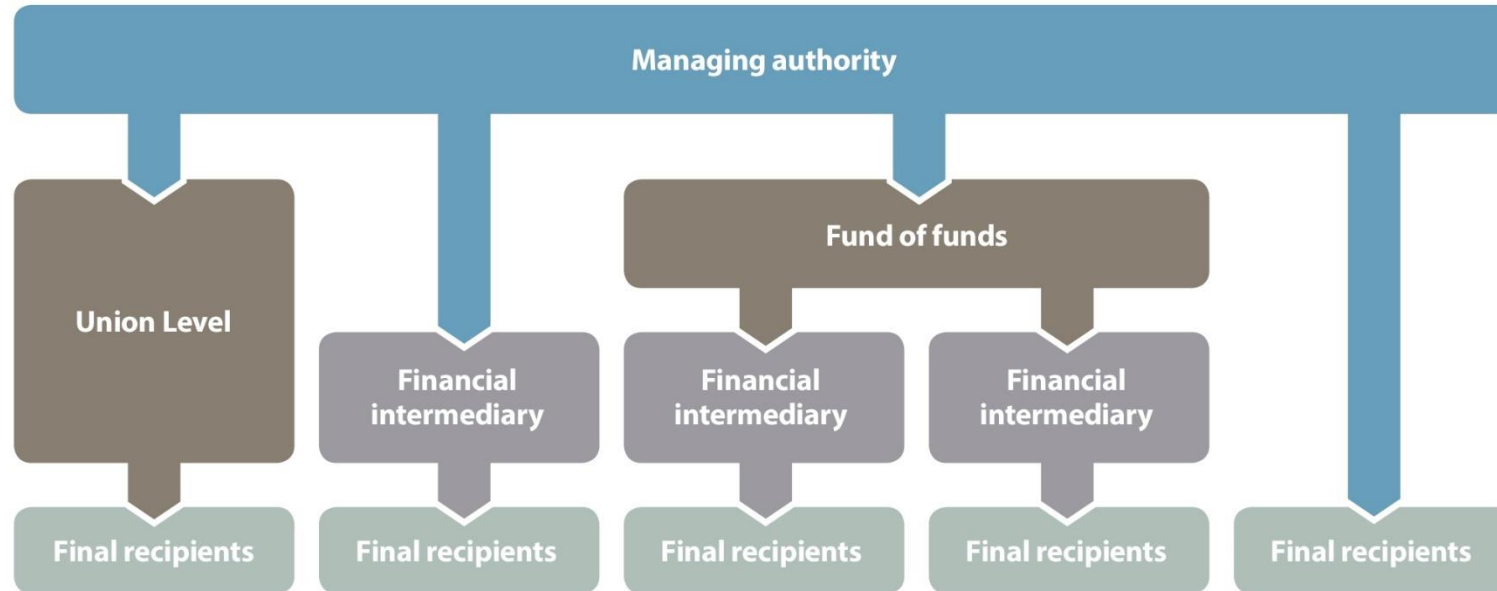




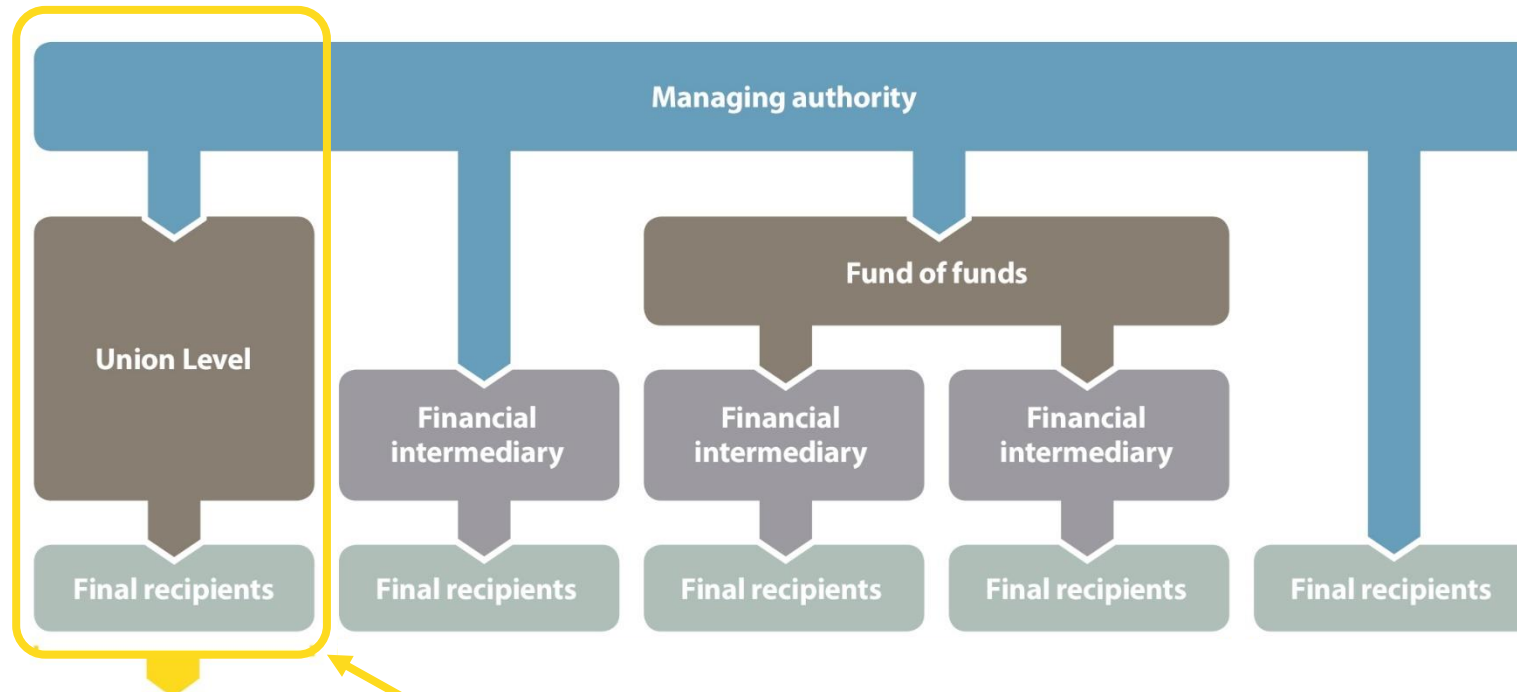
Implementing options and selection of the body implementing the financial instrument

**Anna Zurek,
EIB**

What are the implementation and governance options?



