sources.

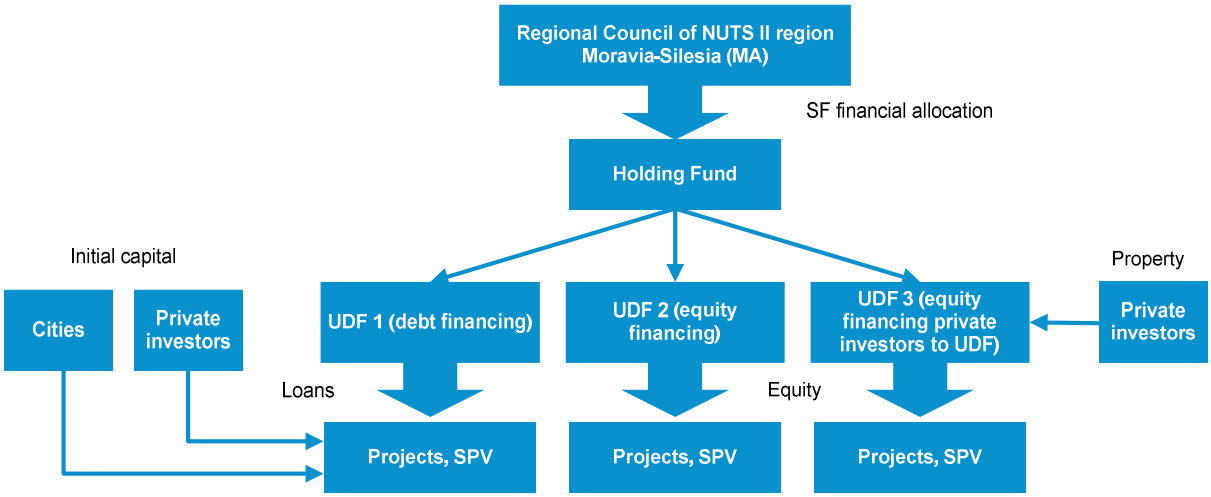


Diagram 7 Option D - a number of urban development funds structured according to financial instrument with a holding fund

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

4.2 Assessment of inclusion of a holding fund

Inclusion of the holding fund in the implementation structure of the JESSICA financial instrument is optional under the General Regulation. We therefore recommend that the Regional Council consider the pros and cons of using this instrument.

In our opinion, the following are the main advantages of establishing a HF:

- Transfer of know-how about financial engineering instruments – The holding fund manager should be an institution that has experience with similar schemes and will pass this experience on. The transfer of know-how could take place for example there, where the holding fund manager would be the EIB. At this time, the EIB is in the role of coordinator of JESSICA-related tasks and has taken on the role of manager of holding funds established with regard to the JESSSICA financial instrument in a number of EU Member States.
- Transfer of experience with marketing and identification of strategic partners/potential investors for the purposes of achieving leverage of the resources.
- Simpler procedures for selecting and monitoring urban development funds from the perspective of RC MS – These procedures would be demanding on the RC MS both financially and administratively especially in case of the establishment of number of urban development funds.
- There where only one urban development fund is established at the beginning and the establishment of a holding fund appears unnecessary, establishment of a holding fund will allow for the further development of the JESSICA financial instrument for example through identification of other opportunities for setting up additional urban development funds – the holding fund manager would have sufficient capacity to identify, based on demands on the market, other opportunities for establishing additional urban development funds.
- Total reduction in the administrative burden for RC MS – If a holding fund is not established, it will be necessary to reinforce personnel/capacity of the Regional Council to perform all necessary tasks.

Possibility to influence time-wise the utilisation of allocations from ROP MS (or other involved operational programmes) and thereby even the possibility to comply with the N+2 or N+3 rule. According to Article 78 of the General Regulation, the statement of expenditure includes resources for establishing the holding fund/urban development fund, where upon the closure of the operational programmes, eligible expenditures are stated as the sum of all payments from the urban development fund to all projects included in the integrated plan for urban development and all provided guarantees[24]. The benefit of establishing a holding fund could be the fact that it can be established before the establishment of urban development funds, for whose establishment it will be necessary to research the demand for such type of instrument in detail and to define the project selection criteria in detail.

[24] See Article 78 of Regulation 1083/2006

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

The following are the main disadvantages/obstacles to establishing a holding fund:

- Administrative demands tied to the need to select a holding fund manager, where it will be necessary to organise a competitive tender according to the Public Procurement Act. In the event that the holding fund manager is EIB, there would be no need to proceed according to the PPA.
- Administrative costs of managing the financial instrument – the holding fund manger's fee is calculated as a percentage of the resources entrusted to him. According to Article 43 of the Implementing Regulation, the maximum amount of the fee is 2% of the resources allocated from the operational programme.

In our view, the advantages of the holding fund will be amplified in the event the EIB or EIF is chosen as the holding fund manager, especially with the regard to the fact that selection of the manager would be simpler as the PPA would not have to be followed and with regard to the transfer of know-how. The European Investment Bank is already the manager of a number of holding funds in other EU Member States. This fact could help to accelerate the negotiating procedure in relation to the conclusion of funding agreements. At the same time, the negotiation period with the holding fund manager could be used to identify suitable institutions to act as urban development fund manager.

4.3 Possibility of combining grant financing and the JESSICA instrument

Combining financing through aid from the operational programmes and the JESSICA financial instruments is possible on the basis of Article 46 of the Implementing Regulation. It is possible to define a number of ways based on which it would possible to combine both sources of funding into one project.

In the first case, the project would be divided up into two parts: revenue generating (profit-making) and non-profit-making. Resources form the JESSICA financial instrument would be used for the revenue generating part, with the non-profit-making part putting together a standard application for aid from the relevant operational programme.

Another possibility would be to utilise resources from the JESSICA financial instrument for the part of project budget that should be covered by the beneficiaries own resources.

One possibility would also be the model where the obligation of the beneficiary to pay back a certain part of the granted loan would be waived upon certain conditions being fulfilled by the beneficiary (namely adherence to the payment schedule). Of course, the disadvantage of this possibility is the fact that the resources in the urban development fund would soon be used up.

4. Implementation structure of the JESSICA financial instrument in the Moravian-Silesian region (continued)

In connection with combining both funding sources, it is also necessary to take into account certain risk factors, in particular the following ones:

- **State aid** – With regard to the fact the assistance provided through the JESSICA financial instrument could be deemed state aid under certain circumstances (see Chapter 2.2 of this report), it is necessary to take care not to exceed the maximum level of assistance when approving projects.
- **Double financing** – From the perspective of auditing the use of various funding sources, it is necessary to ensure that the same activities are not funded both through grants and JESSICA financial instrument resources.
- **Organisational capacity –** this issue needs to be looked at from a dual perspective: from the perspective of the beneficiary, who has to have sufficient capacity to manage a project financed from various sources; and from the perspective of sufficient organisational capacity for the approval process to ensure approval of the part of the projected funded through grants and approval of the part of the project funded through the JESSICA financial instrument.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region

5.1 Assessment of the proposed implementation structure

Chapter 4.1.3 of this report describes four possible options for organising the implementation structure of the JESSICA financial instrument in the Moravian-Silesian region. Chapter 4.2 provides an overview of the advantages and disadvantages of establishing a holding fund.

