



Financial instruments - Commission guidance notes

Commission guidance
Lisbon, 18 January 2016

2014-2020 Commission guidance

➤ Guidance notes

- complementary to short guidance
- covering all issues relevant to MA/fund managers
- developed systematically
- designed to be "living" documents (section on Q&A)

2014-2020 Commission guidance

➤ Guidance notes finalised:

- Short reference guide for managing authorities
- Glossary
- Ex-ante assessment
- Working capital
- Treasury management
- Phased payments
- Combination of support
- Management costs and fees

2014-2020 Commission guidance Glossary



2014-2020 Commission guidance

Glossary

- The glossary contains for the moment only the **basic definitions from the CPR and Financial Regulation** in relation to financial instruments
- The glossary will develop over time. It will be completed once all the guidance notes are prepared.
- All the definitions and concepts developed in guidance notes will be added to the glossary



2014-2020 Commission guidance Ex-ante assessment



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Ex-ante assessment

- **Objective:** evidence based decision making
- **Requirement:** legal obligation and tool to support implementation
- **Completion:** before any programme contribution made to FI
- **Next steps:** submission to the programme monitoring committee and publication
- **Process:** raises awareness and ensures stronger ownership



2014-2020 Commission guidance

Working capital



2014-2020 Commission guidance Working capital (1)

Support for working capital in enterprises **is eligible** as a means of support to enterprises through financial instruments within certain conditions.

Working capital is explicitly mentioned in Article 37(4) CPR but firmly embedded in the context of CPR rules, fund specific conditions and State aid.

1. Eligibility of working capital is not **generic** (CPR provisions! Fund specific rules! ESIF programme conditions!)
2. Support of working capital and its eligibility will be more **on a case by case basis**.

2014-2020 Commission guidance Working capital (2)

Case by case assessment

- ESIF support for working capital in enterprises, as for any investment financing to enterprises through financial instruments, is subject to compliance with **two basic eligibility criteria**: the types of enterprise and seven support targets under Article 37(4)
- The fund manager will have to assess based **on the business plan** whether the investment proposed:
 - is potentially financially viable
 - the amount and proportion of working capital is justified in business and economic terms

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Working capital (3)

Questions & Answers

1. How the State Aid rules influence the ESIF financing of the working capital through FIs:
 - a) The support of working capital must be within the limits of State Aid
 - b) FI providing financing of working capital should attract co-investments by the private sector
2. For financial instruments implemented in accordance with Article 38(1)b of the CPR, evidence of compliance with the eligibility conditions will be provided by the application forms, with supporting documents including business plans. At which level the supporting documents should be kept?

There is no requirement that the application forms with supporting documents including business plan are kept at the level of managing authority. In line with Article 9(1)(d) of Regulation (EU) 480/2014 supporting documents should be kept at any of the following levels: managing authority, financial intermediary, body that implements fund of funds. The arrangements for documentation to be kept at different levels should be agreed in the funding agreement.

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Treasury management

2014-2020 Commission guidance Treasury management (1)

- **Legal base** – Article 43 CPR
- **Relevant only:**
 - ✓ *to the ESIF support paid into the FoF/FI*
 - ✓ *at the level of the FoF/FI when ESIF support is paid into the FI but is not yet invested in final recipients*
- ESIF support to be invested on a temporary basis in line with the principles of **sound financial management**, follow a prudent treasury and investment behaviour (pre-agreed in the FA)
- Any **gains** from the treasury management:
 - ✓ are additional (but not programme) resources;
 - ✓ should be used until the end of the eligibility period for the same purposes (either within the same FI, or if would up - in another ESIF FI or form of support, in line with the OP/RDP priority objectives)

2014-2020 Commission guidance

Treasury management (2)

- It is recommended that the use of gains should "**mirror**" the use of the initial ESIF contribution:
 - ✓by being added to the capital of the fund and used for investments in final recipient(s) and
 - ✓being used to cover a proportionate share of the management costs and fees.
- The interest and other gains are **not eligible** expenditure at closure. To be deducted from the eligible expenditure if at the end of the programming period not used for the same purpose.
- **Reporting** –
 - ✓ FI/MA – reporting modalities to be part of the FA; the MA obliged to ensure that adequate records of the use of interest and other gains are maintained (Art 43(3))
 - ✓MA/COM – MA to send information on the interest and other gains generated from the support from the ESI Funds to the FI, as annex to the AIR (Article 46(1)(g) CPR)



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Treasury management (3)

Questions & Answers

1. When and where is the best place to think about the treasury management (Art. 43 CPR)?

A: When the Funding Agreement is negotiated, in order to take into account the legal and operational issues related to the treasury management (point (g) of the Annex IV CPR - e.g. risk profile, acceptable treasury operations and investments, record keeping and reporting).