Central management

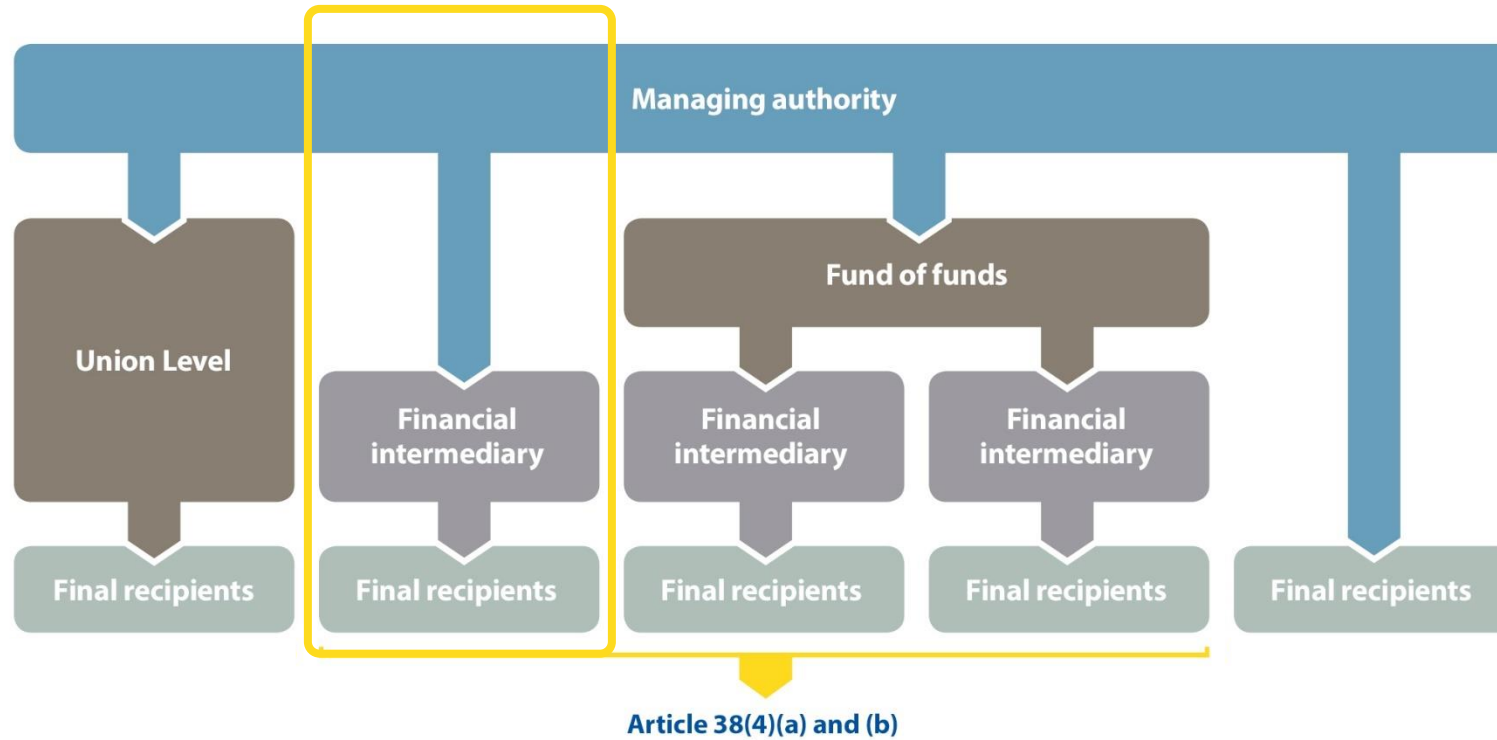


Article 38(1)(a)

