Ref. Ares(2013)2826823 - 05/08/2013

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY

The Director-General

Brussels, 26.03.2010*002736
REGIO/J/2/MB/mm D(2010) 980191

Subject: **ERDF, CF and ESF - Estimation of error rate in EU 27 – programming period 2007-2013**
Operational Programme: 2007RO161PO002 Operational Programme "Improvement Economic Competitiveness"

Ref.: Mission n° 2009/RO/REGIO/J2/798/1 (to be used in all correspondence)

Your Excellency,

Following the analysis of your comments submitted by letter of 7/01/2010 concerning the above-mentioned audit mission, please find enclosed the related audit report (final version).

The key conclusions are as follows:

- Percentage of total expenditure audited in relation to total expenditure declared: 100%

- Error rate of 0 %;

The national authorities are invited to implement the recommendations made in the audit report and to inform the Commission within two months after receipt of this letter about the measures taken.

The Audit Authority is requested to monitor the implementation of the recommendations by the national authorities. Furthermore the Audit Authority is requested to analyse the findings of this audit report and to take them into account in an appropriate way for their own audit work. The Audit Authority is asked to inform the Commission about relevant measures.

His Excellency Mr. Mihnea Motoc
Permanent Representation of Romania to the EU
12 rue Montoyer
B-1000 Brussels

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

Yours faithfully,

for the Director General absent,
Michele Pasca-Raymondo
Deputy Director General

Dirk Ahner

Enclosure: Final audit report in English

Copy:

Ms. Cătălină MELITA, Director, Managing Authority, Ministry of Economy

Ms. Lucica TARARA, Director, Certifying and Paying Authority

Mr. Ioan Aron POPA, Romanian Court of Accounts, President of the Audit Authority

Mr. Jean-Marie SEYLER (Directorate General for Regional Policy, Directorate I)

Mr. Anastassios BOUGAS (Directorate General for Regional Policy, Unit I.1)

Mr. Robert. VERRUE (Director General, Directorate General for Employment, Social Affairs and Equal Opportunities, Unit I.3)

Mr. Michele PASCA-RAYMONDO (Directorate General for Regional Policy, Deputy Director General)

Mr Gabriele CIPRIANI (European Court of Auditors)

OLAF (European Anti-Fraud Office)

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The Director-General

26.03.2010*002736

Subject: **ERDF, CF and ESF - Estimation of error rate in EU 27 – programming period 2007-2013**
Operational Programme: 2007R0161PO002 Operational Programme "Improvement Economic Competitiveness"

Ref.: Mission n°: **2009/RO/REGIO/J2/798/1**

Dates of Mission: 14-15 September 2009 (8-9 October 2009 at EIF Luxembourg)
Member State: Romania
Fund: ERDF
Report prepared by:[redacted]
Report reviewed by:[redacted]
Report approved by:[redacted]

Project n° and title: JEREMIE/2007RO161PO002

Project short description: JEREMIE initiative is a framework providing a series of coherent actions to promote increased access to finance for SMEs. In Romania the initiative is organized through EIF. It comprises 2 components (guarantee and venture capital). At the date of the audit the process of selecting the financial intermediaries (FIs) for the guarantee component was under way. The JEREMIE action in Romania is rather delayed as compared to initial planning.

EUROPEAN COMMISSION
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Beneficiary name: European Investment Fund (EIF)

Error rate in the audited project

		In paying currency (EUROS)		
		Declared expenditure	**EC co-financing rate**	**Community expenditure**
a	**Expenditure declared for the project in the payment claim received by EC until 31/05/2009**	100.000.000,00	86%	86.000.000,00
b	**Audited expenditure**	100.000.000,00		86.000.000,00
	Irregular expenditure			
	7 Findings	86%	86%	0
c	**Total irregular expenditure**	0	86%	0
d	**Error rate (%) (c/b)**	0 %		0 %

The findings are as follows:

Finding n°: 1 Slow progress in the implementation of JEREMIE action	
Nature of the finding:	NOF: No error found

Description of the finding:

The JEREMIE action is delayed as compared to the Tentative Planning included in the Funding Agreement (Annex A) concluded between European Investment Fund (EIF) and Managing Authority. In the Tentative Planning - both Financial Engineering Instruments (for guarantees and venture capital) should have been launched by the end of 2008.

