



# Selection of bodies implementing financial instruments under ESIF

Overview of the guidance for Member States on the selection of bodies implementing financial instruments (2016/C 276/01)

**Carole MANCEL-BLANCHARD, DG REGIO**



## Scene setter

"In implementing Article 37, managing authorities may provide a financial contribution to the following financial instruments:

- (a) financial instruments set up at Union level, managed directly or indirectly by the Commission;
- (b) financial instruments set up at national, regional, transnational or cross-border level, managed by or under the responsibility of the managing authority. "**

**→ Guidance is about FI set up by MS**

## Scene setter

The managing authority may:

(a) invest in the capital of existing or newly created legal entities;

**(b) entrust implementation tasks to certain entities;**

(c) undertake tasks of implementation of loans or guarantee funds directly.

**→ Guidance is on FI with no shareholding requirement by the MA and whose implementation is entrusted to an external entity**

# Whose selection are we talking about?

Selection of bodies implementing financial instruments are

- bodies implementing Funds of funds
- bodies implementing specific financial instruments ie financial intermediaries

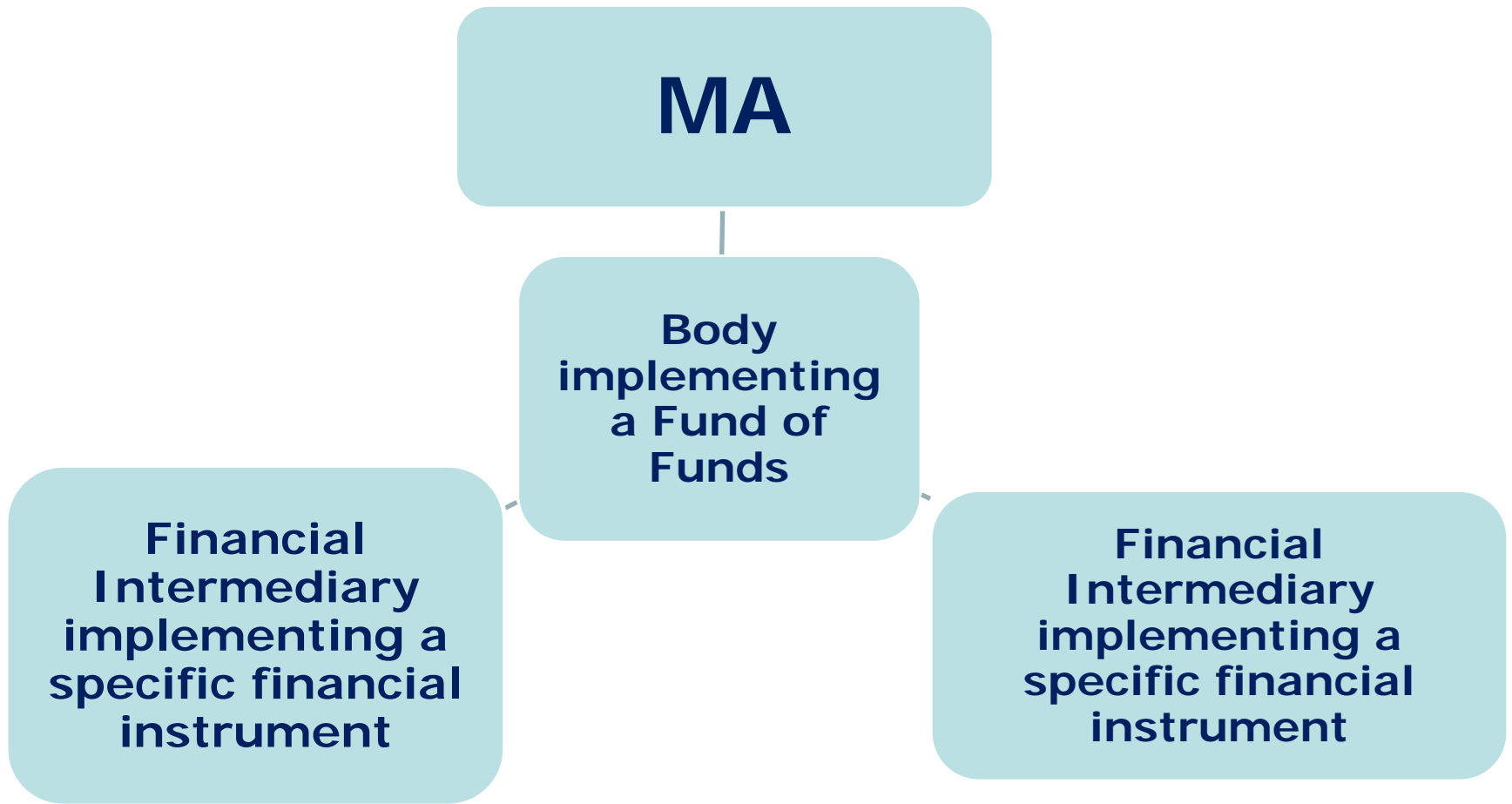
# Who is in charge of selecting?