5.1.1. Criteria for assessing the proposed structures

We further assessed the models for organising the JESSICA instrument based on their suitability with regard to predetermined criteria, which are shown in Diagram 6.

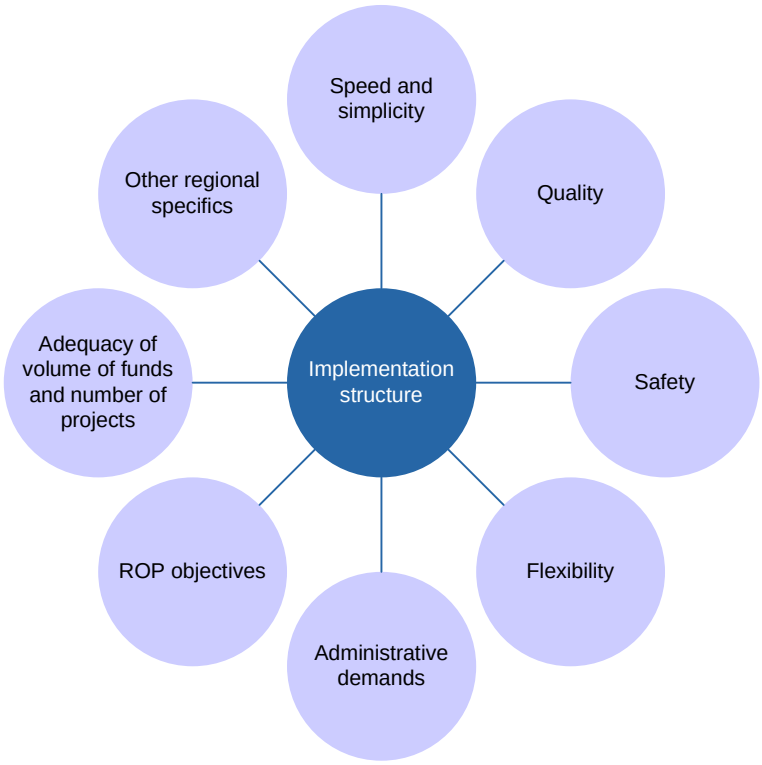


Diagram 8 Criteria for setting up the implementation structure

Simplicity of structure and speed of resource allocation

This criterion is used to assess whether the given structure allows for the fastest allocation of resources from the moment that the Regional Council decides to use this instrument until the resources are allocated to the first projects through the urban development funds. Also assessed was whether the structure was set up in the most simple way for the purpose of minimising any negative impacts of a multiple-level structure, meaning how many levels existed for evaluating state aid issues, and so on.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Quality of resource utilisation

The quality of resource utilisation will depend on the selection of the fund manager and on how the funding agreement is set up. The structure should allow capitalisation on the know-how of experienced experts and their involvement both in project selection and in the process of monitoring/selecting additional urban development funds. The quality of resource utilisation should be assessed in particular with regard to the implementation of the projects, the focus of the projects on urban development, the public benefit of these projects, and so on.

Safety of resource utilisation

The structure should be established in a way to minimise risks in resource utilisation from the RC MS point of view. Risks should be minimised primarily with respect to on time resource utilisation (regarding n+2 rule and expenditure eligibility) and with respect to the investment rate of return (from the UDF point of view). The involvement of experts to assess the projects based on economic analyses (cost-benefit analysis etc.) will be key.

Flexibility of resource allocation

The structure should allow the greatest amount of flexibility for selecting the projects for funding.

Administrative demands on RC MS

The structure should also ensure the minimisation of administrative demands on the aid provider.

Securing ROP objectives

In this regard, assessment should focus on whether the structure is able to help ensure utilisation of the allocation in accordance with the N+2/N+3 rule and the financial forecasts for RC MS, i.e., that the projects receive the transferred allocation in accordance with general regulation no later than at the time of closure of the operational programme, or the fulfilment of other programme indicators.

Adequacy of the volume of available funds

When selecting a suitable configuration, account should also be taken of the fact that the expected amount of resources from ROP MS is smaller at this time. In the same time it has to be ensured that the implementing structure should be effective from the management costs' point of view.

Adequacy of the number of projects with potential for implementation (with regard to the future when the number of projects can grow)

On the other hand, it can be assumed that the demand for resources from the JESSICA financial instrument is a number of times higher at this time than the initial contribution into the fund. It would therefore be appropriate if the configuration allowed for future expansion/adjustment to this demand.

Respecting any other specifics

When setting up the structure, it is also necessary take into account other factors, such as the fact that a large number of the plots of land pertaining to the development projects are privately owned. Projects varying greatly in size have also been identified within the Moravian-Silesian region (Dolní Vítkovice versus other projects).

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

5.1.2. Evaluation of proposed structures

This chapter discusses the evaluation of each structure proposal according to the criteria described in Chapter 5.1.1. A summary of the evaluation can be found in Table 2. Recommendations for the implementation structure in the Moravian-Silesian region are discussed in Chapter 5.1.3.

Simplicity of structure and speed of resource allocation
Although the original assumption was that the speed of resource allocation will depend on the simplicity of the structure, e.g., through only one urban development fund, closer analysis of the Moravian-Silesian region has shown that the speed of resource allocation depends on other factors as well:

a) Degree of preparedness of projects in the Moravian-Silesian region. Degree of preparedness means the existence of urban regeneration projects that have been elaborated to such a degree that aside from the project documentation to be drawn up for the purposes of applying for funding from the urban development fund, there are no other obstacles in the way in the form of time-demanding activities such as zoning proceedings, and so on.

b) Number and quality of preparation that allows the conditions for establishing an urban development fund, including the selection criteria for these projects, and so on, to be determined

Only upon fulfilling these factors/assumptions is it possible from the perspective of this criterion to recommend the selection of the simplest implementation structure.

Our study of projects planned in the Moravian Silesian Region (see Chapter 3.1.1) shows that with regard to innovative configuration of this instrument and zero experience these prerequisites are not entirely fulfilled. For this reason it can be said that configuration of a more complicated implementation structure (for example by involving a holding fund managed by the EIB) would mean the postponement of resource allocation. Establishment of a holding fund managed by an institution that has experience with the JESSICA financial instrument would allow the holding fund to be established much more quickly than the urban development fund. In the time saved, it would be possible focus more on the demand side (defining the urban development fund) and the supply side (municipalities or private investors) in connection with finalising the project. In this regard, it is not possible to give preference to any of the proposed structures.

Quality of resource utilisation
In our point of view, the quality of resource utilisation stems from the following:

a) Sufficient experience and professional capacity of the fund managers
b) Quality configuration of the project selection process, including capital risk assessment
c) Search for new project plans and the possibility to establish new urban development funds

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

In our opinion, involving a strategic partner that has sufficient experience with fund management and project funding using relevant financial instruments would help the quality of resource utilisation. In the case of the holding fund, such partner could be the EIB or EIF. In the case of the urban development fund, the establishment of funds through commercial banks that have experience with such funds and their management should be considered. Such option, however, also carries with it the need to consider state aid issues (see chapter 2.2.1).

We further recommend that in the event of sufficient demand for JESSICA resources, the possibility to establish additional urban development funds should be considered. This diversification could lead to improvement of the professional qualifications of the relevant persons involved in the project selection process or fund management.