The action has been on hold mainly due to clarifications required by the EIF from the European Commission (both DG REGIO and DG COMP).

According to the Funding Agreement (Article 5.8) the Investment Board having a major role in strategy and planning should meet at least quarterly. Nonetheless up to the date of the audit only 2 meetings of the Investment Board have been held - 22 October 2008 and 5 May 2009.

Recommendation: The implementation of the action should be speed up having in view the time constraints of the whole Operational Programme. Investment Board should be more actively involved, especially in the beginning phases of the JEREMIE action.

Deadline for implementation of recommendation: 60 days	Nature of the recommendation: urgent

Comments from the responsible body (auditee):

EIF COMMENTS

The EIF and the Managing Authority take note of your observation. The implementation of JEREMIE action in Romania has been delayed due to a number of external factors (including required clarifications from DG REGIO), outside the control of EIF and Managing Authority, which are presented below.

JEREMIE Implementation

Following the signature of the JEREMIE Funding Agreement (the "Agreement") in February 2008 EIF proceeded with the structuring of the Holding Fund as outlined in the Annex A of the Agreement and selected a financial institution to open JEREMIE bank account. The transfer of JEREMIE Funds took place only in July 2008 due to a delay in the approval and implementation of the Government Emergency Ordinance no. 5 adopted on 13 February 2008.

In parallel, EIF started the preparation of Terms of Reference (the "ToR") for the financial engineering products to be launched under JEREMIE mandates. ToRs for the guarantee products, to be launched as first instruments, were discussed with the Commission services at DG REGIO and DG COMP in the course of September and October 2008. Final ToRs, an outcome of these consultations, were presented formally for approval to the Director General of DG Regio in November 2008 . An additional request for clarification regarding the treatment of operations in Member States outside the eurozone and application of foreign exchange rates for the calculation of eligible expenditure was addressed to DG REGIO in December 2008 .

ToRs provided in the aforementioned letters, including the existing portfolio guarantee, were approved by the services of DG COMP with the letter of Mr Lowe of 28 January 2009 . The approval in principle of ToRs provided for in the letter of 12 March 2009 did not include a position in relation to the existing portfolio guarantee product agreed to be launched in Romania in the first call. Following further exchange of letter a position of DG REGIO on this product was confirmed in July 2009 and based on a joint meeting between DG REGIO Romanian desk and Financial Engineering Unit, Managing Authority, the Chairman of the Investment Board and EIF in August 2009 EIF launched the call for expression of interest for a guarantee of an existing loan portfolio.

Nevertheless, as confirmed by DG REGIO to EIF, the exchange of letters raised concerns within the Commission as to the ambiguity of the regulatory provisions in relation to the eligibility of expenditure for guarantee operations funded by Structural Funds. EIF, at the request of DG REGIO, presented its approach to guarantees under JEREMIE on 26 October 2009 to the various services of the Commission, and based on this further discussions led by DG REGIO are expected to take place in the coming weeks before an official guidance is provided to Managing Authorities. In spite of this uncertainty, EIF and the Managing Authority decided to proceed with the selection of financial intermediaries in Romania under the said call which was closed on 28 October 2009.

In addition to the works on financial engineering instruments, EIF formulated a list of critical implementation issues for JEREMIE - applicable for both Romania and other Managing Authorities - and requested DG REGIO's position on them in a note sent on 13 May 2009 . The list included, among others, the issues related to use of foreign exchange, management costs, calculation of eligible expenditure for all holding fund operations, and durability of operations. Moreover, the note addressed again the difficulty of implementation of venture capital products in the JEREMIE framework given the typical 10+2 years duration of these operations on the one hand, and the requirement to spend Structural Funds by end of 2015 on the other.