The Managing authority or intermediate body selects

- The body implementing the Fund of funds
- Financial intermediaries in case there is no Fund of funds

The body implementing the Fund of funds selects

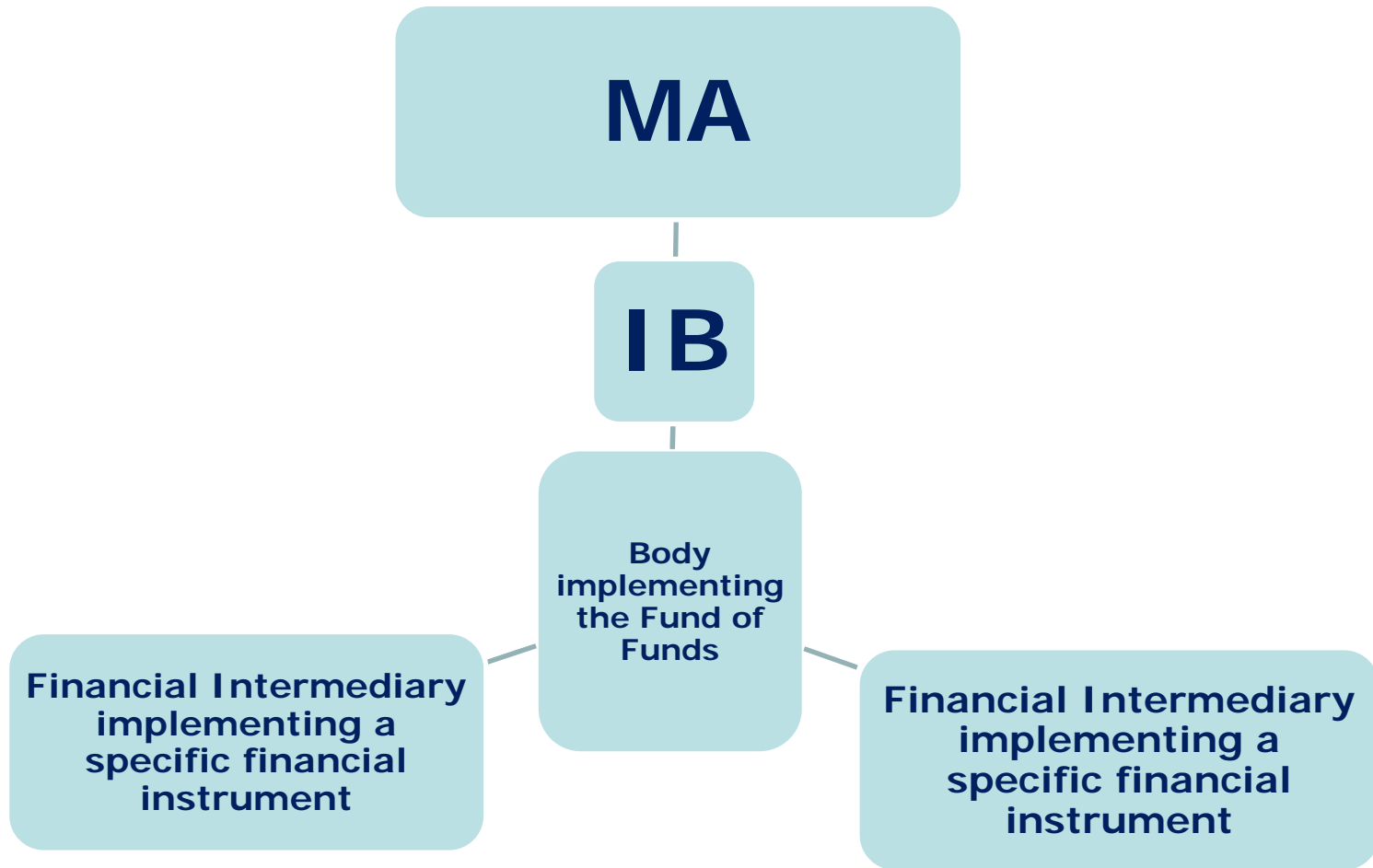
- Financial intermediaries



**MA**

**Financial  
Intermediary  
implementing a  
specific financial  
instrument**

**Financial  
Intermediary  
implementing a  
specific financial  
instrument**







# What rules are applicable to the selection?

The body implementing a Fund of Funds or a specific financial instrument is providing a financial service against remuneration

- For the implementation of a financial instrument under Article 38(4)(b) of the CPR **the MA, IB or FoF need to sign a public service contract**
- No grant

# What rules are applicable to the selection?

1. Public procurement rules and principles apply
  2. Exceptions to their application exist
  3. Relevant exceptions laid down in the public procurement directive
- + Specific selection criteria are laid down in Article 7 of Commission Delegated Regulation (EU) N° 480/2014

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# Selection according to public procurement rules and principles

- Directive 2004/18/EC
- Directive 2014/24/EU
- Treaty principles below thresholds in case the contract presents a certain cross border interest

Possibilities to adress implementation difficulties

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# Situations falling outside the scope of public procurement rules

- Contracts with EIB
- Contracts with EIF
- Contracts with International Financial Institution (IFI)

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# Relevant exceptions laid down in the PP Directive

## Cooperation between contracting authorities

- In-house relation
- Inter Administrative Cooperation

Emergence with Case Law

