



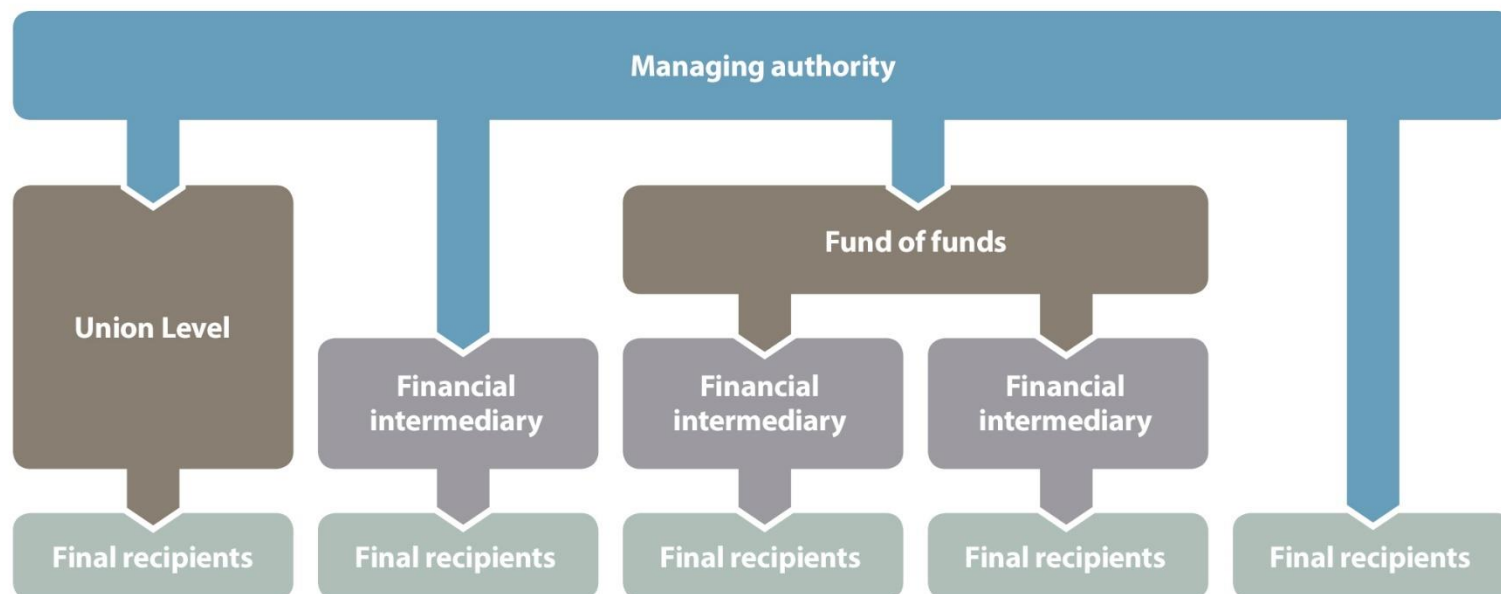
## Implementing options and selection of financial intermediaries