The reply received from DG REGIO on 23 July 2009 provided answers to part of the critical issues identified, stating that it is not possible to amend the regulatory requirements for venture capital funds to support investments in enterprises after 31 December 2015 with JEREMIE Funds. In light of this position, EIF elaborated and presented to DG REGIO in a seminar organised by the Audit Directorate on 29 July an asymmetric cash flow model to be utilised by JEREMIE supported venture capital funds allowing for an upfront use of Structural Funds and maintaining best market practice. The model has been further analysed by the services of DG REGIO and its eligibility was confirmed to EIF via e-mail. Formal position on this as well as on the revised list of critical implementation points submitted to DG REGIO on 15 September 2009 is expected by EIF. Based on a written confirmation of DG REGIO's position on the venture capital asymmetrical cash flow model a second call for expression of interest will be launched in Romania.

JEREMIE Investment Board

As far as the activity of the JEREMIE Investment Board is concerned, the Funding Agreement provides for quarterly meeting during which it shall, among other things, review the investment strategy and terms of reference for operations. The investment strategy for the JEREMIE Holding Fund was confirmed in the Board's first meeting in October 2008. Given the aforementioned discussions with Commission services on the ToRs the Board met twice only to review the proposed guarantee (in May 2009) and venture capital (in November 2009) operations.

Nevertheless, the Investment Board was consulted permanently regarding the strategic, financial and administrative aspects of the implementation of JEREMIE, including through:

- Written procedure for the approval of the Annual Forecast of Costs 2008, including prior approval obtained by the Investment Board from the Managing Authority.
- Written procedure for the approval of the Annual Forecast of Costs 2009, including prior approval obtained by the Investment Board from the Managing Authority.
- Written procedure for the approval of the Annual Report 2008, including prior approval obtained by the Investment Board from the Managing Authority.

In addition, the members of the Investment Board have actively participated in internal and external meetings with the EIF and the Managing Authority, whether requested by EIF/MA or on their own initiative, as follows:

- The Chairman of the Investment Board, Mr. [redacted], has met with the EIF approximately 10 times since the signature of the Funding Agreement (excluding Investment Board meetings), to discuss implementation matters with EIF and the Managing Authority.
- Furthermore, both [redacted] and Ms. [redacted], as representatives of the Ministry of Finance, participated in working meetings with the National Bank to discuss the regulatory aspects of the portfolio guarantee product.
- Mr. [redacted] and the Director General of the Managing Authority met in August 2009 in Brussels with DG Regio Romania desk to facilitate the launch of the portfolio guarantee call.
- Mr. [redacted] participated in October 2008 in a joint JEREMIE presentation with the EIF at the occasion of the 3J conference in Bratislava.
- Ms. [redacted] facilitated a direct meeting with the Minister of SMEs and EIF in order to discuss strategic and implementation matters.
- Mr. [redacted] participated with EIF in a meeting with the National Bank of Romania in order to discuss the portfolio guarantee product and, upon EIF request, informed all the banks operating in Romania of the publication of the guarantee call, in his capacity as Secretary General of the Bankers' Association.

The above-mentioned information proves a very close involvement of the Investment Board

in the strategic steering of the JEREMIE Holding Fund, within the mandate given by the Funding Agreement. The **Managing Authority** concurs with EIF comments and additionally confirms the Chairman's active involvement in formal and informal consultations on various issues raised in the implementation of the operation. Furthermore, his position in the top management of Romania's Authority for Coordination of Structural Instruments has secured useful support as far as national framework for Structural Funds is concerned; in addition, he took part in the Structural Actions Working Party meetings held in 2008 and 2009 in order to amend the Structural Funds Regulations, including the provisions regarding financial engineering.
Analysis of the reply by the Commission: The Commission takes note of the additional information provided by the auditee. Nonetheless the initial finding and recommendation are maintained. The implementation of the recommendation should be followed-up by the Romanian Audit Authority during 2010.

Finding n°: 2 Financial monitoring of JEREMIE action by the Managing Authority	
Nature of the finding:	NOF: No error found

Description of the finding:

The monitoring of the JEREMIE accounts should be strengthened at the level of the Managing Authority. Although there are not many transactions in the JEREMIE accounts, there should be a person in position to perform reconciliation of the accrued interest, debited costs and to reconcile the final balance of the JEREMIE accounts with the financial statements included in the annual implementation report drafted by EIF. The Annual Implementation report should be approved by the Investment Board and the Managing Authority. (Article 5.6.5 from Funding Agreement).

