



# Guidance for Member States on Article 41 CPR

## Requests for payment

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European Commission, Directorate-General for Regional and Urban policy  
REGIO DG 02 - Communication  
Mrs Ana-Paula Laissy  
Avenue de Beaulieu 1  
1160 Brussels  
BELGIUM

E-mail: [regio-publication@ec.europa.eu](mailto:regio-publication@ec.europa.eu)  
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European Structural and Investment Funds

Guidance for Member States on  
Article 41 CPR - Requests for payment

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## 1. BACKGROUND

### 1.1. Regulatory references

Regulation	Articles
Reg. (EU) N° 1303/2013 Common Provisions Regulation <i>(hereafter CPR)</i>	<i>For the EAFRD, EMFF, ERDF, ESF and CF</i> Article 41 – Requests for payment including expenditure for financial instruments  <i>For the EMFF, ERDF, ESF and CF</i> Article 132 – Payment to beneficiaries  Article 135 – Deadlines for presentation of interim payment applications and for their payment
Reg. (EU) N° 480/2014 Commission Delegated Regulation <i>(hereafter CDR)</i>	Article 9 – Management and control of financial instruments set up at national, regional transnational or cross-border level
Reg. (EU) N° 821/2014 Commission Implementing Regulation <i>(hereafter CIR 821/2014)</i>	Article 1 – Transfer and management of programme contributions
Reg. (EU) N° 1011/2014 Commission Implementing Regulation <i>(hereafter CIR 1011/2014)</i>	Annex VI – Model for the payment application including additional information concerning financial instruments  Annex VII – Model for the accounts
Reg. (EU) N° 1305/2013 European Agricultural Fund for Rural Development <i>(hereafter EAFRD 1305/2013)</i>	Article 59 – Fund contribution
Reg. (EU) N° 1306/2013 European Agricultural Fund for Rural Development <i>(hereafter EAFRD 1306/2013)</i>	Article 36 – Interim payments  Article 58 – Protection of the financial interests of the Union
Reg. (EU) N° 908/2014 Commission Implementing Regulation <i>(hereafter CIR 908/2014)</i>	Article 22 – Declarations of expenditure

## 1.2. Purpose of the guidance

During the 2007-2013 period, in order to encourage the early implementation of financial engineering instruments, Regulation (EC) No 1083/2006 ("the General Regulation") provided that payments into the funds could be declared in interim payment applications to the Commission as eligible expenditure.

However, in some cases delays occurred in disbursing the funds to final recipients and management costs were not always linked to performance. Moreover, a serious concern has been in some cases the practice of over- allocation of resources to financial engineering instruments which then remain in the funds, accumulating interest and management costs and fees, instead of being disbursed to the final recipients. Such practices have been discouraged by the Commission, namely through guidance issued in 2008 and 2011, as they were considered not to be in accordance with sound financial management and delayed the positive effect investments could have on the economy.

An additional consideration for the 2007-2013 and earlier periods is that managing authorities (MA) faced difficulties in generating national contributions necessary to obtain the full reimbursement of programme contributions paid to financial engineering instruments upfront.

Against this background, and in view of the need to correct the aforementioned shortcomings, Article 41 CPR offers a mechanism:

- Providing more flexibility when it comes to the payment of national contributions to financial instruments (FIs), and
- Introducing phased applications for interim payment in a way that prevents excessive upfront payment of ESI Funds to FIs.

## 2. GUIDANCE

### 2.1. Applicability of provisions under Article 41 CPR

The provisions under Article 41(1) CPR on requests for payment, including expenditure for FIs, apply to FIs supported with ESI Funds as referred to in points (a) and (b) of Article 38(1) CPR. Two exceptions are provided in the CPR:

- a derogation granted under Article 39(7) CPR to FIs implemented under Article 39 CPR ("SME initiative");
- a derogation granted under Article 41(2) CPR to FIs implemented in accordance with Article 38(4)(c) CPR (i.e. implemented directly by the MA).

The provisions under Article 41 apply to payment and information flows between the **Commission and the certifying authority (CA)/paying agency (in case of EAFRD)** which is responsible for drawing up and submitting payment applications.