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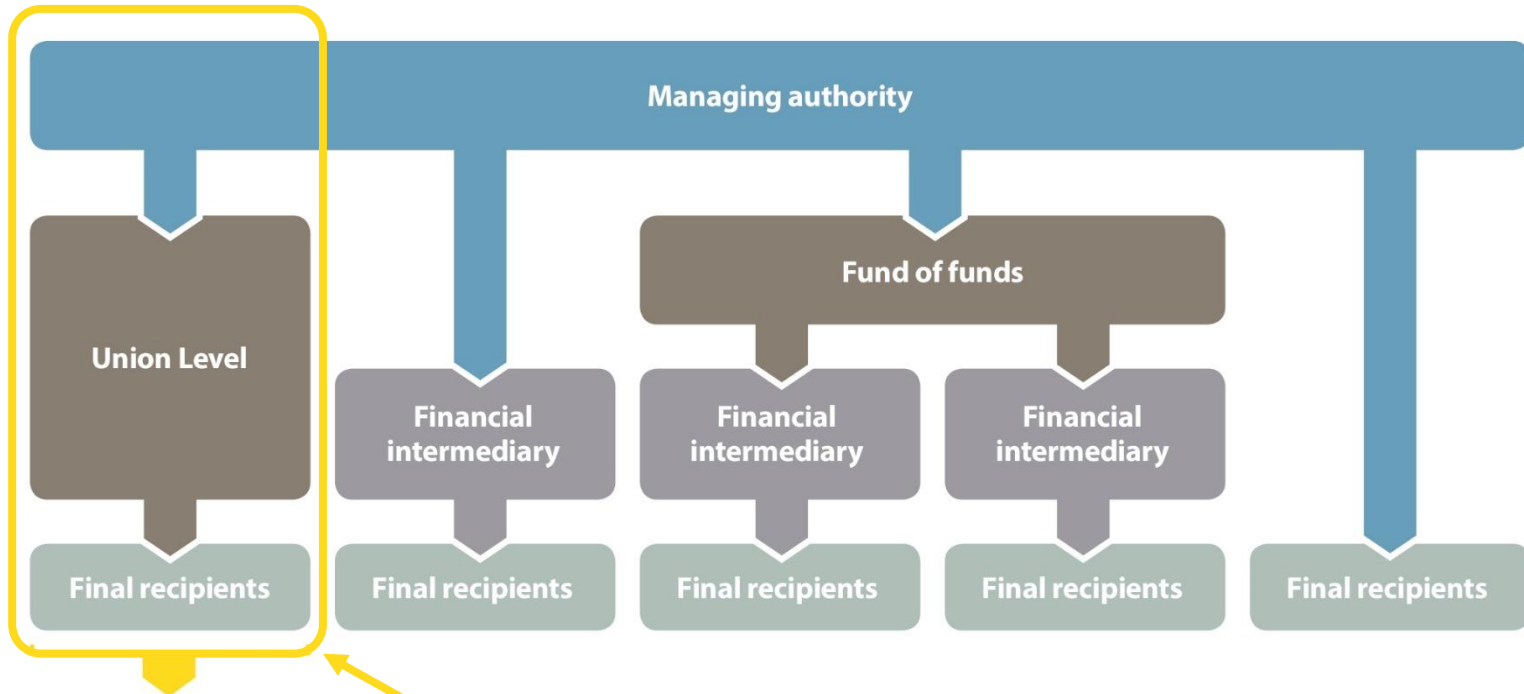
European Investment Bank