Recommendation: At the level of the Managing Authority there should be a person in position to perform reconciliation of the accrued interest, debited costs and reconcile the final balance of the JEREMIE accounts with the financial statements included in the annual implementation report drafted by EIF

Deadline for implementation of recommendation: 60 days	Nature of the recommendation: specific
Comments from the responsible body (auditee): The **Managing Authority** accepts the recommendation and will either appoint a staff member responsible for the reconciliation of the final balance of the JEREMIE accounts with the financial statements included in the annual implementation report submitted by EIF or procure external expertise to this purpose.	
Analysis of the reply by the Commission: The Commission takes note that the auditee accepted this finding. The implementation of the recommendation should be followed-up by the Romanian Audit Authority during 2010.	

Finding n°: 3 Winding up provisions in the Funding Agreement	
Nature of the finding:	LOCI: Limited other compliance issue

Description of the finding:

The provisions in relation to winding up are stated on page 25-26 (Article 15.8) and Annex E of the Funding Agreement. Nonetheless - the winding-up provisions are not very thoroughly described in the Funding Agreement. The lack of specific provisions regarding winding up can lead to winding up difficulties at closure as the responsibilities of the parties are not clearly defined. Article 44.i from Commission Regulation *1828/2006* provides that "The funding agreement (...) shall in particular make provisions for: winding-up provisions of the holding fund, including the reutilization of resources returned to the financial engineering instrument from investments made or left over after all guarantees have been honoured which are attributable to the contribution from the operational programme."

Recommendation: The responsibilities of both parties (EIF and MA) in respect of winding up should be clearly defined in the Funding Agreement following the provisions of Article 44.i from Commission Regulation 1828/2006.

Deadline for implementation of recommendation: 90 days	Nature of the recommendation: specific
Comments from the responsible body (auditee): **EIF COMMENTS** EIF understands but does not concur with this finding. The Funding Agreement (the "Agreement") does not make any specific provisions in relation to winding up of the holding fund as its operation is not limited to the term of the Agreement or Programming Period. On the contrary, the Holding Fund shall remain an investor into the underlying financial engineering instruments until their completion which in certain cases, for example in venture capital operations, can go beyond 2020 (please see the point related to exit from operations). Given this long time horizon, it is not advisable to make specific provisions related to winding up of the holding fund in the Agreement. The Agreement, however, in Appendix E, provides for a reutilisation of resources returned from the financial engineering instruments (the "Proceeds") and interest generated on JEREMIE Funds (the "Interest") by the JEREMIE holding fund in accordance with the investment strategy. This is in line with the provisions of Art. 78(7) of Reg. 1083. It is understood that Proceeds and Interest do not have to be spent by the holding fund before 31 December 2015. Therefore, EIF considers the current clauses in the Funding Agreement to be appropriate The **Managing Authority** agrees with EIF comments.	
Analysis of the reply by the Commission: The Commission maintains the finding as Article 44.i from Commission Regulation 1828/2006 is not complied with. The implementation of the recommendation should be monitored by the Romanian Audit Authority during 2010.	

Finding n°: 4 Exit policy provisions in the Funding Agreement and published call for expression of interest	
Nature of the finding:	LOCI: Limited other compliance issue

Description of the finding:

In Annex E of the Funding Agreement it is stated that *"it is not possible to establish, at this stage, specific and detailed guidelines in relation to the exit policy. However, provided that the details of the exit strategy of the JEREMIE Holding Fund will be decided at later stage by the Managing Authority and the other entities involved depending on the circumstances, a potential exit scenario could be to:*

i. *reinstall a JEREMIE Holding Fund, with EIF or another institution;*
ii. *transfer funds available to another institution dealing with SMEs.*

This list shall not be regarded as exhaustive, but only as an example of potential options."

Nonetheless Article 44.h from Commission Regulation 1828/2006 provides that *"The funding agreement (...) shall in particular make provisions for: the exit policy of the holding fund out of the venture capital funds, guarantee funds, loan funds, urban development funds"*

The Funding Agreement states that the exit policy should be presented in the terms of reference. Nonetheless the call does not make reference to an exit policy.

Recommendation: The specific exit options should be clearly defined in the Financing Agreement following the provisions of Article 44.h from Commission Regulation 1828/2006.