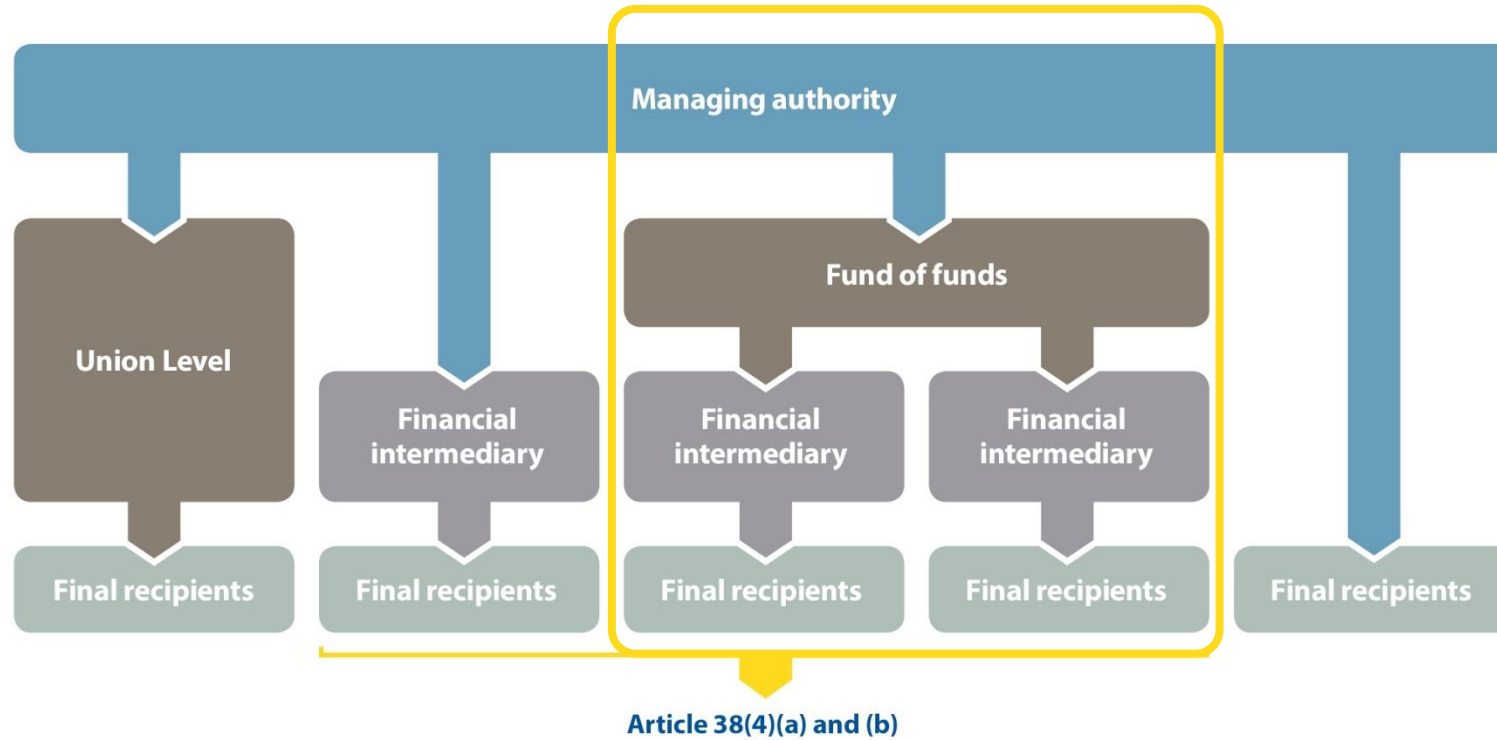
- EASI
- Erasmus+
- Innovfin
- COSME