# What are the implementing and governance options?



# Central management

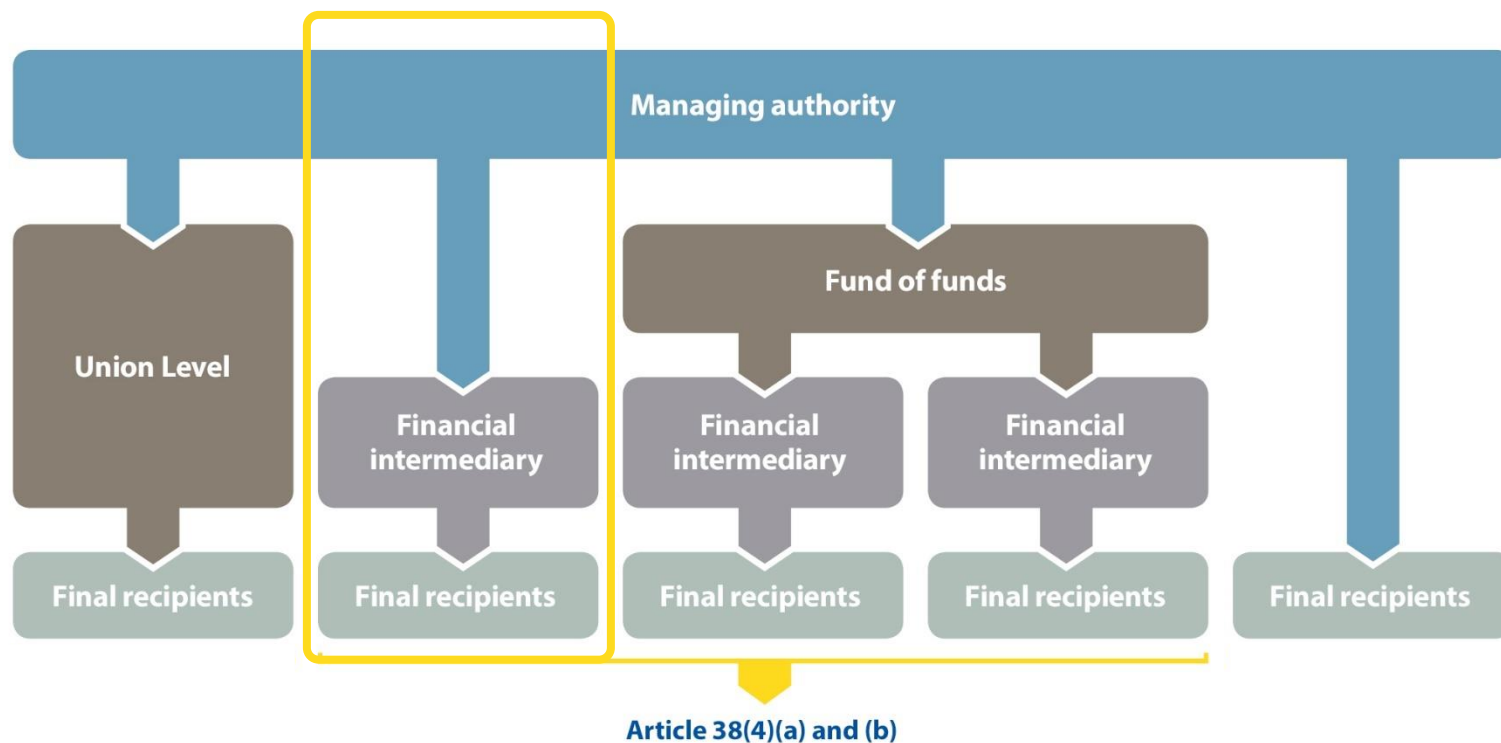


Article 38(1)(a)