Deadline for implementation of recommendation: 90 days	Nature of the recommendation: specific

Comments from the responsible body (auditee):

EIF COMMENTS

<u>EIF understands but does not concur with this finding.</u>

Art. 44(2)(h) of Reg. 1828/2006 stipulates that the Funding Agreement (the "Agreement") shall make provisions for the exit policy of the holding fund out of the underlying financial engineering instruments. This provision is reflected in Appendix E of the Agreement which states that such policy will be proposed in the respective Terms of Reference (the "ToR") for individual operations. This general wording is related to the fact that:

(i) at the time of signature of the Agreement the details of financial engineering instruments to be applied under JEREMIE were under discussion with the Commission services (see point related to speed of implementation);
(ii) specific financial engineering products require different definitions for exit policy.

With reference to the latter point, though, it shall be understood that holding fund shall not exit from any operation prior to its completion. In relation to the three broad product types, this obliges the holding fund to:

(i) in case of guarantee products, to provide an unconditional guarantee to financial intermediaries which will be honored until its term expires and a final settlement is made at the end of a workout period; depending on the type of underlying assets, such term can exceed 31 December 2015;
(ii) in case of funded risk participation (loan) products to maintain its co-financing share of the underlying SME loan until its repayment;
(iii) in case of venture capital funds, to meet draw down requests from funds of the capital committed within the term of the funds which is typically 10+2 years; should holding fund fail to meet this obligation, it would become a defaulting investor in a fund forcing it to wind up operations.

The information on the above was included in the calls for expression of interest published to date. Therefore, in light of the above, EIF considers that adequate provisions for the exit policies have been made within the Funding Agreement at the time of its signature. Furthermore, the aforementioned provisions will be reflected in the Operational Agreements with Financial Intermediaries.

The **Managing Authority** agrees with EIF comments and would like to point out that, at the time of signing the Funding Agreement, the Romanian authorities had not made a decision on a specific exit policy and therefore, it was considered that the most appropriate solution would be to indicate two possible options while leaving a decision for a later stage, towards the end of the Agreement.

Analysis of the reply by the Commission:

The Commission takes note of the information provided. Taking into consideration that the financial instruments have been chosen, the exit policy should be foreseen in the Funding Agreement.

The Commission maintains the finding. The implementation of the recommendation should be followed-up by the Romanian Audit Authority during 2010.

Finding n°: 5

European Investment Fund's (EIF) procedures for the selection of financial intermediaries (i.e.

financial engineering instruments): consistency with the contractual obligations of the Funding Agreement	
Nature of the finding:	No finding

Description of the finding:

In the selection of financial intermediaries in Romania, EIF applies EIB internal rules of procedures and guidelines via publication of calls for expression of interest. The calls are published on the EIF website and whenever considered necessary on the websites of the MA and other relevant organizations/associations in the MS/regions.

Therefore EIF did not follow the provisions of public procurement directives. It appears that this has been done on the basis of Article 15 (c) of Directive 2004/18/EC (as well as Article 22 (c) of Directive 2004/17/EC) in accordance to which the Directive *"shall not apply to public contracts governed by different procedural rules and awarded: (...) (c) pursuant to the particular procedure of an international organization"*.

However, a further clarification is needed in this respect. In fact, in the case of another Jeremie Holding Fund (in Latvia), it was found that the funding agreement and the investment business plan specify that: *"The EIF will utilize its experience to manage a clear and transparent selection process of the best financial intermediaries for each instrument area. This selection process will be consistent with EC Directives on procurement and laws of the Republic of Latvia."*

Since the applicable rules should be the same for all Member States, in order to clarify this issue, the following documents have been requested to EIF and submitted to the relevant Commission services for internal consultation:

- ✓ Draft operational agreement (Facility Agreement for Guarantee Fund) between EIF and a selected FI in Lithuania;
- ✓ Draft operational agreement (Limited Partnership Agreement for Venture Capital Fund) between EIF and a selected FI in Latvia;

Furthermore, the following document, already at our disposal, will be added for the purpose of the internal consultation:

- ✓ MoU between the Commission and EIF, *"provisions concerning the selection of FIs by EIF"*

The following documents have also been requested but not yet obtained:

- ✓ Assessment reports made by lawyers in the different countries (Romania, Latvia, Lithuania) to confirm the reasons for exclusion from the application of public procurement directives.