Thus, Article 41 CPR does not regulate the payment and information flows between the MA and the body implementing FIs (fund of funds or financial intermediary). It is however expected that Member States will aim to reproduce this payment schedule as regards the disbursements from the MA to the FI.

The funding agreement signed between the MA and the body implementing FIs will set out the requirements and procedures for managing the phased contributions provided by the programme. To ensure uninterrupted funding flows to the final recipients, when required, it is recommended that provisions deviating from this payment schedule are inserted into the funding agreement. Any such differentiated payment flow between the MA and the FI

should be tailored to the specific risks identified for the instrument and be in line with the principle of sound financial management.

## **2.2. Tranching**

### *2.2.1. Applications for interim payment will be phased*

Regardless of the actual timing and amounts of programme contributions paid by MAs or any other public or private sources constituting national co-financing paid to the FI or invested at the level of the final recipient, Article 41(1) CPR stipulates that applications for interim payment for programme contributions paid to the FI during the period of eligibility will be phased.

Moreover, Article 41(1) CPR limits the amount of programme contributions paid to the FI which can be included in each application for interim payment to 25% of the programme contribution committed in the funding agreement. This amount corresponds to expenditure in the meaning of Article 42(1)(a),(b) and (d) CPR. In practical terms, this implies that MAs would normally include payments for programme contributions paid to the FI in four applications for interim payment (if the threshold of 25% is held), or more (if the MA requests less than 25% of programme contribution committed in the funding agreement in any payment application) submitted in accordance with Article 135 CPR or Article 22 CIR 908/2014 for the EAFRD.

### *2.2.2. Applications for interim payment may include national co-financing expected to be paid*

Article 41(1)(b) CPR clarifies that the application for interim payment may also include up to 25% of the amount of national co-financing expected to be paid to the FI (including at the level of investment in final recipients) for expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR within the eligibility period.

Thus, national contributions can be included in the application for interim payment even if they were not yet paid to the FI or invested at the level of final recipient together with the ESI Funds contribution. This means that MAs have the flexibility to include in the application for interim payment a limited amount of national co-financing contributions (not exceeding 25% of the total national co-financing agreed in the funding agreement) that is "expected to be paid" to the FI at the various levels of its implementation during the period of eligibility.

For example, on the basis of the funding agreement signed between a MA and a fund manager and the business plan of the FI, anticipated co-investments at the level of fund of funds, anticipated contributions by financial intermediaries or anticipated co-investments by private investors at the level of final recipients (constituting national co-financing of priority axis based on total expenditure) may be taken into account and included in an application for interim payment as part of the national co-financing "expected to be paid" for expenditure in the meaning of Article 42(1)(a)(b) and (d) CPR.

In this way, MAs may be reimbursed the ESI Funds contribution also in cases where national co-financing is paid to the FI at a later stage during the period of eligibility.

### *2.2.3. Subsequent applications for interim payment*

Subsequent applications for interim payment in relation to FIs can only be submitted when certain minimum percentages of cumulative amounts included in previous applications for interim payment were spent as eligible expenditure. These applications should be based on

the regular declarations by the fund manager to the MA on the amounts disbursed to final recipients.

Article 41(1)(c) CPR regulates under which circumstances subsequent applications for interim payment in relation to FI may be made following the initial application. It states that:

- the second tranche of programme contributions to the FI may only be included in an application for interim payment when at least 60 per cent of the amount included in the first application for payment has been spent as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR; and that
- the third and any subsequent tranches of programme contributions to the FI may only be included in an application for interim payment when at least 85 per cent of the cumulative amounts included in previous applications for interim payment has been spent as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR.

This provision represents a safeguard against over-payment of programme resources to FIs.

### **2.3. Information on implementation of the FI**

The programme contribution paid to the FI in line with the provisions of Article 41 CPR can be declared in payment applications.