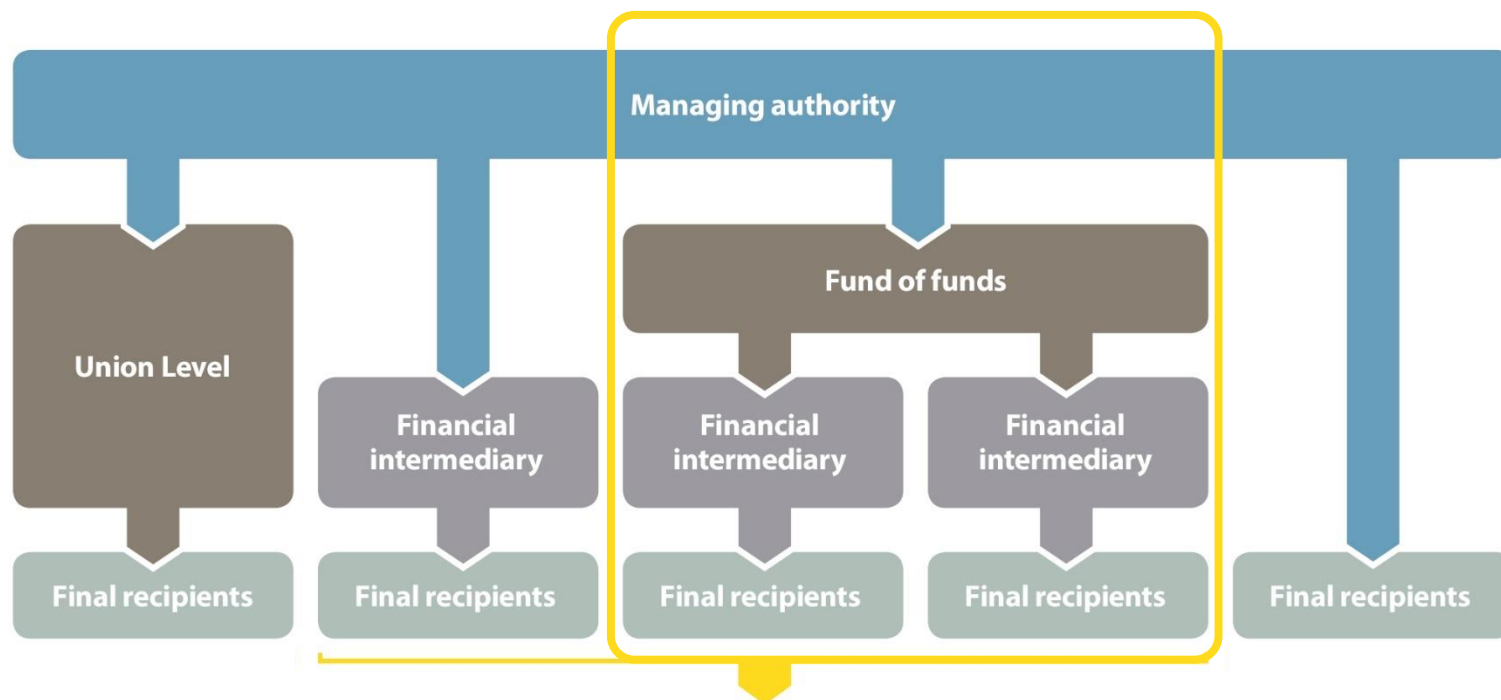
- EaSI
- Erasmus+
- Innovfin
- COSME



# Shared management (financial intermediaries)

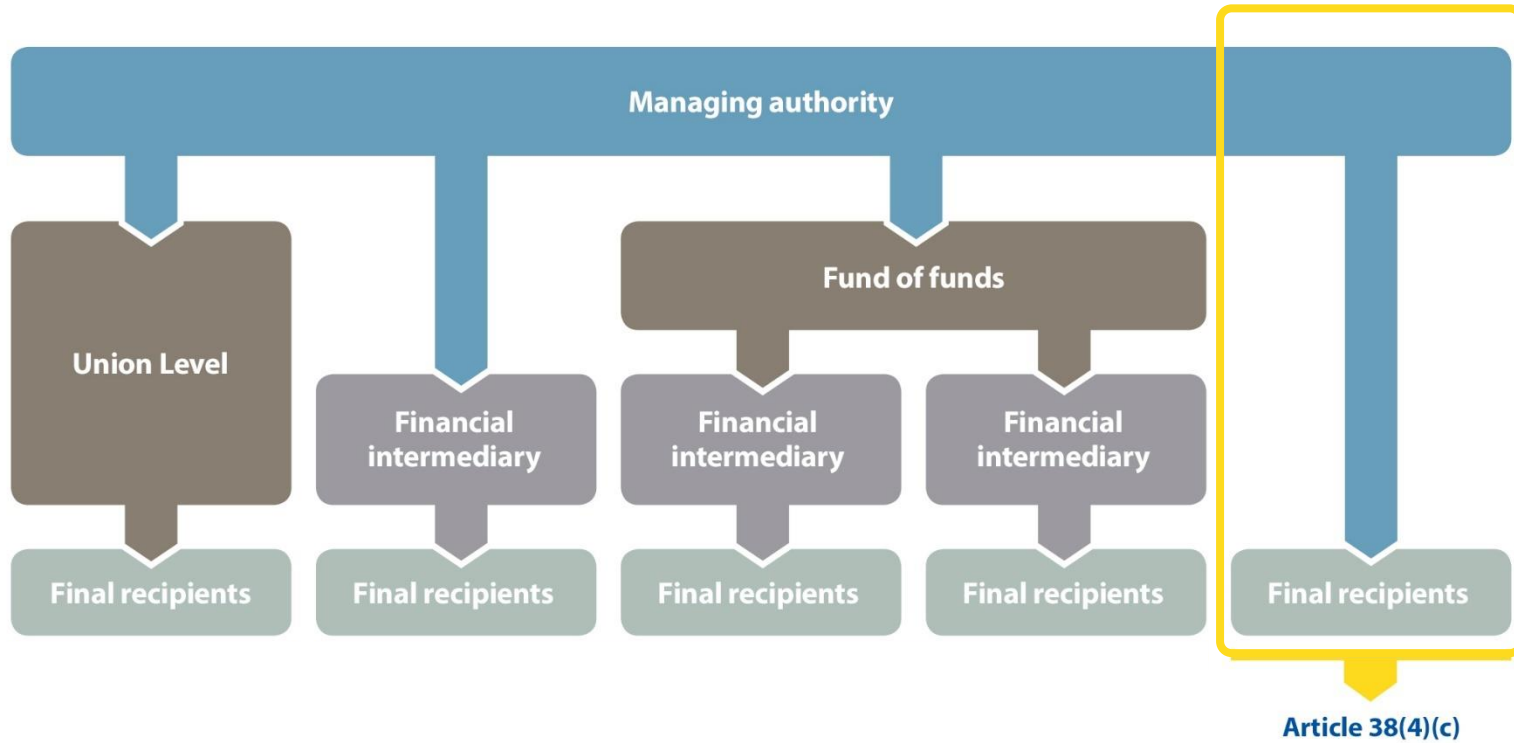


# Shared management (fund of funds)

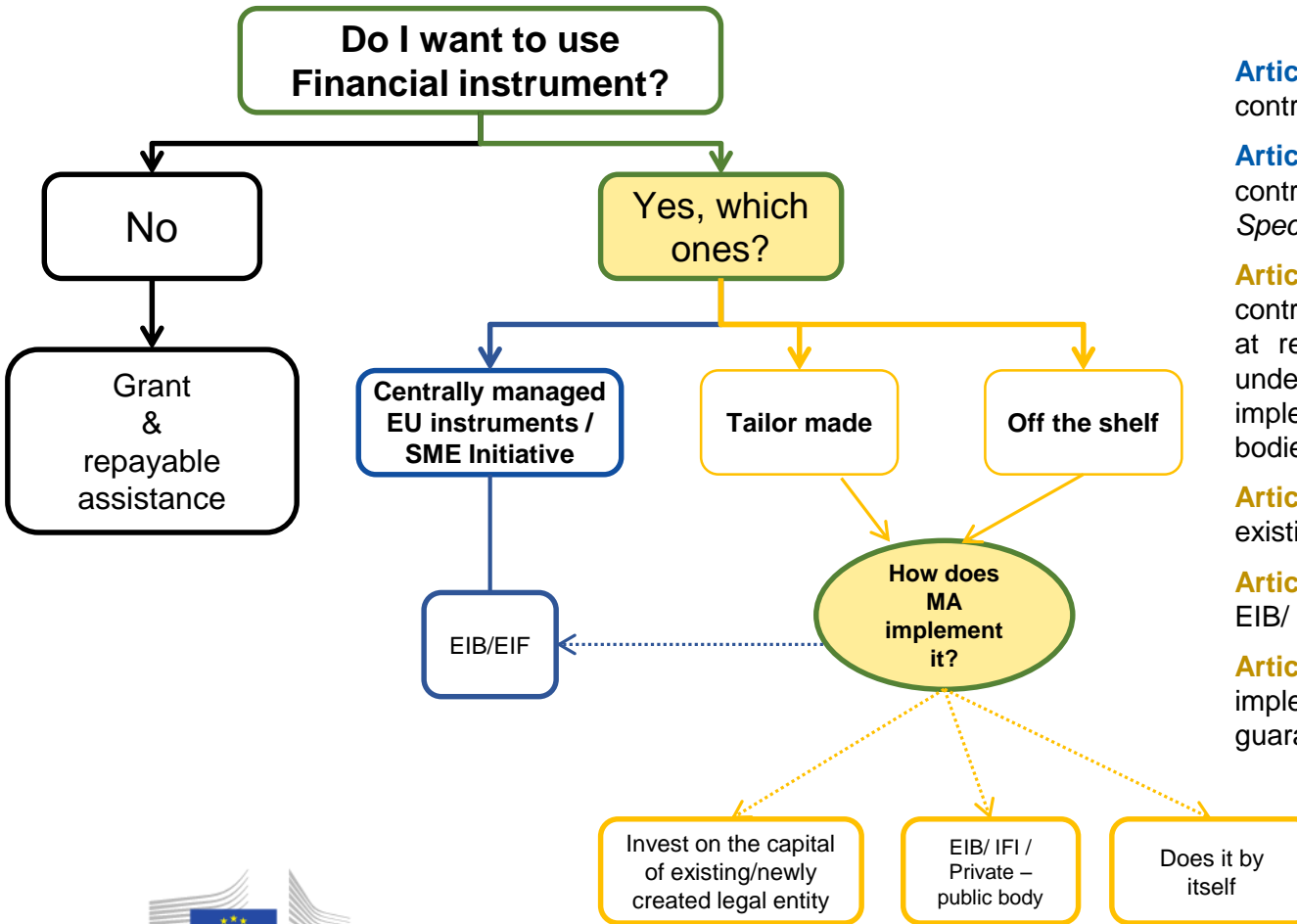


Article 38(4)(a) and (b)

# Direct management



# Implementing options at a glance



**Article 38.1.a:** MA may provide a