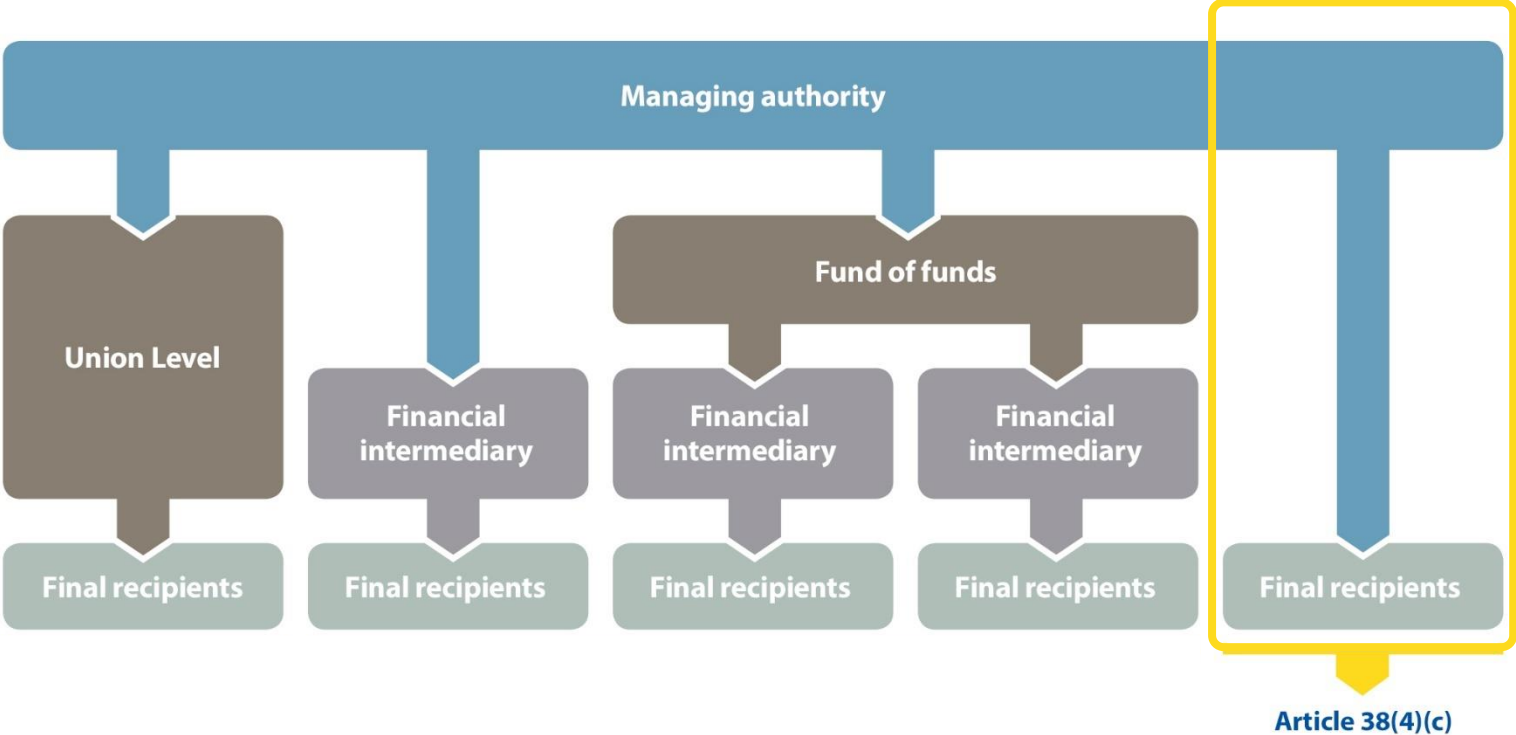
Shared management (financial intermediaries)