Safety of resource utilisation

Just is the previous case, resource utilisation safety will depend on the configuration of the processes of assessing and selecting projects for funding, including increased demands on analysing investment risk. The configuration of parameters will be determined by the funding agreement. From the perspective of the implementation structure, it would be appropriate to consider the involvement of a quality partner, e.g., in the form of a holding fund, who will further specify these rules. In the case of EIB, as the holding fund manager, its experience with establishing other holding funds and urban development funds and application of best practice could be used to the extent that this information is known.

Flexibility of resource allocation

The flexibility of resource allocation will be determined on the one hand by the funding agreement concluded between the Managing Authority and the respective fund. With respect to flexibility of resource allocation, we consider a structure that has a more diversified base of urban development funds to be appropriate. Such a structure should enable attracting highly qualified evaluators who will be able to assess projects even under conditions of less rigid selection criteria. If the structure includes generally oriented urban development funds, one can expect these evaluators to be rather generalist in nature. Evaluation should of course take place with regard to fulfilment of the programme conditions, for which the RC MS bears responsibility, and with regard to the feasibility of the projects in terms of the feasibility of the investment plan. On the other hand, excessive diversification of the funds could lead to the risk of excessive thematic specialisation of the funds, which would limit the use of the allocation for other types of projects. For this reason, it is possible to recommend differentiation of the development funds rather according to financial instruments or, in extreme cases, creation of a fund on a project basis (which would be the case of Dolní Vítkovice).

Administrative demands on RC MS

Without a doubt, the Administrative demands on RC MS will be reduced by the establishment of a holding fund, which will carry out a number of activities that would otherwise have to be carried out by RC MS.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Securing ROP objectives

Establishing a holding fund managed by EIB, which already has experience in this area, could accelerate the utilisation of the allocation. We believe that it will be possible to set up the holding fund in advance of the establishment of any urban development fund. In this way, the Managing Authority will be given an earlier opportunity to show that allocation has been utilised. At the same time, it is important to ensure that the allocation has actually been used for urban regeneration projects right through to the end of the programmeming period. This requirement places increased demands not only on the evaluation process, but also on the marketing of this instrument to the demand side. For this reason, we also recommend considering the involvement of a strategic partner, such as EIB.

A second aspect of utilising the allocation is the increased risk of failure to utilise the allocation in full in case of the excessive diversification of the funds, especially in terms of thematic areas, which may result in the funds not being able to cover demand perfectly from the respective allocations.

Adequacy of the volume of available funds

At the time of this study, the expected volume of resources for use through the JESSICA financial instrument is relatively small. When preparing the cash-flow analysis, an allocation of CZK 500 million, transferred from ROP MS (area of support 2.3 – Support of brownfield development) was taken into account. Our interviews with key players in the region (Vítkovice, RPG) did not confirm any interest in co-financing the funds. One also cannot count on the inclusion of resources from other operational programmes.

From the cost's point of view as the most suitable implementation structure can be pointed out such with less levels of management and funds (be they HF of UDF).

With regard to the volume of resources, we recommend beginning with a structure that has the smallest number of urban development funds, so as not to break up this allocation too much.

Adequacy of the number of potentially feasible projects

Preliminary analysis of the projects in the Moravian-Silesian region shows that demand for funds in the region well exceed the amount that should be first released for JESSICA-type projects. For this reason, we recommend giving preference to developing a structure that in the future will, for example, allow expansion of the number of urban development funds and that could be adjusted to any further resource contributions.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Respecting any other specifics

With regard to the specifics identified in the Moravian-Silesian region, we recommend that in the event of sufficient funding resources for the JESSICA instrument the establishment of certain funds be considered on a project basis. In the event of the implementation of the Dolní Vítkovice project, whose total volume is estimated at CZK 60 billion, we recommend establishing a special fund for the development of this area. Also in the case of implementation of projects where the establishment of funds using the capital of private entities is a possibility (i.e., in the form of land or buildings in the case of RPG), we recommend considering the establishment of a special urban development fund. We believe that this diversification and the setting up of clear conditions on the recoverability of the investment as well will help convince investors to become involved in these projects.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Criterion	Questions / Explanations	Option A	Option B	Option C	Option D
Speed of resource allocation and simplicity of structure	Is the structure set up to allow projects to be selected and resources allocated to them as quickly as possible? Is the implementation structure set up in the simplest possible way? Are the negative impacts of a multiple level structure minimised? (E.g., is the number of points based on which the public aid will be assessed as small as possible?)	●	●	●	●
Quality of resource utilisation	Does the given structure ensure the selection of projects of sufficient quality? Does the given structure allow the involvement of players with professional experience to give added value to the utilisation of the resources?	●	●	●	●
Safety of resource utilisation	Is the structure set up to minimise the risks connected to the utilisation of the resources from the point of view of the Regional Council – provider of resources from ERDF? Is the structure set up to minimise the risks connected to the use of the resources from the perspective of recovery of the investment?	●	●	●	●
Flexibility of resource utilisation	Will the provision of the funds through the JESSICA financial instrument be tied to rigid rules or will the given structure allow flexibility?	●	●	●	●
Administrative demands on RC MS	What structure is the most suitable from the perspective of decreasing the administrative burden on RC MS?	●	●	●	●
Securing ROP objectives	Will resources be utilised in accordance with the N+2N+3 rule and the financial forecasts of RC MS? Will the programme indicators be fulfilled?	●	●	●	●
Adequacy of volume of available resources	Does the structure correspond to the total volume of resources that will be available? Is the number of structural levels appropriate?	●	●	●	●
Adequacy of number of potentially realisable projects	Does the structure correspond to the total number of suitable projects (demand)?	●	●	●	●
Respect to local specifics	Is the structure adequate for use in local specific conditions (e.g. differences among projects in terms of volume, property ownership by private entities etc.?	●	●	●	●

Table 6 Summary of the evaluation of each of the options for the implementation structure of the JESSICA financial instrument in the Moravian-Silesian region.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Legend to Table 6

- The option completely meets given criterion
- The option only partially meets given criterion
- The option does not meet given criterion at all

5.1.3. Recommendations regarding implementation structure

Based on the evaluation discussed in the previous chapter, we recommend proceeding in the way set out below.

In the framework of the implementation structure, we recommend considering the establishment of a holding fund to be managed by either EIB or EIF. Assessment of the inclusion of the holding fund is discussed in Chapter 4.2 of the report.

In the first phase we recommend establishing one or two pilot urban development fund(s) as an appropriate implementation strategy. One of them would be a generally oriented urban development fund authorised to provide loans, guarantees or equity for different projects. The other one could be narrowly oriented with respect to specific regional requirements. This specification would be set by the managing authority in cooperation with holding fund manager. Such an urban development fund could aim, for example, at a concrete thematic sector or at capital financing, in which resources of private investors would be made through plots of land. If only one urban development fund was established, fund resources would consist solely of operational programme resources. Private investor resources could then be collected for example through a SPV company establishment.

From the mid-term perspective, the structure should be set up to allow a future response to any increase in demand on the part of the projects or to allow investment from other operational programmes or from other sources. It is also for this reason that we consider the above-described structure to be suitable.