According to Article 42(1), (2) and (3) CPR, the eligible expenditure of the FI at closure is the total amount of programme contribution effectively disbursed by the FI by the end of eligibility period, i.e.:

1. paid to or for the benefit of final recipients in accordance with Article 42(1)(a) or committed for guarantee contracts, in accordance with Article 42(1)(b)
2. incurred for management costs and paid for management fees,
3. paid into escrow accounts in accordance with Article 42(1)(c), (2) and (3) CPR.

During the implementation of the FI, the fund manager will regularly declare to the MA the total amounts of eligible expenditure under points 1 and 2 above

The declaration by the fund manager on eligible expenditure both during implementation and at closure should be based on supporting documents. In accordance with Article 9(1) CDR supporting documents for expenditure declared as eligible should be kept either by the MA, or the financial intermediary, or the body that implements fund of funds in order to provide evidence of the use of the funds for the intended purposes, of compliance with applicable law and of compliance with the criteria and the conditions for funding under the relevant programmes.

These supporting documents have to allow verification of the legality and regularity of expenditure declared to the Commission. They have to include as a minimum documents listed in Article 9(1)(e) CDR. The exact scope of the information and documents to be retained or provided by the fund manager will be agreed in the funding agreement between the MA and the financial intermediary (and between the fund of fund and financial intermediaries if applicable).

The declaration made by the fund manager to the MA will form the basis for preparation of the information concerning FIs required under Article 41(1)(d) CPR and in Appendix 1 of Annex VI CIR.

After the eligibility period, where applicable, the declaration concerning FIs submitted by the fund manager should also include the amount of expenditure in relation to the programme contribution placed in escrow accounts in line with the provisions of Article 42(1)(c), and Article 42(2) and (3) CPR.

Both the preparation of payment applications and of accounts submitted to the Commission remains the responsibility of the CA/paying agency (in case of EAFRD). In relation to FIs these two set of documents will cover payments to the FIs under Article 41(1)(a) and (b) CPR.

In addition, Appendix 1 of Annex VI and Appendix 6 of Annex VII CIR to be submitted *together* with each payment application and the accounts respectively will include both payments to FIs and the latest state of play of payments by FIs. These appendixes will include cumulative amounts, i.e. payments made since the beginning of the eligibility period.

The amount chargeable to the Funds for the whole period is the amount paid to the FIs in line with Article 41(1)(a) and (b) CPR which was spent for eligible expenditure according to Article 42 CPR.

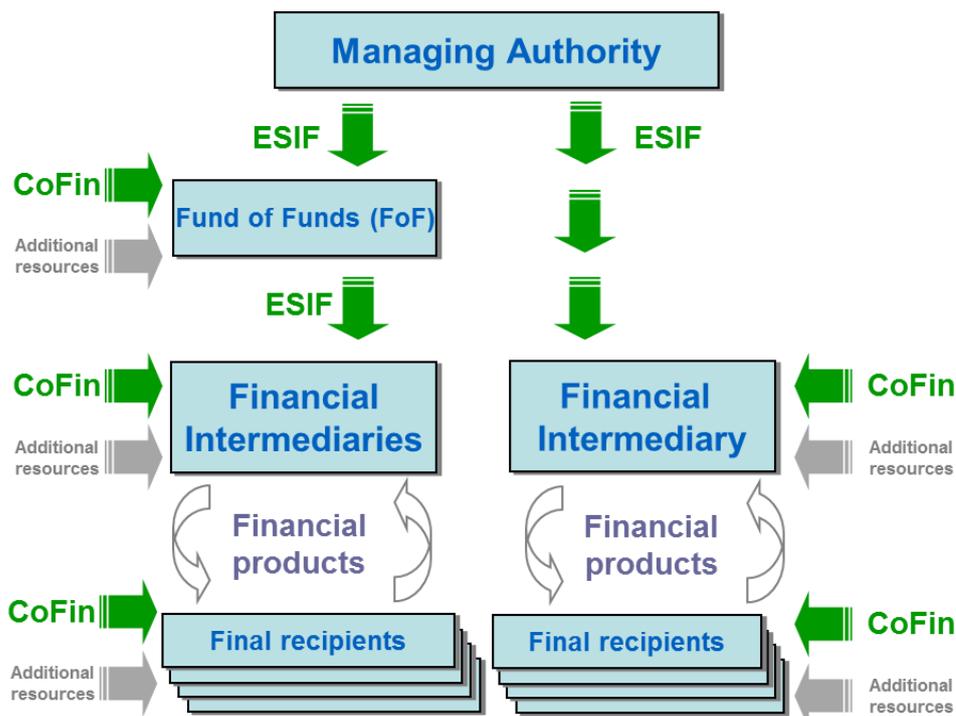
The accounts of the last accounting year for the programme will contain the corrections or adjustments resulting from the determination of the final amount of the eligible expenditure of the FI over the eligibility period.