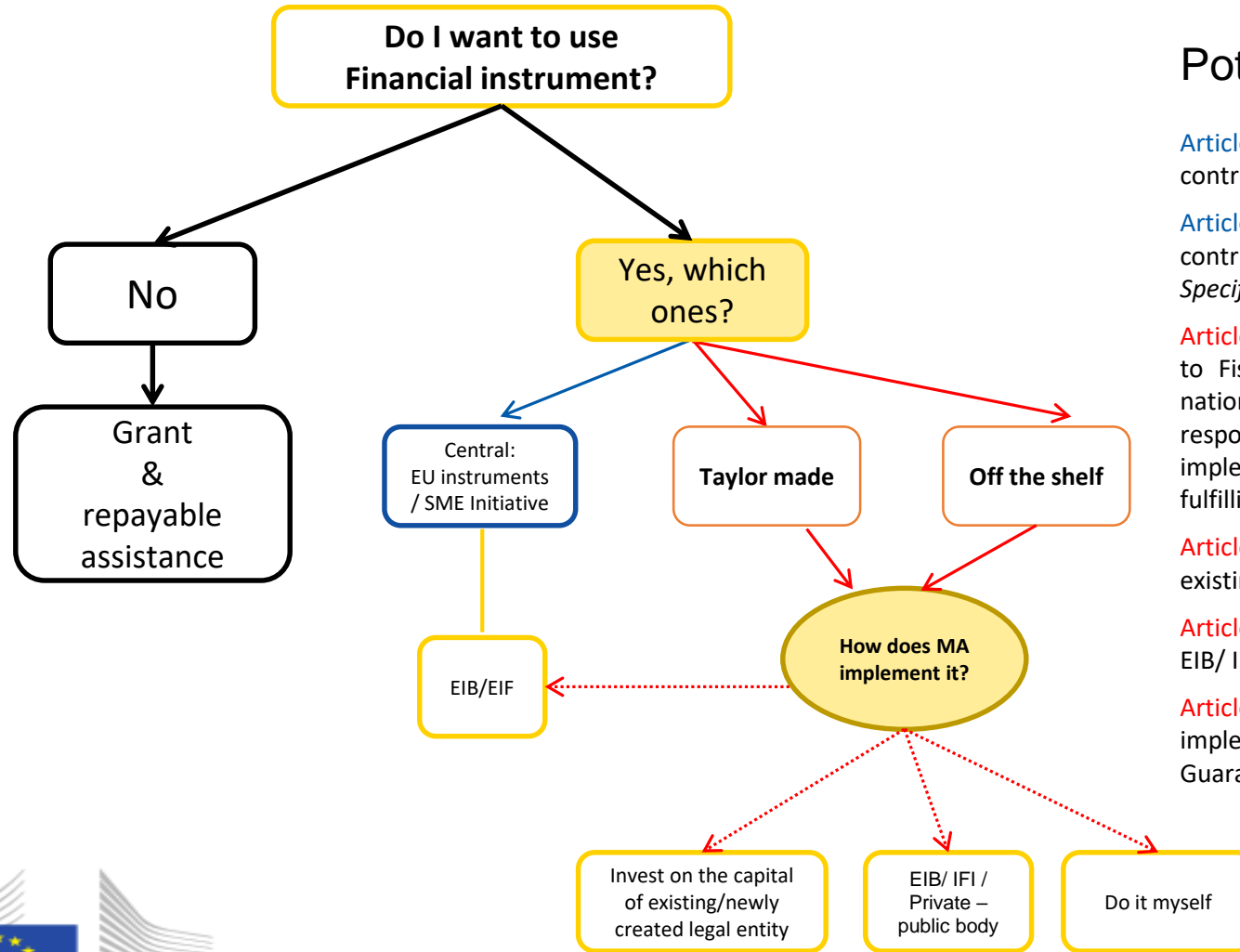
Shared management (fund of funds)



Direct management



Mode of implementation



Potential options :

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 (taylor-made / OSI) 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 (solely for loans / Guarantees).