In the event that the Regional Council decides to implement this instrument, we recommend launching a targeted information and consulting campaign that would allow further specification of the particular projects.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

5.2 How the urban development fund operates

5.2.1. Specification of the urban development fund in the market for financial instruments

The urban development funds are able to allocate their resources through loans, guarantees, and equity.

Financial recoverability (rate of return)
With regard to the financial recoverability (rate of return), the urban development funds should target projects that unlike grant financing are recoverable (refundable), i.e., that generate revenue, but are not of sufficient interest to private investors, for example by having a rate of return that is too low or recovery risk that is too high for the private investor.

The internal rate of return (IRR) represents the discount rate where the net present value is zero. The project should be deemed acceptable if the IRR exceeds the given discount rate (e.g. 5%).

Economic and social rate of return
Just like grant financing, urban development funds should target projects with added value for the inhabitants of the municipality in question. One of the possible approaches is performing an evaluation through a cost-benefit analysis (CBA), which evaluates the impact of the investment also in terms of the economic and social benefits. The CBA calculates these benefits in monetary value. These criteria are not taken into account by classic commercial instruments and their impact in this area can be both positive and negative.

In these cases, it is possible to use, for example, the SROI index, which divides the net value of the benefits of the investment by the net value of the investment. Nevertheless, this index has only limited use. For example, it cannot be applied in the case of benefits that cannot be transposed to a financial equivalent.

It is necessary to look at social and economic criteria independently. Planned investments should thus fulfil a number of independent conditions, not an overall scorecard.

Diagram 7 shows the position of the JESSICA financial instrument in terms of the financial and economic benefits and social benefits.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

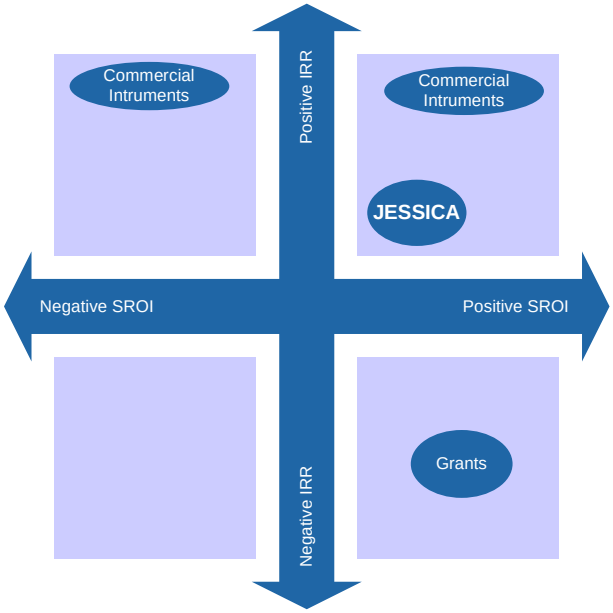


Diagram 9 Comparison of JESSICA financial instruments against grants and commercial products

5.2.2. Pilot urban development funds

The possible basic configuration of pilot urban development funds is set out in the overview below.

Own capital fund	CZK 486,2 million
Other fund resources	Not expected
Year of commencement of activity	2011
Number of implemented projects	According to size 3 – 5
Average size of project	Approx. CZK 120 million
Thematic definition of fund	Generally aimed at area regeneration
Provided products	Especially loans, sometimes guarantees or equity capital
Costs of fund management	3% p. a. from fund resources

Table 7 UDF parameters

5.2.3. Financial instruments of the pilot fund

Debt financing

It is possible to provide debt financing for investment and operation financing of the projects.

Rate of return of the investment

The rate of return in the case of debt financing (e.g., the amount of loan interest) should be set above the Prague InterBank Offered Rate (PRIBOR), which is currently at about 2.4 – 2.6% p. a.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

With regard to the nature of each debt instrument, we recommend setting the rates at around PRIBOR plus a 2 - 4% margin for securing the loan (senior debt) and around PRIBOR plus a 5 - 9% margin for mezzanine-type loans (unsecured loans).

Investment risk rate

No guidelines have been laid down for managing the investment risk rate in the framework of the JESSICA financial instrument. It will therefore be necessary to set up standard risk management procedures.

Maturity/recoverability

In the cash-flow analysis, the term of maturity of the loan was set at 10 years. We believe that the instrument should allow the financing of middle-term and long-term loans ranging from 5 to 20 years.

Financing through capital (equity finance)

Due to the different nature of this type of financing, we recommend that in the case of equity financing, a special urban development fund be set up for this purpose. The minimum rate of return should be about 12 – 25 % p.a., and vary according to the specific nature of each investment.

Higher rate of investment risk, maturity, client's financial standing, security amount, industry risk, and unspecified risk should all affect the interest and return rates as well. More specific configuration of financial instruments for each urban development fund and their financial instruments requires a more detailed analysis of the market and demand side reflecting the current financial indicators at the time of establishment of the fund.

5.2.4. Example of possible financing methods

In this section, we provide an overview of possible methods of financing in the framework of the JESSICA financial instrument. First of all, this overview does not aspire to be exhaustive, i.e., to cover all possible options. Second, its aim is not to address the specifics of particular projects. The examples below are entirely made up and are illustrative in nature.

The aim of this overview is to demonstrate that the financing of projects through JESSICA financial instrument is diverse in terms of structure and varied in the way the stakeholders are involved in the project and, thus, in the extent that they are able to affect the investment.

One of the messages should therefore be that projects financed through the JESSICA financial instrument can be set up in a way that best corresponds to actual conditions and thereby be sufficiently motivating for all stakeholders.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

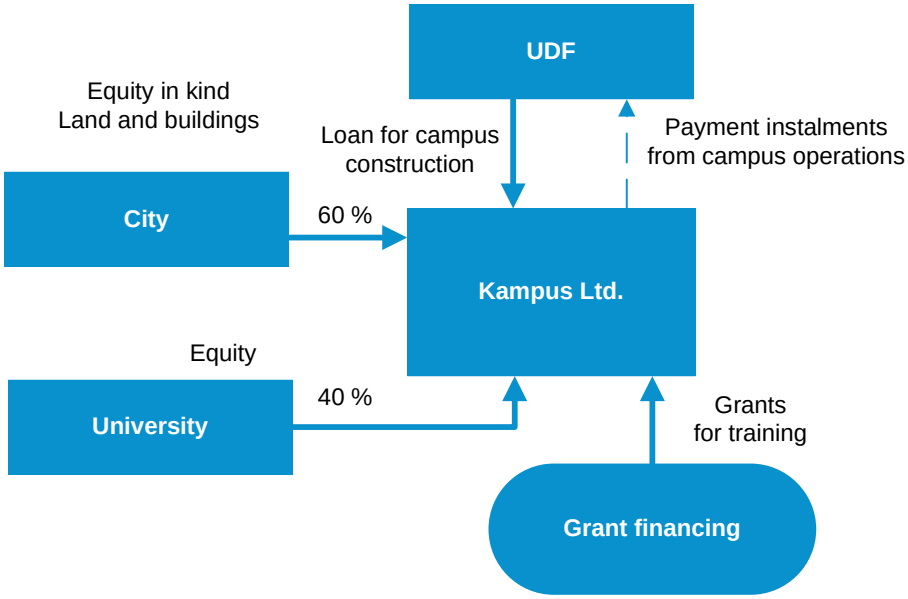


Diagram 10 Example 1 – Project for the construction of a campus, financing through a JESSICA loan and grant financing