#### 2.4. Treatment of national co-financing

The MA provides the programme contribution to the FI, based on the terms and conditions laid down in the relevant funding agreement.

The national co-financing may be provided in a flexible manner, i.e. at different levels of FI implementation and at different timing.

As provided for in Article 38(9) CPR national co-financing (public or private contributions) may be provided at the level of the FI (fund of funds or financial intermediary) or at the level of the investments in final recipients.



National co-financing does not have to be paid to the FI at the same time as the payment of the ESI Funds' share and may be separately contributed at later stages of the implementation cycle, but needs to be contributed in line with the funding agreement by the end of the eligibility period.

It should be underlined that when *pari passu* investments is required (e.g. under State aid rules) simultaneous investment of national co-financing and ESI Funds share might be required (simultaneous transactions between private and public investors).

## **2.5. Co-financing rate of priority axis/measure and of the financial instrument operation**

The maximum co-financing rate and the maximum amount of contribution from ESI Funds (ERDF, ESF and CF) to a programme is set up for each priority axis in the respective Commission decision adopting a programme.

For the EAFRD, the co-financing rate and the maximum amount of contribution is set up for each measure foreseen in the rural development programme in the respective Commission decision adopting the programme.

The co-financing rate at the level of an operation is decided and fixed by the MA (i.e. the ESI Funds support could be 100% at the level of the operation). The CPR does not contain any restriction on the co-financing rate at the level of the operation; however, there might be an explicit rule on the co-financing rate for particular operations stemming from the national eligibility rules referred to in Article 65(1) CPR or from the provisions in the programme or state aid rules.

## **2.6. Deadlines**

The arrangements for payment flows to FIs, their frequencies and any deadlines should be agreed between the MA and the body implementing FIs (and if applicable between the body implementing fund of funds and the financial intermediary) in the relevant funding agreement.

The MA should ensure that the management of payments to the FI ensures its smooth functioning. Any delays by MA of initial or subsequent payments to the FI would affect the timing of the respective payment of ESI funds by the Commission to the Member State as the basis for the payment application is always the programme contribution paid to the FI (with the possible exception for national co-financing as provided for in Article 41(1)(b) CPR).

Article 132(1) CPR requires that the deadline for payments from a MA to a beneficiary (fund of fund in the case of an FI implemented through a fund of funds or a financial intermediary in the case of an FI implemented without a fund of funds) should not exceed 90 days from the date of submission of the payment claim by the beneficiary. Subject to the respect of this maximum deadline, the payment deadline, which should reflect the liquidity needs of each specific FI, should be agreed between the MA and the beneficiary in the relevant funding agreement.

## **ANNEX 1: NUMERICAL EXAMPLES ILLUSTRATING THE PAYMENT MODALITIES UNDER ARTICLE 41 CPR**

### **Scenario**

- A FI was established, with a funding agreement committing a total programme contribution of EUR 500m.
- The co-financing rate of the priority axis from which programme resources are to be contributed to the FI operation is 60% for the sake of demonstration. The ESI Funds share of the programme contribution to the FI operation is assumed to be also 60% thus EUR 300m, the national co-financing share is EUR 200m.
- The business plan of the FI envisages a total expenditure of EUR 500m:
  - Expenditure of EUR 450m during the period of eligibility (loans to final recipients as provided for under Article 42(1)(a) CPR and related management fees as provided for under Article 42(1)(d) CPR, and
  - Expenditure of EUR 50m to be paid for 10 years after the eligibility period [interest rate subsidies in relation to loans provided by sources other than ESI Funds and disbursed during the period of eligibility, as provided for under Article 42(1)(c) CPR]

### **Phased applications for payment**

- The CA includes payments of programme contributions to the FI in four applications for interim payment. As the business plan of the FI envisages expenditure of EUR 450m during the period of eligibility, each application for interim payment will include a programme contribution of EUR 112,5m (25% of EUR 450m).