2. At which levels the Article 43 CPR applies for the interest and other gains generated by support from the ESIF to FIs?

A: The Article 43 applies only to the ESIF contribution (not the co-financing part) and before this contribution is disbursed to the final recipients. It applies also to the interest and other gains generated at the level of the FoFs and/or Financial intermediaries.

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Phased payments

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Phased payments (1)

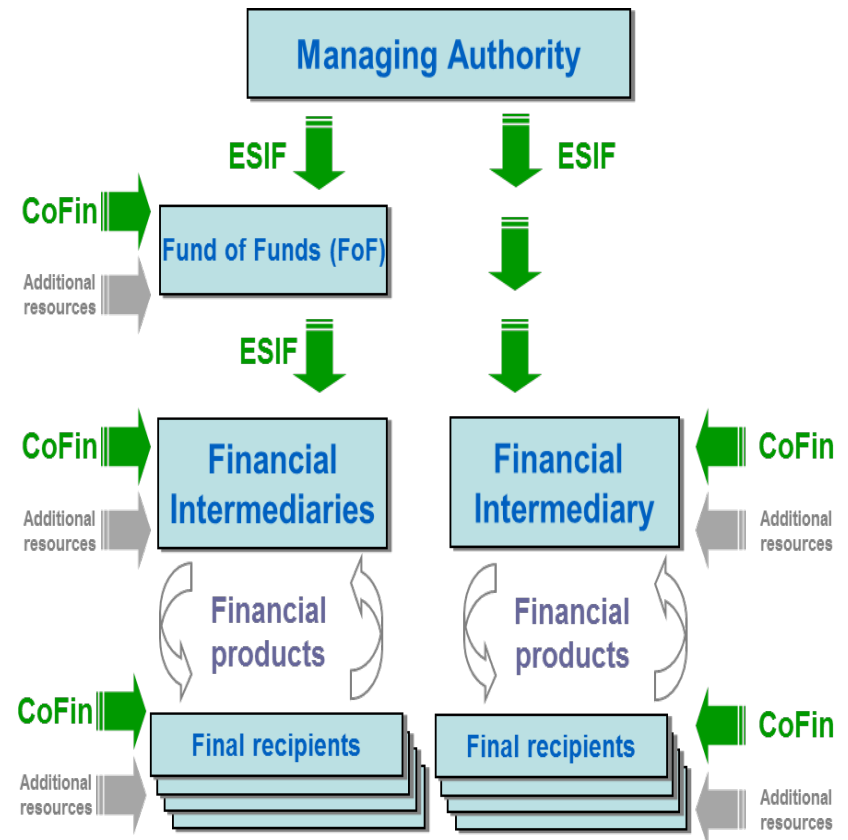
Main concepts:

1. ESIF programme contribution to financial instrument (ESIF contribution and national co-financing)

2. National co-financing at the level of FI operation

- can be different than at PA level,
- can be private/public,
- can come at different levels: MA (e.g. regional budget), FoF (e.g. national resources), financial intermediary (e.g. own resources), or at the level of investment in final recipient (e.g. co-investment by business angel).

!!! Own contribution by final recipient does NOT count as national co-financing





2014-2020 Commission guidance

Phased payments (2)

Main changes in relation to 2007-2013 period:

- **phasing of max 25% of committed programme** amount in FA paid,
- **subsequent payments from Commission**
subject to implementation on the ground
(60% second application, 85% subsequent applications)
- **flexibility for national co-financing**

Applicability!

- Formally MS –COM, but ..
- NOT for "SME initiative" and "FI directly managed by MA"



2014-2020 Commission guidance

Phased payments (3)

Questions & Answers

1. If one or more funds under the fund of funds model do not perform as well as the others, will it delay payment of subsequent tranches?

Yes, the payment to the financial instrument is the payment from MA to the beneficiary (in this case the FoF) and the 60% threshold applies to this amount included in the previous application for interim payment (Article 41(1)(c) CPR). The task of FoF is however proper management of ESIF programme allocation to FI operation.