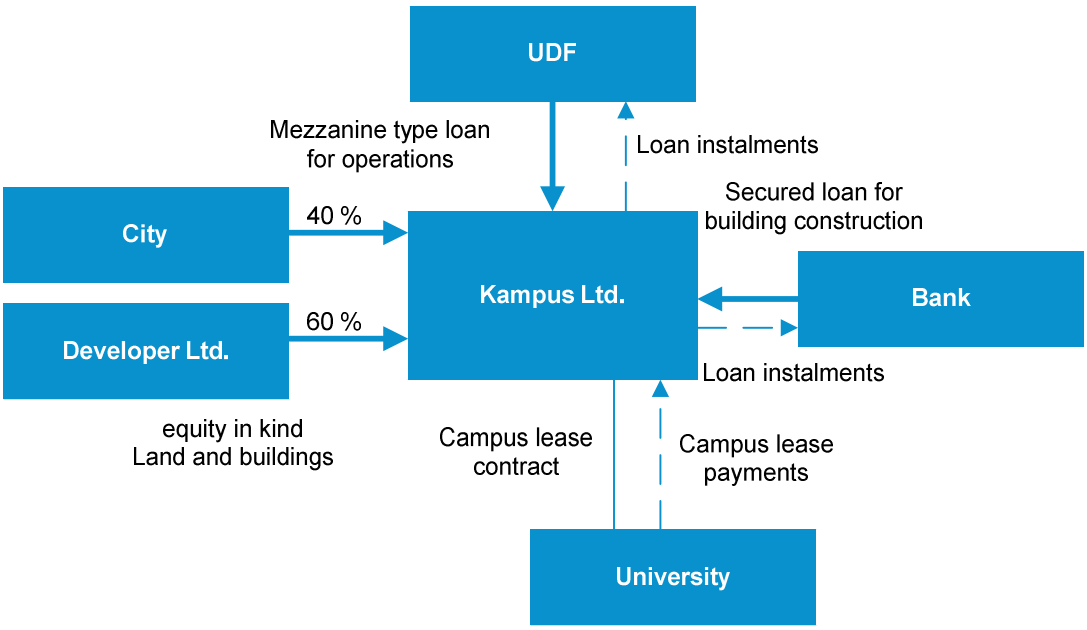


Diagram 11 Example 2 – Project for the construction of a campus financed through a JESSICA loan and a commercial bank loan

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

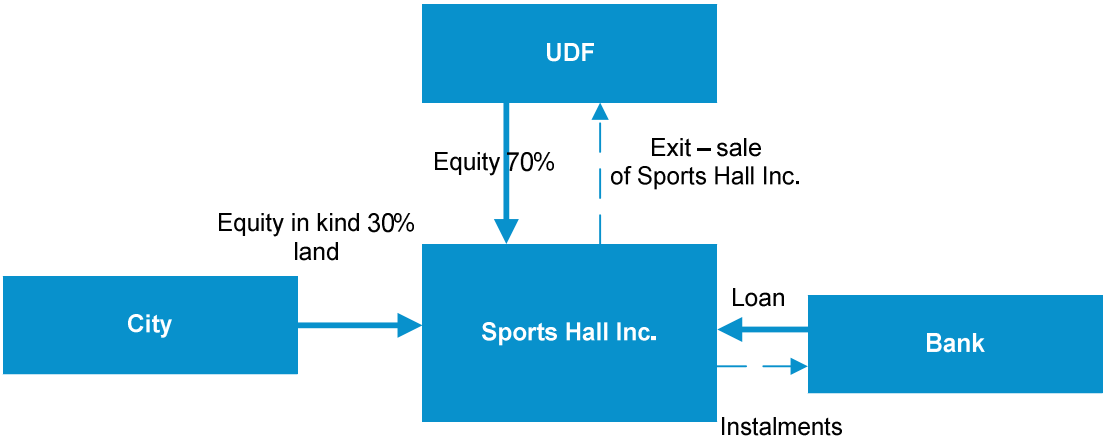


Diagram 12 Example 3 – Project for the construction of a sports hall financed through JESSICA equity and a commercial bank loan

In the first three examples, a SPV was set up for the purposes of implementing the project. The examples show that this company can be owned by various partners, such as the municipality and other stakeholders (e.g., the university). In the third example, the urban development fund becomes a SPV partner as well based on the provision of JESSICA equity.

In the examples shown, the nature of the equity capital also differs. It can be provided both in the form of cash and in the form of lnon-current fixed assets, i.e., transferred land or buildings (so-called equity in kind).

The models also show that resources allocated to the project through the urban development fund can be supplemented through other funds – grant financing or commercial loans – and not just through equity capital and JESSICA sources.

The examples also show that by being an SPV partner, the municipality is able to retain decision-making and supervisory powers over the project and its implementation.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

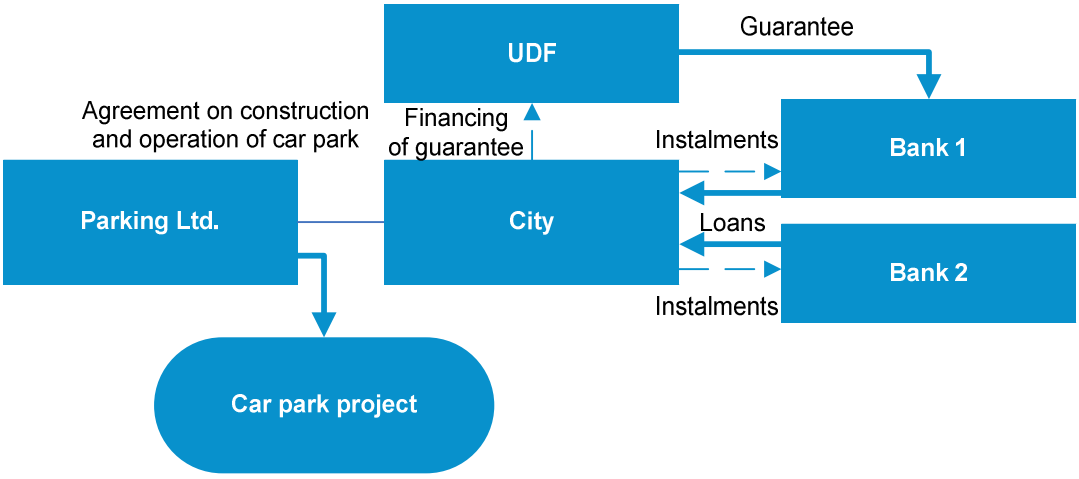


Diagram 13 Example 4 – Project for the construction and operation of a car park financed through a commercial bank loan with a JESSICA guarantee