### **National contribution expected to be paid**

- The CA submits to the Commission an application for interim payment, including a programme contribution of EUR 112,5m to the FI, of which EUR 67,5m is the ESI Funds share which was paid to the FI.
- The Member State may include in the amount of programme contributions declared in the first application for interim payment up to EUR 45m of national co-financing expected to be paid to the FI during the period of eligibility (25% of EUR 180m, which is the 40% national co-financing share of EUR 450m), for example in the form of an anticipated co-investment of EUR 45m which is expected to be provided at the level of the fund of funds shortly after its establishment. This means that the effective payment of programme contributions to FI (as included in the application for interim payment) can in practice comprise only the ESI Funds share and the Member State will be reimbursed 100% of this ESI Funds share (EUR 67,5m).

### **Subsequent payment applications submitted during eligibility period**

- Following an application for interim payment including a first tranche of programme contribution of EUR 112,5m of which EUR 67,5 were reimbursed by the Commission, the application for interim payment including the second tranche can only be made when at least EUR 67,5m (60% of EUR 112,5m) were spent as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR.
- The application for interim payment including the third tranche can only be made when at least EUR 191,25m (85% of EUR 225m) were spent as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR.

- The application for interim payment including the fourth tranche can only be made when at least EUR 286,875m (85% of EUR 337,5m) were spent as eligible expenditure in the meaning of Article 42(1) (a),(b) and (d) CPR.

### Overview table

CPR Art	#	Application for payment	During eligibility period				After eligibility period pertaining to programme contributions paid by 31.12.2023 pursuant to Article 42
			Interim 1	Interim 2	Interim 3	Interim 4	Interim 5
			2014	2016	2018	2020	
41(1)(a)	1	Cumulative amount of programme contribution paid to FI included in each interim application for payment (not exceeding 25% of total amount of programme contributions committed to the FI under relevant FA corresponding to expenditure in the meaning of Art 42(1)(a),(b) and (d) expected to be paid during eligibility period) [in EUR m] Amounts to be entered in the columns (A) and (B) of the Appendix 1 of the payment application	112.5	225	337.5	450	500
	2	of which ESIF share paid to the FI (cumulative)	67.5	135	202.5	270	300
	3	of which national co-financing (cumulative)	45	90	135	180	200
41(1)(b)	4	of which national co-financing share paid to the FI (cumulative)	0	30	80	110	200
	5	of which national co-financing share <u>expected to be paid</u> at the level of the fund of funds	45	20	0	0	
	6	of which national co-financing share <u>expected to be paid</u> at the level of the financial intermediary	0	30	30	15	
	7	of which national co-financing share <u>expected to be paid</u> at the level of investment in final recipient	0	10	25	55	
	8	Total amount of cumulative programme contributions effectively paid to the FI (rows 2 and 4)	67.5	165	282.5	380	
	9	Reimbursement by the Commission on the basis of the application for interim payment under Art 41 CPR; co-financing rate 60% (single payment / cumulative payments) [in EUR m]	67.5	67.5 (135)	67.5 (202.5)	67.5 (270)	30 (300)
41(1)(c)	11	Threshold for application for payment (Art 41(1)(c))	0%	60%	85%	85%	
	12	Application for interim payment can be submitted when the following amount of programme contributions previously paid was spent as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d). [in EUR m] Amounts to be entered in the columns (C) and (D) of the Appendix 1 of the payment application	N/A	67.5	191.25	286.875	

### Example of information filled in the Appendix 1 of the Payment Application (Annex VI CIR 2011/2014)

- This example is based on the example in the previous table and assumes a programme that has a public calculation base.
- For each interim payment application the amounts indicated have to be filled in per priority and category of region, when applicable.