2. If the amount of programme contribution to the FI is increased, how are the payments and tranches affected?

The MA has to amend the funding agreement and pay an additional programme contribution to the FI. This additional payment to the FI may trigger a payment application for up to 25% of the additional committed amount. For the calculation of the maximum next tranche, the total increased commitment should be used. For the calculation of the progress in implementation, needed to justify the next payment application, the total amount included in the previous applications (with the 25% of the additional commitment) should be taken into account.

2014-2020 Commission guidance Combination

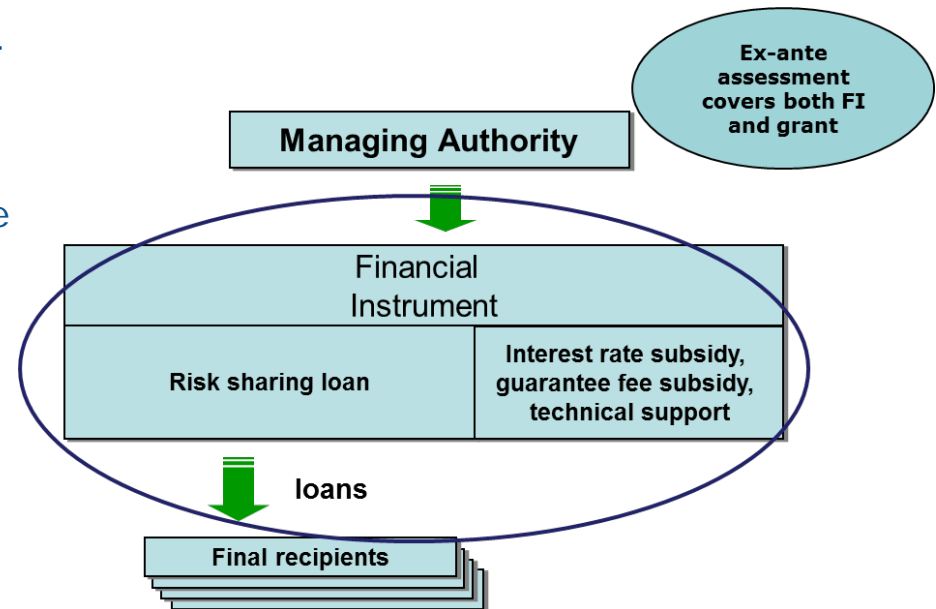
2014-2020 Commission guidance Combination (1)

- **Two types of combinations**, as provided for in 2007-2013, continue. However, the legal framework in 2014-2020 contains explicit provisions - CPR 37(7)(8)(9)
- The two types of combinations are envisaged also in Financial Regulation:
 - Combination of a grant and a FI within a **financial instrument operation**
 - Combination at the level of final recipient within two operations

2014-2020 Commission guidance Combination (2)

Combination of a grant and a FI within a **financial instrument operation**

1. Grant is **directly related to financial instrument** targeting the same final recipients (interest rate subsidy, guarantee fee subsidy, technical support). **It is NOT a grant for the investment in final recipient.**
2. Grant and financial instrument constitute a **single operation**, which falls under the **provisions of Title IV** and is financed from the **same priority axis / measure** (and the same ESI Fund)
3. A contribution from MA to FI operation (covering both a FI and a grant) is justified and estimated in ex-ante assessment.
4. Compliance with State aid rules is needed.
5. For each form of support **separate records** have to be maintained.