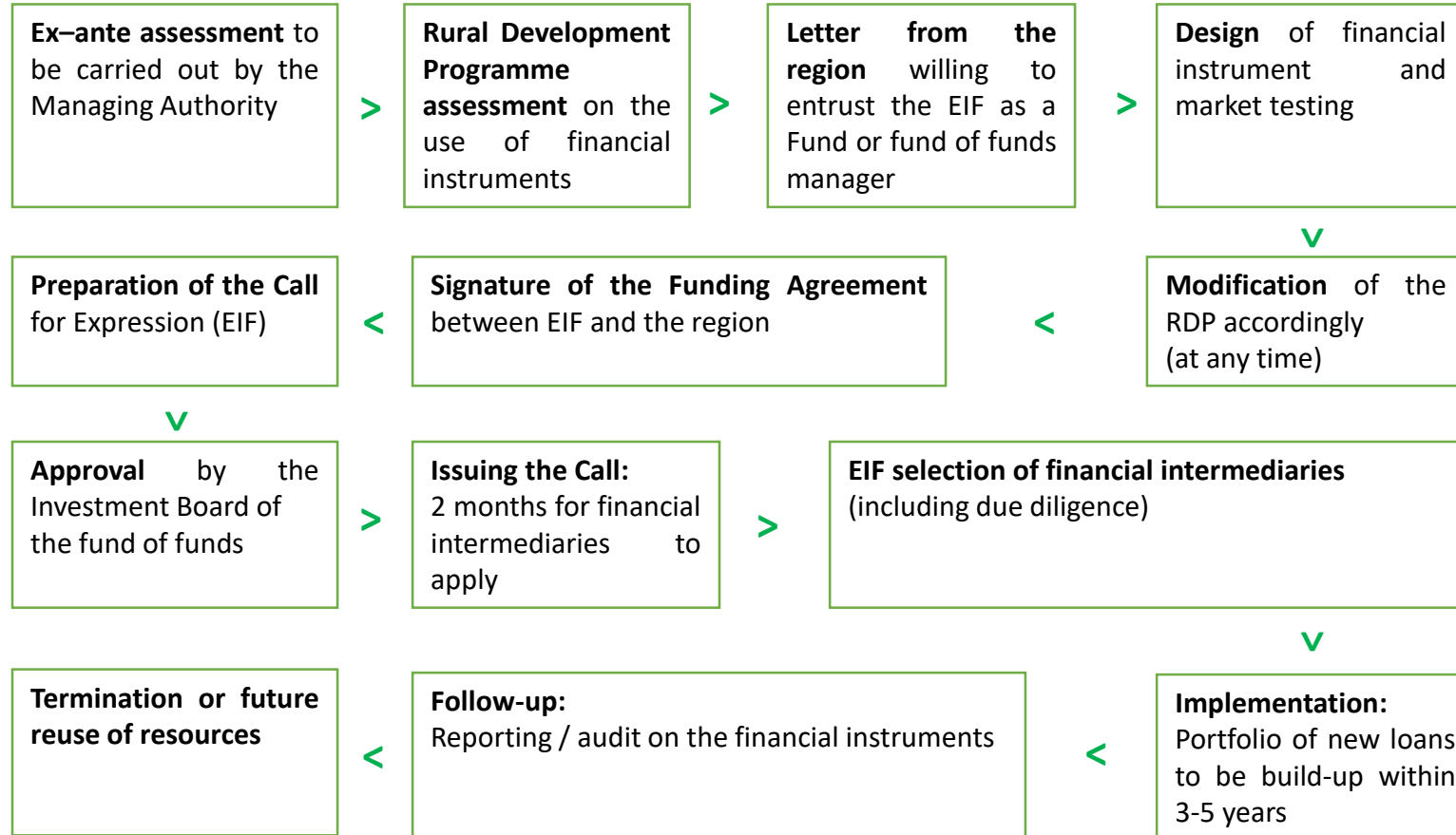
Implementing process



Timing/Cooperation

EIF / DG Agri / Managing

Authority



Key milestones



- Ex Ante Assessment and Market Testing
- Eligibility Criteria
- Financial Intermediary Selection
- Funding Agreement



Ex-Ante - Market Test



- The ex ante analysis provides preliminary / framework information
- It is key – for a successful implementation of a financial instrument – a thorough market test: a) does actually exist a market gap? i.e. demand for credit not matched by the offer due to low liquidity/risk appetite of financial intermediaries; b) are the financial intermediaries actually operating on the reference market ready to increase the offer once supported by the envisioned financial instruments? c) are financial intermediaries and beneficiaries ready to the cultural shift implied by a financial instrument? d) how critical is the “blending” of grants and financial instruments?
- Methodology: direct contact with financial intermediaries; presentation of the instrument; analysis of existing portfolios; benchmarking with different instruments/sectors with similar beneficiaries.

Eligibility Criteria



- A financial instrument requires the full engagement and understanding of its features by one or more financial intermediaries
- In particular, eligibility criteria and admissible costs are to be verified by the financial intermediary
- Therefore it's important that eligibility criteria and admissible costs are defined in a clear and easy way (possibly simpler than for grants)
- Financial instruments are not suitable to support all the measures of an RDP. In the first pilot projects, support is mainly limited to the measures of art. 17 and 19 of EC Reg. 1305/2013



Financial Intermediary Selection



- 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 (FI) 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 FI
 - The FI 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 FI cannot benefit of the public support (guarantee or funding)
 - The FI is responsible for the reporting of the instruments and is subjects 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



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.