Codification in the new PP Directive 2014/24/EU



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# Procedure for selection

## How to select the body implementing the Fund of funds?

Procurement or situation falling outside the scope of PP rules

## How to select the body implementing the specific financial instrument:

Fund of Funds manager selected following an open call for tenders:

Yes: no need for the body implementing the fund of funds to procure to select the body implementing the specific financial instrument

No: procurement or situation falling outside the scope of PP rules

Specific case: application of rules of EIB - EIF -IFI

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## **Specific selection criteria laid down in Article 7 of CDR (EU) N° 480/2014**

- Some criteria must be applied as such to all bodies regardless of the type of instrument they might implement (e.g. agreement to be audited)
- Some criteria need to be adjusted to the type of financial instrument to be implemented (terms and conditions of the support provided to final recipients, including pricing)

Exception: no need to check whether EIB EIF fulfil these criteria when implementing a Fund of Funds

# Why a guidance note on this topic?

Audit findings

Financial corrections

New rules on selection in CDR

➔ Need for clarity

# Why a guidance note on this topic?

It clarifies the possibilities of selection taking into account the existing legal provisions at stake

It does not create new rules

## What type of guidance note?

Guidance provides interpretation of EU law

→ adopted by the Commission on 22 July 2016 and published in the Official Journal of 29 July

→→ **implementation phase**

# Reference documents

- Directive 2004/18/EC
- Case law
- Directive 2014/24/EU
- Guidance note on selection of bodies implementing FI, OJ C276, page 1





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