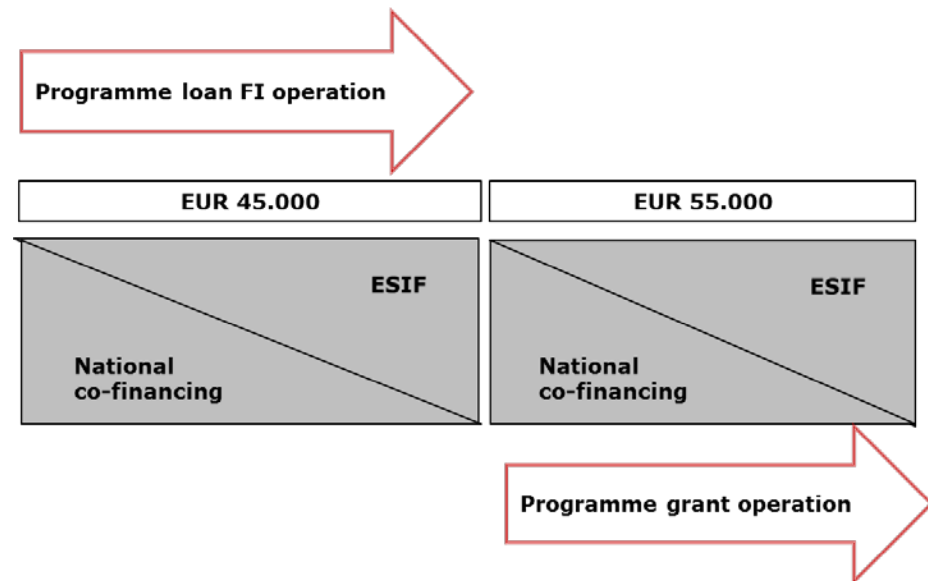


2014-2020 Commission guidance

Combination (3)

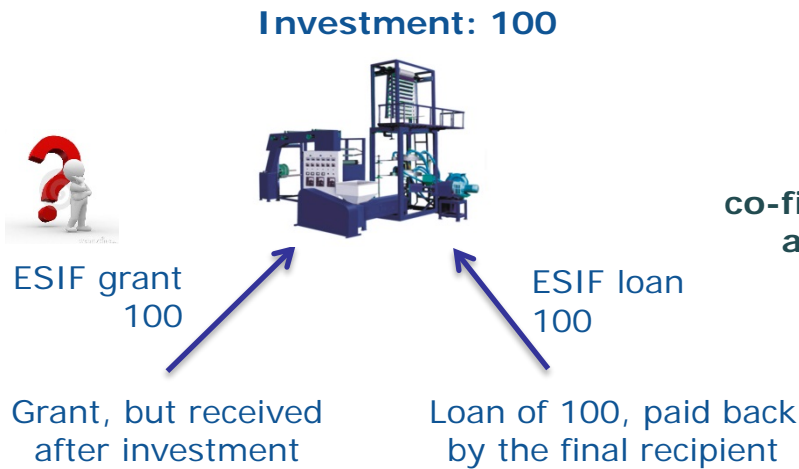
Combination at the level of final recipient within two operations

1. **Combination** of support takes place at the level of final recipients ("beneficiary" in case of grants). The same body (enterprise) receives support from a grant and from a FI. Combination **can cover the same investment or even the same expenditure item**.
2. Combination results in **two separate operations** with distinct eligible expenditure.
3. The **sum of all forms of support \leq total amount of the expenditure** item concerned.
4. State aid rules have to be respected (e.g. on cumulation, on own contribution free from state aid by the beneficiary in regional aid)
5. **Grants cannot be used to reimburse support from FI.**
6. **FI cannot be used to pre-finance the grants.**

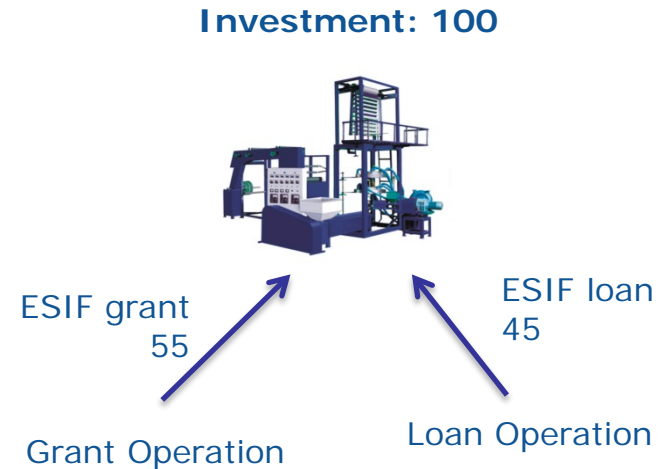


2014-2020 Commission guidance Combination (4)

Combination at the level of final recipient within two operations



co-financing rate at PA 50%



- Not allowed by the Regulation** (see above)
 - Even if no over-financing with ESIF (because of the 50% co-financing rate) - double declaration of the same expenditure, and loan used to pre-finance a grant:**
- Eligible expenditure declared to EC:**
- Grant: 100
 - Loan: 100
- Total ESIF reimbursement:** $(50\% * 100 + 50\% * 100)$ **100**