financial contribution to FIs set up at Union level;

**Article 39:** MA may provide a financial contribution to FIs set up at Union level -> *Specific case: the SME Initiative* ;

**Article 38.1.b:** may provide financial contribution to FIs (tailor-made/ OTS) set up at regional, national, etc. managed by or under the responsibility of the MA and entrust implementation tasks to the EIB or other bodies fulfilling the conditions of art. 38.4.b;

**Article 38.4.a:** MA may invest in the capital of existing or newly created legal entities;

**Article 38.4.b:** Entrust implementation task to EIB/ IFI/ Private – public body

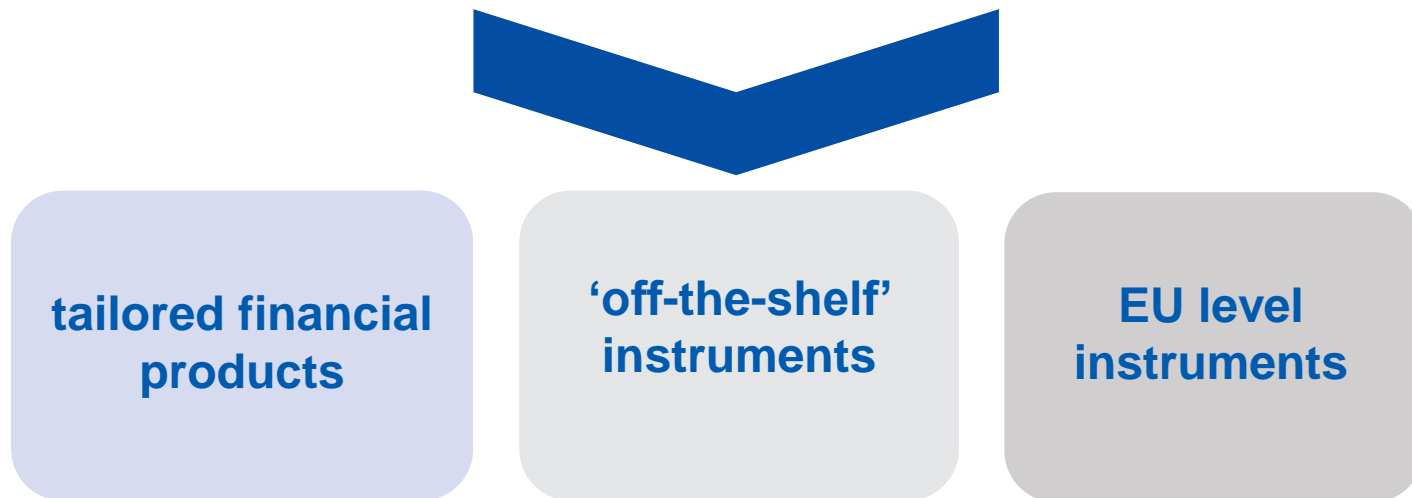
**Article 38.4.c:** MA may undertake implementation tasks directly (only for loans/ guarantees).