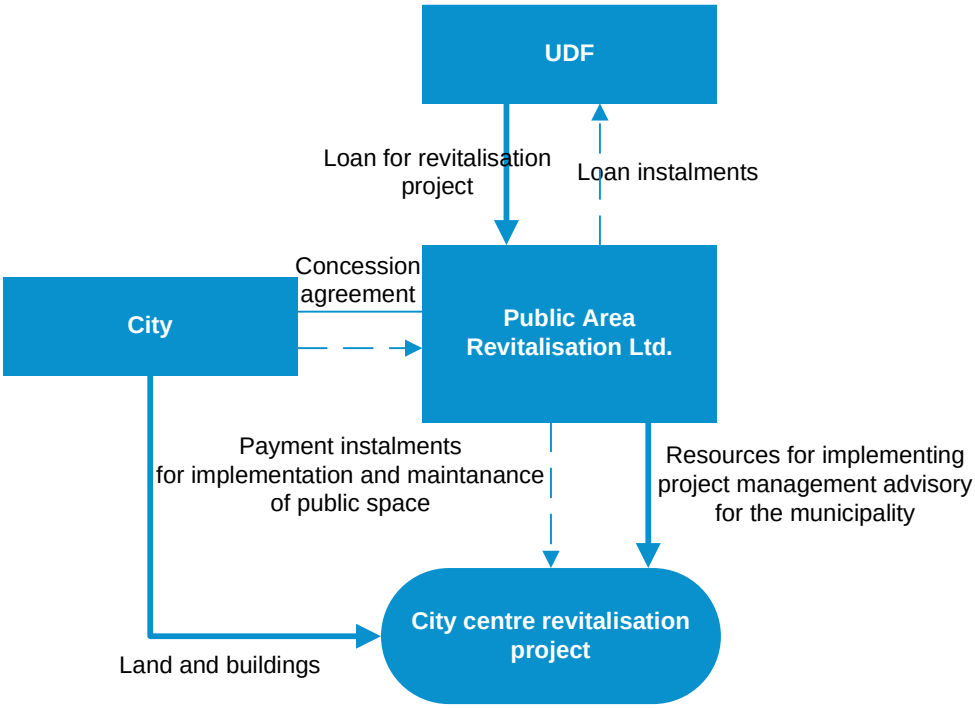


Diagram 14 Example 5 – Project for the revitalisation of the city centre

The remaining two examples show the option where the project is implemented by a private company under a contract with the municipality, which determines the form of the project. Example 4 also shows the option where a guarantee has been provided for the project to allow, for example, a commercial loan to be obtained for a project bearing a higher risk, and so on.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

The examples show the following benefits of the JESSICA financial instruments:

- Flexibility of structure configuration that can be adjusted to the specific conditions of the projects;
- Involvement of more stakeholders in the project, multiplication of resources and know-how;
- Direct involvement of municipalities into the projects – retention of control over the implementation of the project;
- Involvement of the private sector in projects with a public added value.

5.2.5. Fund configuration, fund activities

The activities of the urban development fund should be as follows:

- Search for and final selection of suitable projects for financing;
- Provision of funds to selected projects ;
- Selection of type of payment instalments and interest rates with respect to loans/profit from equity and their allocation to fund contributors;
- Monitoring and implementation of projects and progress and reporting thereof to the holding fund/or managing authority;
- Management of investment activity ;
- Organisation of separate accounting in the event that ineligible costs are also financed through the fund;
- Bookkeeping and financial reporting generally.

5.2.5.1 Internal organisation of the fund

Front Office

Brings new opportunities for realisation. Accompanies the investment procedurally and executively for its entire life. Is the face of the investment and deals with the client. Determines remuneration for Back Office and Analysis Department.

Middle Office

Analysis Department

Helps the Front office process and structure investment opportunities, creates mathematical models and risk management analyses for each project.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Risk department
Is the opponent to the Front Office, assesses the risk of each project and helps the Credit Committee management the system-related risks of the fund.

Legal department
Helps the Front Office process and structure the investment opportunities, prepares a legal risk analysis and drafts contractual documentation, manages outsourcing of legal services.

Back office
Treasury
Manages the fund's cash flow based on instructions from the Credit Committee.

Support services
Provides support to other fund departments in areas such as IT, HR, facility management, and accounting, both directly and through outsourcing.

Fund management
Credit Committee
The fund's supreme body. Approves each investment and its conditions, including the fund's expenditures. Manages the fund's system-related risks. Sets methodology, best practices, and the SOP fund. Determines remuneration for the Front Office and Risk Department. Comprises representatives of those allocating resources to the fund.

5.3 Management costs

Costs of managing the implementation structure of the JESSICA financial instrument in the Moravian-Silesian region comprises in particular holding fund management fees and urban development fund management fees.

5.3.1. Holding fund management costs

In the case of the holding fund, we assume that its manager will be EIB (see our recommendations in Chapter 5.1.2). According to Article 43(4)(a) of the Implementing Regulation, the annual costs of managing the holding fund cannot exceed 2% of the capital contributed by the operational programme (in this case approx. CZK 500 million), unless a higher percentage proves necessary after a competitive tender.

We assume that this will not occur in the case of EIB. The costs of managing the holding fund would thus amount to approximately CZK 10 million per year. Furthermore we assume that part of these management costs will be covered by earnings from interests.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

5.3.2. Urban development fund management costs

According to Article 43(4)(b) of the Implementing Regulation, the annual costs of managing the urban development fund is 3% of the resources expended from the operational programme or holding fund, unless a higher percentage proves necessary after a competitive tender. We believe that if a financial institution that is public in nature (e.g., ČMZRB) becomes the fund manager, it will not necessary to increase this percentage. Nevertheless, if a private subject becomes the manager of the urban development fund, it may happen that based on a competitive tender, this percentage might be higher.

In the event that one urban development fund is set up, the costs of managing it may amount to approximately CZK 14 million per year.

5.4 Implementation action plan

This part of the report will introduce each of the steps necessary for the successful implementation of the JESSICA financial instrument in the Moravian-Silesian region and propose a general time schedule for each activity. There where it is possible, the person/institution responsible for each step will be listed.

5.4.1. Main steps leading to implementation of the JESSICA financial instrument in the Moravian-Silesian region

The following are the main steps leading to the configuration of the functional implementation of the JESSCIA financial instrument in the Moravian-Silesian region:

- Decision of the MC on the transfer of the funding allocation for utilisation in the framework of the JESSICA financial instrument;
- Decision on the implementation structure option;
- Decision on involving the HF, identification of a suitable institution, signing of the funding agreement;
- Resolution of the issue of state aid;
- Modification of ROP rules (e.g. for the IUDP);
- Organisation of cooperation between municipalities and private owners;
- Selection of urban development fund manager;
- Commencement of the urban development fund.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Decision of the MC on the transfer of the funding allocation for utilisation in the framework of the JESSICA financial instrument

The first step that can lead to the commencement of work on preparations of the implementation of the JESSICA financial instrument in the Moravian-Silesian region is the decision on the transfer of part of the funding allocation. According to Article 65 of the General Regulation, only the MC can make this decision.

At this time, RC MS is considering earmarking a part of the allocation in area of support 2.3 – Support of brownfield development. In the event of insufficient demand for aid resources in other priority axes or areas of intervention, it is possible that RC MS will consider transferring these resources in favour of the JESSICA financial instrument. In this case, it is necessary to be aware of the fact that changes in allocation between priority axes can be seen as a change of the EC's decision, and therefore these changes will be subject to the EC's approval.

Decision on implementation structure option

This report proposes a number of options for implementation structures, including their assessment (see Chapters 4.1 and 5.1). Nevertheless, RC MS is responsible for making the final decision on the selection of one of these.