Eligible expenditure declared to EC:

- Grant: 55
- Loan: 45

Total ESIF reimbursement:
 $(55 * 50\% + 45 * 50\%)$ **50**

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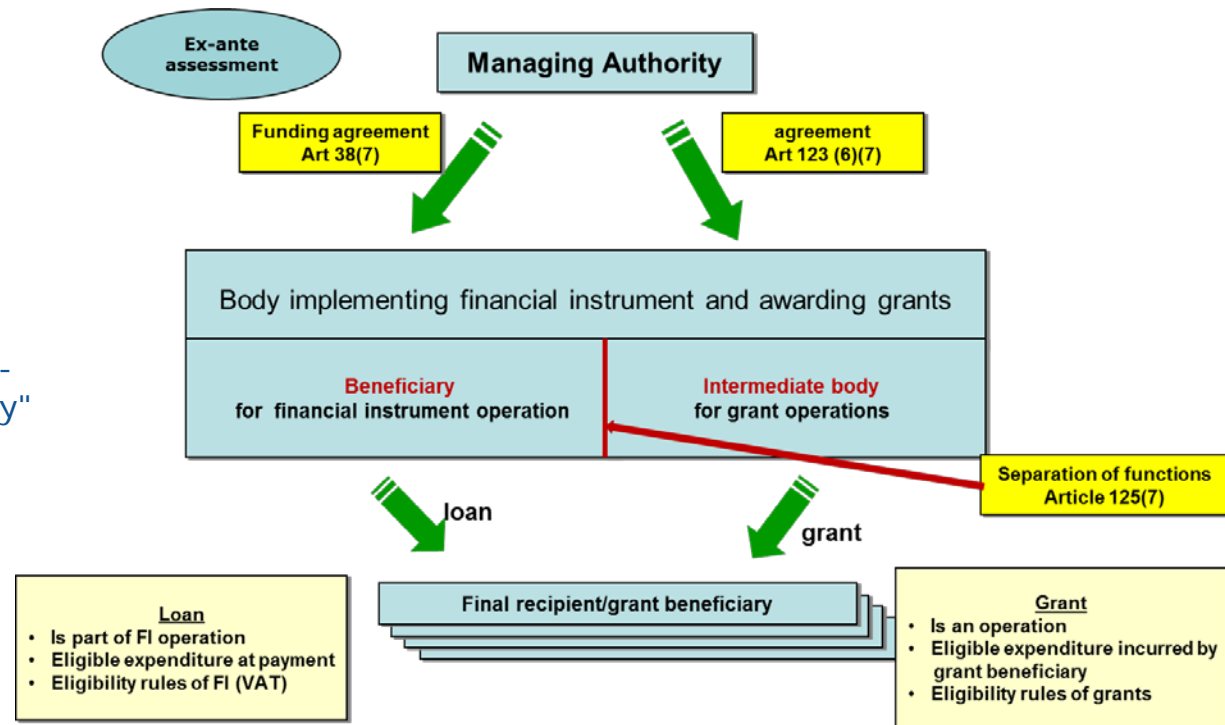
Combination (5)

Combination at the level of final recipient within two operations

In combination within two operations loan and grant can be given:

- **by the same body** (it will be "beneficiary" for FI and "intermediate body" in case of grant)
- **to the same body** (e.g. enterprise)- ("final recipient" for FI and "beneficiary" for grant)
- **for the same project** or even expenditure item (e.g. machinery)

!!! **NOT for the same eligible expenditure** (the same expenditure cannot be declared twice to COM) !!!



2014-2020 Commission guidance

Management Costs and Fees/MCF



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Management Costs and Fees/MCF (1)