# Which products to choose?



**The choice of the financial products will depend on:**

- the market failures
- the suboptimal investment situations and investment needs to be addressed
- the acceptable level of risk, reward and ownership that a MA is willing to consider





# Off-the-shelf models



5 Standard products published by Commission

3 x SMEs

- Portfolio risk sharing loan (RS loan)
- Capped portfolio guarantee
- Co-investment facility

2 x EE and Urban Development

- Renovation loan
- Urban Development Fund

# Selection of the financial intermediaries



- A financial instruments is successful if and only if financial intermediaries fully deploy it and increase the credit offer to the beneficiaries
  - The financial intermediary (F.Int.) is technically the beneficiary of the RDP, therefore the selection criteria to be defined according to the art. 49 of Reg. 1305/2013 concern the selection process of the F.Int.
  - The F.Int. is responsible for the selection of the final beneficiaries (farmers, SMEs) based on banking practices AND is responsible for the eligibility of the operation (beneficiary, costs). If the operation is not eligible according to the RDP, the F.Int. cannot benefit of the public support (guarantee or funding)
  - The F.Int. is responsible for the reporting of the instruments and is subject to controls and auditing by the Managing Authority
- The benefit of the public support to the financial instrument must be transferred to the final beneficiary. Farmers & SMEs have to pay lower interests on the loans and/or have to provide less collateral/own guarantees.
- The Financial Intermediary can be selected (by the Managing Authority, or by the EIB/EIF if entrusted by the MA) OR “open access” can be granted to all the Banks that apply (pros and cons of the two alternatives).



# Funding agreement (1)



- A Funding Agreement (FA) is required when:
  - The MA makes a contribution into a Financial Intermediary, which will implement the FI;
  - The MA entrusts the implementation of a FI to a FoF, whether EIB Group, an IFI or a national body.
- Despite being under the same name, the two agreements are very different:
  - The latter needs to include the elements listed under Annex IV of CPR;
  - The former needs to include also all elements of the FI deployed, i.e. the commercial terms of the loan, the guarantee, the equity investment deployed in accordance with market and industry standards. We can define it as “Operational Agreement” – although this is also a FA under the CPR.



# Funding agreement (2)



FA needs to have at least the following elements:

- Investment Strategy (**implementation plan**, **products to be offered**, **SMEs targeted**);
- Business plan (**leverage**), target results;
- Monitoring and audit provisions;
- Provisions regarding payments of ESIF into the FI;
- Treasury provisions;
- Management costs and fees;
- Re-utilisation of reflows, within and beyond the eligibility period (or exit strategy);
- Liability, adherence to “relevant professional standards”, independence and avoidance of conflicts of interests;
- Winding up provisions.



# General principles for selection



## Article 37(1)

MAs must **comply with applicable law, in particular on State aid and public procurement**

## Article 38(4)

The bodies implementing financial instruments must ensure **compliance with applicable law (inter alia, public procurement)**

## Article 38(5)

The selection of financial intermediaries based on **open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest**

CPR

# Selection – ESIF Requirements



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II  
(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

COMMISSION NOTICE  
Guidance for Member States on the selection of bodies implementing financial instruments  
(2016/C 276/01)

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- Guidance published in July 2016
- Arts 37-38 Common Provisions Regulation (CPR) (1303/2013)
  - Comply with State aid and public procurement law
  - Open, transparent, proportionate and non-discriminatory processes avoiding conflict of interest
- Art 7 of the Commission Delegated Regulation (CDR) (480/2014)
  - Selection Criteria – legal capacity, economic and financial capacity, organisational capacity and experience
  - Award criteria – Investment methodology, ability to raise additional resources, additionality, management costs and fees
  - Terms of reference including audit and tax requirements



# Selection of bodies implementing FIs



I	Selection in accordance with public procurement rules and principles
II	Designation of the EIB and EIF
III	Designation of an international financial institution
IV	In-house award
V	Inter-administrative cooperation



# I. Selection in accordance with public procurement rules



Selection in accordance with the provisions of **Directive 2004/18/EC** or **Directive 2014/24/EU**:

**Choice of the procedure** (standard, competitive procedure with negotiation, competitive dialogue)

**Framework agreement**

**ABOVE**

## **Threshold\***

EUR 135 000 (central government authorities)  
EUR 209 000 (other contracting authorities)

**BELOW**

The selection of bodies entrusted **must comply with the principles of the Treaty**: free movement of goods, freedom of establishment and to provide services, non-discrimination, mutual recognition, transparency and proportionality.