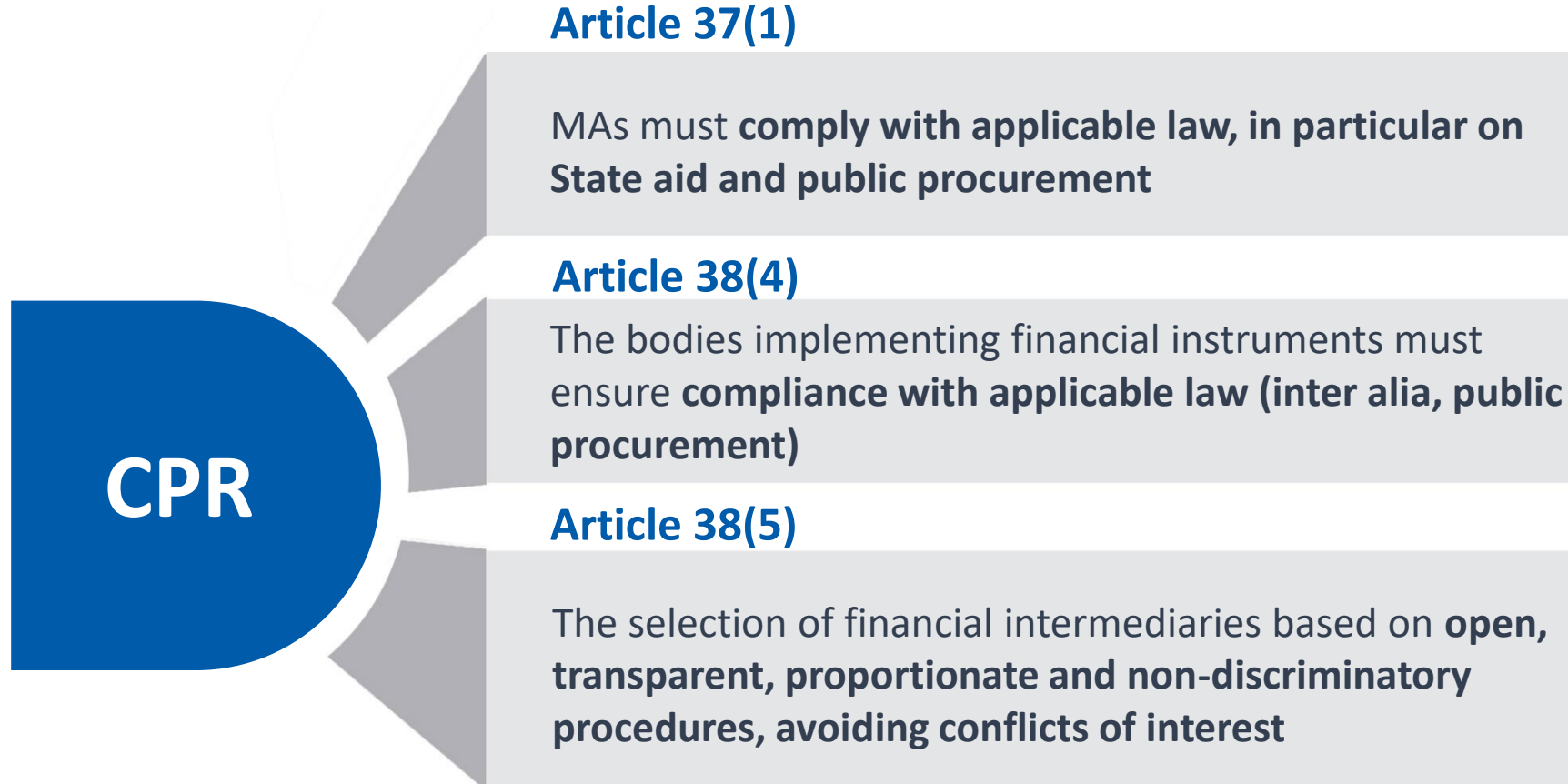
Funding Agreement



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.





Selection – ESIF Requirements



29.7.2016 EN Official Journal of the European Union C 276/1

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)