2007-2013

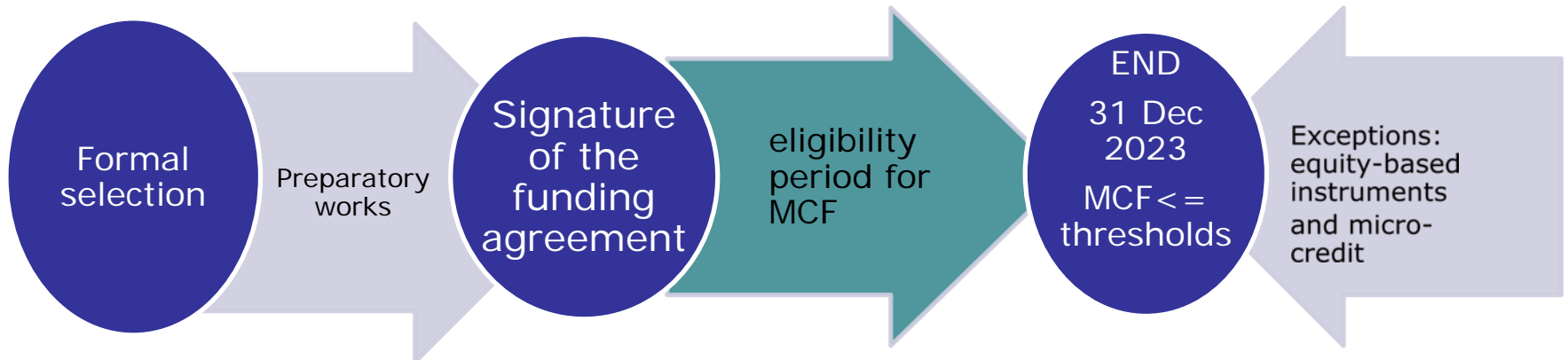
MCF calculated on the basis of the amounts contributed to the FIs = decoupled from disbursements to final recipients AND rather high limits

2014-2020

- requirement for performance orientation
- new calculation of thresholds

2014-2020 Commission guidance Management Costs and Fees/MCF (2)

Eligibility period



2014-2020 Commission guidance Management Costs and Fees/MCF (3)

➤ Eligible MCF

1. **At closure**, they should **not exceed** the amount calculated in accordance with CDR Art. 13 which is a sum of:
 - **base remuneration** (the basis is programme contribution to FI, the investments in final recipients are not relevant here)
 - **performance remuneration** (the basis are investments in final recipients)
2. **Different calculation of thresholds** in function of the **implementation options** (with or without a fund of funds) and **type of instrument**
3. The **amount** calculated **under point 1** is to be **capped** by a general threshold on the entire programme contribution



2014-2020 Commission guidance Management Costs and Fees/MCF (4)

Eligible MCF

The **methodology** of calculation eligible MCF **does not apply if:**

1. The **body implementing** the financial instrument **is selected through a competitive tender** which proves the need for higher MCF, or
2. **For equity** where the **majority of the capital invested** in financial intermediaries **is provided by private investors or public investors** operating under market economy principle and the programme contribution is provided *pari passu* with the private investors

Higher MCF can be paid from non-ESIF resources, e.g. from resources attributable to the support from ESI Funds programmes which are paid back from investments in final recipients, or from own resources (but state aid rules apply)



2014-2020 Commission guidance Management Costs and Fees/MCF (5)

Article 12(2) CDR: the managing authority shall inform the **monitoring committee** about the performance-based calculation of management costs and fees of the financial instruments (the Commission recommends that the monitoring committee is informed before the relevant funding agreements are signed as it was good practice in some cases in the 2007-2013 already). The monitoring committee shall also receive reports on an annual basis on the management costs and fees effectively paid in the preceding calendar year.

Article 46(2)(e) CPR: the **specific report on financial instruments** shall include the information about the management costs incurred or management fees paid, by each financial instrument and by programme and priority or measure.



2014-2020 Commission guidance Management Costs and Fees/MCF (5)

Questions & Answers

1. Which thresholds apply to FIs providing quasi-equity, such as subordinated loans or preferred equity?

For FIs providing quasi-equity, the thresholds for equity apply.

2. Management costs and fees incurred for preparatory work in relation to the FI before the signature of the relevant funding agreement may only be included in the eligible expenditure if incurred after the date when the formal decision selecting the body concerned was taken. What is regarded as the formal decision selecting the body concerned?

The formal decision selecting the body concerned may be evidenced e.g. by a national decree nominating the body to implement the ESIF FIs or a written notification to the selected body. The CPR does not specify which exact form such formal decision should take.



2014-2020 Commission guidance Forthcoming guidance documents

- Selection of bodies implementing FIs
- ESIF/EFSI complementarities
- Preferential remuneration of private investor
- Implementation options under 38(1)(b)
- Eligibility in FIs
- State Aid in FIs

Muito obrigado!

Q&A