*\*referred to the estimated value of the services net of VAT*





## II. Designation of EIB and EIF



### Article 38(4)(b)(i) of the CPR

The EIB and EIF are identified in the CPR among the bodies to whom tasks of implementation of financial instruments may be entrusted directly by managing authorities (Article 38(4)(b)(i) of the CPR). Therefore MA may entrust EIB/ EIF without competitive process.

As the relation between Member States and the EIB is ruled by primary law, the provisions of the directives on public procurement (which are secondary law) do not apply.

### Article 13(6) CDR

In absence of a competitive process, the thresholds for management costs and fees provided in **Article 13** apply.

**\*Article 2(23) of the CPR** defines the "EIB", for the purpose of the CPR, as comprising EIB, EIF and any (other) subsidiary of EIB.



# III. Designation of an international financial institution



## Article 38(4)(b)(ii) of the CPR

Managing authorities may consider entrusting the implementation of a financial instrument to an **international financial institution**.

Entrustment of tasks for FI implementation may be done **directly** by a managing authority, **provided that**:

- 1) the **Member State is member** of the international financial institution
- 2) the **tasks entrusted fall within the statutory mission** of the institution



# IV. In-house award



The conditions for concluding contracts directly with 'in-house entities' were defined by **Directive 2014/24/EU**.

**No direct private capital participation in the controlled legal person\***

**Control over the legal person similar to that over its own departments. Article 12(1)**

**The controlled legal person must carry out more than 80% of its activities in the performance of tasks entrusted by the controlling contracting authority**



\*with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions



# V. Inter-administrative cooperation



## Article 12(4) of Directive 2014/24/EU

A contract concluded exclusively between two or more contracting authorities falls outside the scope of the Directive where three conditions are fulfilled:

there is a contractual assurance **that public services are provided with a view to achieving COMMON objectives**

the participating **contracting authorities perform on the open market less than 20% of the activities** concerned by the cooperation

the implementation of that cooperation is governed solely by considerations relating to the public interest

# Direct (In-house) Award and Inter-admin Co-operation



## Commission Guidance



### Control

- Significant decisions = lending strategy, staffing and budget NOT approval and management of investments.
- 100% ownership or <1% ownership as long as have control of significant decisions
- Can be joint control with other contracting authorities



### 80%/20%

- Calculated based last three years' turnover of the controlled entity
- DA – 80% or more of its activity is for tasks on behalf of owners
- IAC – less than 20% of its activities in similar products



### Public Interest

- Remuneration must be equivalent to activities for controlling entity
- Same costs and fees as would be charged to owners - transparency



# Selection criteria (first set)



Article 7(1)(a) to (f) and Article 7(2) first paragraph of CDR 480/2014

The criteria are linked to the **legal, financial, economic and organisational capacity.**

1

**Legal  
capacity**

2

**Economic and  
financial  
capacity**

3

**Organisational  
capacity**

4

**Experience of  
the organisation  
and of team  
members**

For Direct Award  
“the selection criteria referred to in Article 7 of the CDR  
need to be applied but not as selection criteria, award  
criteria and elements indicated in the terms of reference”  
“transparent and justified on objective grounds”



# Award criteria (second set)



## Article 7(2)(a) to (f) of CDR 480/2014

The second set of criteria is linked to the **subject-matter of the contract** on the implementation of the financial instrument.

- MAs must apply **the most economically advantageous methodology** to evaluate the offers. The use of **the lowest price only or cost only methodology** to evaluate the offers submitted by bodies implementing financial instruments **would not allow managing authorities to apply the full minimum set of evaluation criteria**
- The 4 criteria are:

Investment methodology

Ability to raise additional resources

Additionality of investment activity

Level of management costs and fees