Decision on involving HF, identification of suitable institution, signing of the funding agreement

Together with the decision on suitable implementation structure, it is necessary to make a decision on whether the services of a holding fund will be required. Assessment of the strengths and weaknesses were touched upon in Chapter 4.2 of this report.

In the event that it is decided to involve a holding fund, whose manager will be the EIB, it will be necessary to commence negotiations with the EIB on the conclusion of a funding agreement. The particulars of this agreement are set out in Chapter 4.4.1 of this report.

In the event that it is decided that the holding fund manager will be an institution other than the EIB (or the EIF), it will be necessary to organise a competitive tended pursuant to the PPA.

Resolution of the issue of state aid

The issue of state aid is dealt with in chapter 2.2.1 of this report. It is apparent that the assistance provided through the JESSICA financial instrument will include state aid. For this reason, it is necessary for the RC MS to pay attention to this issue and prepare a notification programme for the area of urban regeneration/development. The EC is responsible for approving the notification.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

Modification of ROP rules

Based on Article 44 of the General Regulation, it is possible to use financial engineering instruments to support projects with a public and private sector partnership and other projects included in the IUDP. Most projects submitted by municipality representatives in the framework of the study are not included in any of the approved IUDP at this time. Nevertheless, in some cases their inclusion is possible. It further stems from interviews with the representatives of the addressed municipalities that the IUDP rules are complicated. Their creation is a relatively long term process in particular thanks to the necessity to involve a wide range of players. For this reason, it will be necessary to modify the IUDP rules to allow the inclusion of projects suitable for financing through the JESSICA financial instrument.

When modifying the rules, we recommend that RC MS work closely with the Ministry for Regional Development, as it is the National Body for the Coordination of Assistance through EU Structural Funds in the Czech Republic.

Organisation of cooperation between municipalities and private owners

This report has mentioned in a number of places that when implementing most projects it will be necessary to organise cooperation between public institutions and a private entity, namely for the reason that the private entity will be the owner of the land.

As mentioned in Chapter 1.4.5 of this report, we believe that it is necessary to create a platform based on which communication and cooperation between the public and private sector will be ensured. Based on facts ascertained during interview with municipality representatives and private owners, it would be appropriate for this platform to be set up by an independent person/institution.

Selection of the urban development fund manager

In the event that it is decided to utilise a holding fund in the framework of the implementation structure, this step will be one of its responsibilities. In the opposite case, the selection of the urban development fund manager is the responsibility of the RC MS, as the Managing Authority.

If we consider the fact that the holding fund manager will be the EIB, then the selection of the urban fund development manager will take place according to the internal rules of this institution. A funding agreement, containing at least the particulars stipulated by Article 43(6) of the Implementing Regulation, will be concluded with the fund manager.

Commencement of activities of the urban development fund

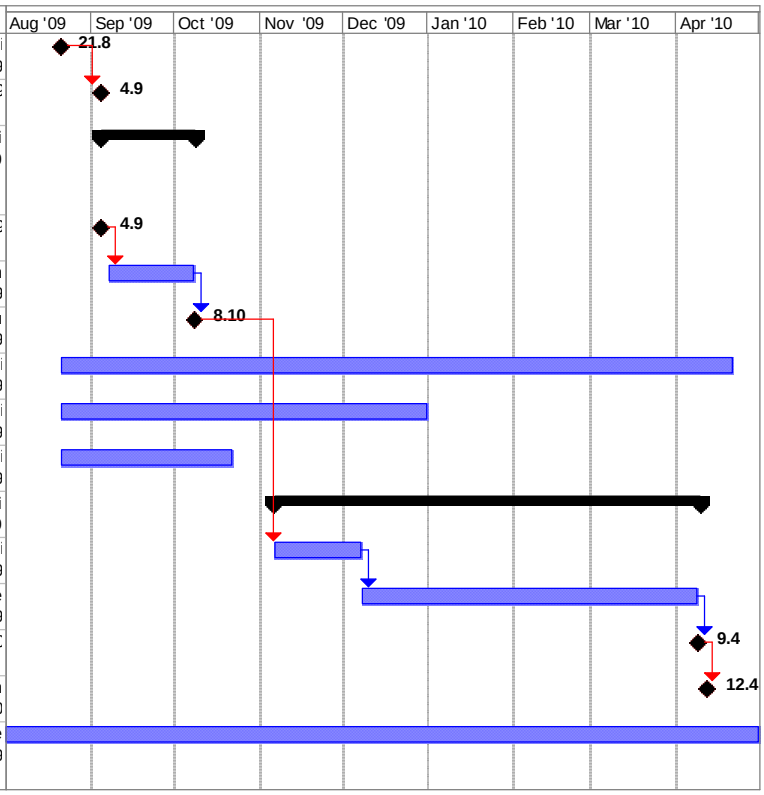
The urban development fund manager will begin to discharge his office upon signing the financing agreement in accordance with its provisions.

5. Implementation Plan for the JESSICA instrument in the Moravian-Silesian region (continued)

5.4.1. Time schedule

The following diagram is a draft general time schedule regarding the tasks described above and shows, if relevant, how these tasks are interconnected.

ID	Task Name	Duration	Start
1	Decision of MC to reallocate funds from ROP MS	1 day	Fri 21.8.09
2	Decision about option of implementation structure	1 day	Fri 4.9.09
3	**Decision about inclusion of HF, finding suitable institution, funding agreement**	**25 days**	**Fri 4.9.09**
4	Decision about inclusion of HF	1 day	Fri 4.9.09
5	Negotiation with EIB concerning condition,	23 days	Mon 7.9.09
6	Signature of funding agreement	1 day	Thu 8.10.09
7	Solving the question of state aid	174 days	Fri 21.8.09
8	Further legal analysis (UDF form etc)	95 days?	Fri 21.8.09
9	Adoption of ROP rules (IUDP etc.)	44 days	Fri 21.8.09
#	**Selection of UDF manager**	**111 days**	**Fri 6.11.09**
#	Research of suitable institutions	22 days	Fri 6.11.09
#	Selection of UDF manager	88 days	Tue 8.12.09
#	Signature of funding agreement	1 day	Fri 9.4.10
#	Commencement of UDF operations	1 day	Mon 12.4.10
#	Ensuring the cooperation and communication between cities and private investors	209 days	Tue 14.7.09



6. List of Abbreviations

Abbreviation	Explanation
CEB	Council of Europe Development Bank
ČMZRB	Czech-Moravian Guarantee Development Bank Inc.
CR	Czech Republic
EC	European Commission
EIB	European Investment Bank
EIF	European Investment Fund
EU	European Union
HF	Holding fund
IOP	Integrated Operational Programme
IUDP	Integrated Urban Development Plan
MRD	Ministry for Regional Development of the Czech Republic
MC	Monitoring Committee
MSR	Moravian-Silesian region
ME	Ministry of the Environment of the Czech Republic
General Regulation	COUNCIL REGULATION (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999
OPBI	Operational Programme Enterprise and Innovation
OPE	Operational Programme Environment
PCA	Payment and Certification Authority
Implementing Regulation	COMMISSION REGULATION (EC) No. 1828/2006 setting out rules for the implementation of Council Regulation (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No. 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund
MA	Managing Authority
ROP MS	Regional Operational Programme of the NUTS II Region Moravia-Silesia
RPG	RPG RE Management, s.r.o.
RC MS	Regional Council of the of the NUTS II Region Moravia-Silesia
UDF	Urban Development Fund
SPV	Special Purpose Vehicle
RCC	Regional Council Committee
PPA	Act No. 137/2006 Coll., on Public Procurement, as amended