TABLE OF CONTENTS

1. Regulatory references and text	2
2. Background	2
3. Selection of bodies implementing financial instruments	4
3.1. Selection in accordance with public procurement rules and principles	4
3.1.1. Selection in accordance with the provisions of Directive 2004/18/EC or Directive 2014/24/EU	4
3.1.2. Below the thresholds of the Directive: selection in accordance with the principles of the Treaty	7
3.2. Designation of the EIF	7
3.3. Designation of the EIF	8
3.4. Designation of an international financial institution	8
3.5. In-house award	9
3.5.1. Conditions for award to in-house entities until Directive 2014/24/EU is transposed or until 18 April 2016 whatever is earlier	9
3.5.2. Conditions for award to in-house entities after transposition of Directive 2014/24/EU (Article 12 of Directive 2014/24/EU) or after 18 April 2016	11
3.6. Inter-administrative cooperation	14
3.6.1. Conditions for inter-administrative cooperation until Directive 2014/24/EU is transposed or until 18 April 2016 whatever is earlier	15
3.6.2. Conditions for inter-administrative cooperation after transposition of Directive 2014/24/EU or after 18 April 2016	16
3.7. Requirements of Article 7 of the CDR	17
3.7.1. Selection criteria	17
3.7.2. Award criteria	18
3.7.3. Elements for the terms of reference	19
4. Reference, links	19

- Guidance published 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

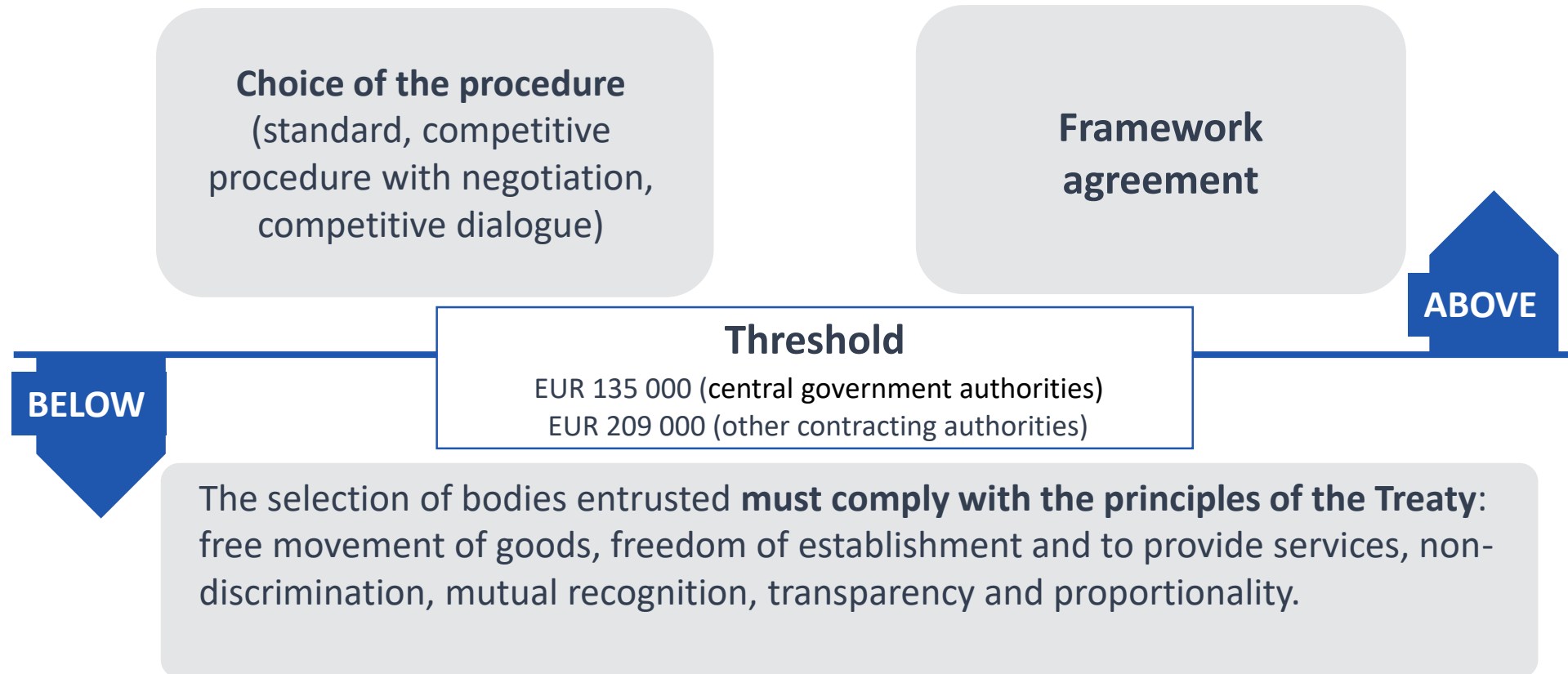


I	Selection in accordance with public procurement rules and principles
II	Designation of the EIB and EIF
III	Designation of an international financial institution
IV	In-house award
V	Inter-administrative cooperation

I. Selection in accordance with public procurement rules



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



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.

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**.

MA

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

EIF Overall Implementation Process of a Financial Instrument or Fund of Funds