A final opinion as regards the procedures to select the financial intermediaries will be expressed in the final report on the basis of the response received from the relevant Commission services.

Recommendation: Subject to the final opinion on the procedures to select the financial intermediaries

<table>
<tr><td>Deadline for implementation of recommendation: To be determined</td><td>Nature of the recommendation: To be determined</td></tr>
<tr><td colspan="2">Comments from the responsible body (auditee):

EIF COMMENTS

As stated above DG REGIO audit had requested further analysis on certain aspects of the guidelines to be conducted by their legal team. We understand that this analysis has been concluded and based on the findings understand that this observation is now closed.

The Managing Authority asked for the advice of the national regulator for public procurement (ANRMAP) who confirmed (letter 14036/MG/19.11.2008) that EIF may identify financial intermediaries by applying its own procedures.</td></tr>
<tr><td colspan="2">Analysis of the reply by the Commission:

Following internal consultations, it is concluded that EIF qualifies as international organization, thus falling under the provisions of Article 15(c) of Directive 2004/18/EC, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts which states that: "This directive shall not apply to public contracts by different procedural rules and awarded: [...] (c) pursuant to the particular procedure of an international organization."

This finding is considered closed in the context of the present audit.</td></tr>
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Finding n°: 6
European Investment Fund's (EIF) procedures for the selection of financial intermediaries (i.e. financial engineering instruments): transparency of the selection procedure and equal treatment of applicants (consistency with the principles of the EC Treaty)

Nature of the finding:	LOCI: Limited other compliance issue

Description of the finding:

The first call for expression of interest in Romania (Loan portfolio guarantee) had a deadline of 26/10/2009 (extended from 19/10/2009) which had not yet expired at the time of the audit.

This finding arises from the review of a sample of files relating to the selection of FIs in Latvia and Lithuania. Since the internal guidelines and procedures for the selection, appraisal and certification of the FIs are standard, the finding is reported as well for JEREMIE Holding Fund Romania.

It has been noted that the qualitative assessment criteria are insufficiently explained in the calls and that their weighting is not mentioned.

Recommendation: Enhance the transparency of the selection procedure by:

- Ensuring that the quality assessment criteria are weighted in the calls and that they are applied by the members of the evaluation panel in full consistency with the announced ones.

Deadline for implementation of recommendation: as the receipt of report	Nature of the recommendation: specific
Comments from the responsible body (auditee): **EIF COMMENTS** The principle of transparency, as applied in public procurement law (outside the applicability of the EU Procurement Directive, i.e. under the direct applicability of the EU Treaty provisions) as interpreted by the European Court of Justice ("ECJ") requires, that the respective market be "opened up to competition" (ECJ Case Telaustria, 7 December 2000, ruling no. 3) and requires "impartiality of procurement procedures" (idem). Further guidance issued by the European Commission on contracts that do not fall under the EU rules applicable to public procurement, confirms that the advertisement may be "limited to a short description of the essential details of the contract to be awarded and of the award method ..." (Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives of 1. August 2006, OJEU 2006/C 179/02, paragraph 2.1.3) and should "provide as much information as an undertaking ... will reasonably need to make a decision on whether to express its interest in obtaining the contract." (idem).	

On this basis the question of the adequacy of delays and of the specification of details of the award criteria becomes judgemental. EIF believes that, if this is true for contracts subject to procurement procedures, although not under the provisions of the formal EU procurement rules, it must apply a fortiori to contracts awarded on the basis of a call for the expression of interest without a formal procurement procedure being required.

On the basis of its market expertise, EIF established delays for the reply to the Calls for the Expression of Interest, which gave adequate reaction time to the interested parties. The Calls, which were addressed to an experienced and knowledgeable specialist public furthermore specified clearly that the award of the contract follows the standard EIF due diligence process (widely known in the market) and indicated quality assessment criteria, which were sufficiently detailed in order to allow interested parties to "reasonably ... make a decision on whether to express [their] interest in obtaining the contract." On the basis of the above, no guidance can be identified that would have obliged EIF to detail the different qualitative criteria weightings or to further detail the qualitative assessment criteria applied in the course of the EIF standard due diligence process which was implemented.