7. Reference sources

Legislation

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

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

Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

Commission regulation (EC) No. 1998/2006 of 15 December 2006 on the application of Article 87 and 88 of the Treaty to *de minimis* aid

Act No. 137/2006 Coll., on Public Procurement

Act No. 248/2000 Coll., on Support for Regional Development

Act No. 218/2000 Coll., on Budgetary Rules

Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets

Studies on the implementation of the JESSSICA financial instrument

JESSICA Preliminary Study – January 2007

Analysis of the Legal Conditions for the Implementation of the JESSICA Initiative in Poland, September 2008

JESSICA Evaluation Study – South Poland, January 2009

JESSICA Evaluation Study – Sweden, February 2009

JESSICA Evaluation Study – Lithuania, January 2009

Other materials

Study conducted by MasterCard – 2008 Czech Development Centres (Moravian-Silesian region)

8. Annexes – cash flow

(million CZK)	Programmeming period 2007–2013				Other activity of the fund						
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Holding fund (HF)											
Financial cash flow											
Earnings	**500,00**	**0,00**	**0,00**								
Capital transfer from ROP	500,00	0,00	0,00								
Capital transfer from other OP	0,00	0,00	0,00								
Capital transfer from other sources	0,00	0,00	0,00								
Expenditures	**0,00**	**485,00**	**0,00**								
Capital transfer to UDF at the beginning of each year	0,00	485,00	0,00								
Other expenditures	0,00	0,00	0,00								
Operational cash flow											
Earnings	**20,00**	**0,00**	**0,00**								
Deposit interest	20,00	0,00	0,00								
Expenditures	**13,80**	**10,00**	**10,00**								
Interest tax	3,80	0,00	0,00								
Administration fee	10,00	10,00	10,00								
Fund balance at the end of each year	506,20	11,20	1,20								

8. Annexes – cash flow (continued)

(million CZK)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
	Programmeming period 2007–2013				Other activity of the fund						
Urban development fund (UDF)											
Total cash flow		249,74	-209,40	55,18	54,91	-95,80	166,46	-60,98	-80,92	95,35	96,31
Total earnings		506,83	50,27	74,32	73,41	72,49	208,03	200,70	98,53	115,59	115,77
Total expenditures		257,09	259,67	19,15	18,50	168,28	41,57	261,69	179,45	20,24	19,46
Fund balance at the beginning of each year		485,00	249,74	40,34	95,52	150,42	54,63	221,09	160,10	79,18	174,53
Fund balance at the end of each year		249,74	40,34	95,52	150,42	54,63	221,09	160,10	79,18	174,53	270,84
Operational cash flow											
Capital transfer from holding fund		485,00	1,20	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
Other capital transfer		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
Deposit earnings		21,83	11,24	1,82	4,30	6,77	2,46	9,95	7,20	3,56	7,85
Administration costs		14,59	14,59	14,59	14,59	14,59	14,59	14,59	14,59	14,59	14,59
Financial cash flow		-242,50	-207,25	67,95	65,20	-87,98	178,58	-56,35	-73,54	106,37	103,04
Earnings		0,00	37,83	72,51	69,11	65,72	205,57	190,75	91,32	112,03	107,91
Expenditures		242,50	245,08	4,56	3,92	153,70	26,99	247,10	164,87	5,66	4,87
Debt financing											
Expenditures – loan provision		**145,50**	**145,50**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**
Earnings - interest		0,00	7,28	13,82	12,37	10,91	9,46	8,00	6,55	5,09	3,64
Earnings - installment		0,00	14,55	29,10	29,10	29,10	29,10	29,10	29,10	29,10	29,10
Outstanding debt		145,50	276,45	247,35	218,25	189,15	160,05	130,95	101,85	72,75	43,65
Expenditures – tax on financial operations		0,00	1,38	2,63	2,35	2,07	1,80	1,52	1,24	0,97	0,69
Guarantees											
Earnings		0,00	1,46	1,46	1,46	1,46	1,46	1,46	1,46	1,46	1,46
Expenditures – tax on financial operations		0,00	0,28	0,28	0,28	0,28	0,28	0,28	0,28	0,28	0,28

8. Annexes – cash flow (continued)

	Programmeming period 2007–2013				Other activity of the fund						
(million CZK)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mezzanine											
Expenditures – mezzanine provision		**48,50**	**48,50**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**
Earnings - interest		0,00	4,85	8,73	6,79	4,85	2,91	0,00	0,00	0,00	0,00
Earnings - installment		0,00	9,70	19,40	19,40	19,40	19,40	9,70	0,00	0,00	0,00
Outstanding debt		48,50	87,30	67,90	48,50	29,10	9,70	0,00	0,00	0,00	0,00
Expenditures – tax on financial operations		0,00	0,92	1,66	1,29	0,92	0,55	0,00	0,00	0,00	0,00
Equity											
Expenditures – equity provision		**48,50**	**48,50**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**
Earnings – equity sold		0,00	0,00	0,00	0,00	0,00	120,68	120,68	0,00	0,00	0,00
Expenditures – income tax		0,00	0,00	0,00	0,00	0,00	22,93	22,93	0,00	0,00	0,00
Debt financing II round											
Expenditures – loan provision		**0,00**	**0,00**	**0,00**	**0,00**	**150,42**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**
Earnings - interest		0,00	0,00	0,00	0,00	0,00	7,52	6,77	6,02	5,26	4,51
Earnings - installment		0,00	0,00	0,00	0,00	0,00	15,04	15,04	15,04	15,04	15,04
Outstanding debt		0,00	0,00	0,00	0,00	150,42	135,38	120,34	105,30	90,25	75,21
Expenditures – tax on financial operations		0,00	0,00	0,00	0,00	0,00	1,43	1,29	1,14	1,00	0,86
Debt financing III round											
Expenditures – loan provision		**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**221,09**	**0,00**	**0,00**	**0,00**
Earnings - interest		0,00	0,00	0,00	0,00	0,00	0,00	0,00	11,05	9,95	8,84
Earnings - installment		0,00	0,00	0,00	0,00	0,00	0,00	0,00	22,11	22,11	22,11
Outstanding debt		0,00	0,00	0,00	0,00	0,00	0,00	221,09	198,98	176,87	154,76
Expenditures – tax on financial operations		0,00	0,00	0,00	0,00	0,00	0,00	0,00	2,10	1,89	1,68

8. Annexes – cash flow (continued)

	Programmeming period 2007–2013				Other activity of the fund						
(million CZK)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Debt financing IV round											
Expenditures – loan provision		**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**160,10**	**0,00**	**0,00**
Earnings - interest		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0	8,01	7,20
Earnings - installment		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0	16,01	16,01
Outstanding debt		0,00	0,00	0,00	0,00	0,00	0,00	0,00	160,10	144,09	128,08
Expenditures – tax on financial operations		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0	1,52	1,37
Total resources in fund		**492,24**	**501,09**	**507,77**	**514,17**	**520,30**	**574,72**	**632,48**	**645,41**	**658,49**	**672,54**