This approach is consistent with the EIF's business model and best practices, as applied successfully in its activity, including in various other mandates.

The **Managing Authority** recommended to the European Investment Fund to apply during the JEREMIE selection process the general evaluation criteria approved by the Monitoring Committee for the SOP IEC, and adapt them to each JEREMIE instrument. These general criteria provide for a publication of weighting/scoring for the individual groups of selection criteria. However, in the course of the discussions related to the Calls for Expression of Interest, it was explained to us by the EIF professionals that, given the already elaborate nature of the assessment normally applied by the EIF to financial engineering instruments, applying scores during the evaluation would not only bring limited value-added in terms of transparency and fairness, which are already in place in the EIF, but may potentially create unnecessary constraints in selecting the best applicant, especially given the fluctuations in today's market. The Managing Authority has decided to accept the expert opinion of the EIF on this matter and agrees that the use of weighted quality assessment criteria for the calls for expression of interest under JEREMIE should be optional as long as the selection procedure in place, especially a complex one like due dilligence, is transparent, clear and well-documented. An additional argument was that the same approach has been used by EIF under the CIP mandate from the Commission.

Analysis of the reply by the Commission:

The Commission takes note of the auditee's comments. EC maintains the view that, in order to comply the EC treaty principle of transparency and sound financial management, the quality assessment criteria are weighted in the calls and that they are applied by the members of the

evaluation panel in full consistency with the announced ones. This recommendation is applicable for future open calls.

Finding n°: 7 Calculation of European Investments Fund's (EIF) standard cost rate	
Nature of the finding:	LOCI: Limited other compliance issue

Description of the finding:

The standard EIF cost rate as indicated in the "costs letter to the Funding Agreement" of 18 February 2008 is EUR/month 18,313 and EUR/month 30,056 for "administrative staff" and "professional staff" respectively. The costs shall constitute "costs recovery" in accordance with par. 4 of the "costs letter" and should be incurred by EIF in accordance with par. 8.

The actual standard EIF cost rate does not include the following costs: travels, consultancies, costs for calls for tenders/expressions of interest, bank accounts, local office, compensation of IB members, translations, marketing, treasury management and termination. All these costs may be charged separately.

However, the actual standard cost rate that has been charged by EIF for the determination of the management fees for 2008 is EUR/month 35,500 (Annual Report to Investment Board for the year 2008, dated March 31st 2009).

The auditors have been informed that the standard cost rate of EUR/month 35,500 is still only indicative.
A preliminary estimation made by the auditors, based on the available information (Annual Report 2007), shows a possible range of about EUR 14,400 to EUR 19,300. However, this estimation does not take into account the split between the staff in the operational divisions and support divisions nor the allocation of the support division costs. EIF has informed us that a new "cost rating methodology" has been approved. It will be validated by an auditing company and enter into force in January 2010.

Recommendation:

- the standard rates for 2008 and 2009, which have been taken into account for the calculation of the management fees, will have to be adjusted in accordance with the new "cost rating methodology".

- the detailed description of the new cost rate methodology should be provided to the Commission services.

Deadline for implementation of recommendation: 90 days	Nature of the recommendation: specific
EIF COMMENTS The methodology for the calculation of the EIF rate used to justify the EIF cost applicable to the JEREMIE Holding Fund has been reviewed in 2009 with the objective to ensure auditability of the rate under ISAE 3000. The reviewed cost rating methodology will be audited by external auditors in early 2010. In line with the Funding Agreement, the new rates will be used for the issuance of the Cost Payment Statement for 2009 due at 31/03/2010, as well as, for consistency purposes, retroactively for 2008, which may then result in an amended Cost Payment Statement for 2008. The description of the cost rate methodology will be distributed to the Commission services and the Member States. The **Managing Authority** agrees with EIF comment.	
Analysis of the reply by the Commission: The Commission takes note of the auditee's additional information. The finding is maintained and the implementation of the corrective actions will be monitored by the Romanian Audit Authority during 2010.	