- The first tranche of programme contribution is included in the columns (A) and (B) of the first interim payment application (Interim 1). In columns (C) and (D) the state of play of the corresponding amounts paid by the FIs is included.
- In the subsequent interim payment applications (Interim A and B), the columns (C) and (D) are updated with the state of play of the corresponding amounts paid by the FIs.
- The interim payment application including the second tranche (Interim 2) can only be made when at least EUR 67.5m (60% of EUR 112.5m) were spent as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR (see example in previous table). The programme contribution is included in the columns (A) and (B) and the columns (C) and (D) are updated with the state of play of the corresponding amounts paid by the FIs.
- Likewise each next interim payment application contains updated columns (C) and (D) whereas columns (A) and (B) are updated when the interim payment application includes the third and fourth tranche of programme contribution (Interim 3 and 4).
- The interim payment application (Interim 5) submitted after the end of eligibility period (however concerning expenditure incurred during the eligibility period) indicates the additional contribution to FI of EUR 50 (Column A and B) and the corresponding expenditure pursuant to Article 42(1)(c) CPR (Column C and D).

	Programme contributions paid to FIs included in payment applications (cumulative)		Amounts paid as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR (cumulative)	
	(A)	(B)	(C)	(D)
	Total amount of programme contributions paid to FIs	Amount of corresponding public expenditure	Total amount of programme contributions effectively paid, or, in the case of guarantees, committed, as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) CPR	Amount of corresponding public expenditure
<b>Paym Appl Interim 1</b>	112.5	112.5	0	0
<b>Paym Appl Interim A</b>	112.5	112.5	50	50
<b>Paym Appl Interim B</b>	112.5	112.5	60	60
<b>Paym Appl Interim 2</b>	225	225	67.5	67.5
<b>Paym Appl Interim C</b>	225	225	90	90
<b>Paym Appl Interim 3</b>	337.5	337.5	191.25	191.25
<b>Paym Appl Interim D</b>	337.5	337.5	200	200
<b>Paym Appl Interim E</b>	337.5	337.5	250	250
<b>Paym Appl Interim 4</b>	450	450	286.875	268.875
<b>Paym Appl Interim F</b>	450	450	300	300
<b>Paym Appl Interim G</b>	450	450	450	450
<b>Paym Appl Interim 5</b>	500	500	500	500

**ANNEX 2: QUESTIONS AND ANSWERS****1. *What is the impact of suspension of payments on the payment flow between the MA and the body implementing FIs (beneficiary)?***

Provided that national authorities take the remedial actions required by the Commission within reasonable deadlines, suspension of payments by the Commission does not have an impact on payment flows between the MA and the beneficiary since the MA pays the contribution to the FI before inserting the related amount in a payment claim submitted to the Commission.

**2. *Does the national co-financing mentioned in Article 41(b) CPR refer to the co-financing at the level of operation or at the level of priority axis/measure (EAFRD)? What are the possible consequences for the FI from applying different co-financing rates by the MA at operation and at priority axis/measure (EAFRD) level?***

The national co-financing mentioned in Article 41(1) (b) CPR refers to the co-financing at the level of the FI or at the level of final recipients for expenditure in the meaning of points (a), (b) and (d) of Article 42(1) CPR.

Since the Commission reimburses to the Member State the amount resulting from applying the priority axis/measure co-financing rate to eligible expenditure included in the payment application, the following situations in FI operation may occur:

- a) If the proportion of national co-financing at the level of FI operation is higher than the proportion of national co-financing at the level of priority axis/measure, then the amount presented in the interim payment application (ESI Funds share paid into the fund plus national share "expected to be paid") is reimbursed to the Member State by ESI Funds at a lower level than its actual share in the FI operation (*the ESI Funds contribution paid by the MA to the FI is not fully reimbursed to the Member State*). For example, the FI operation presented in the example under Annex 1 is co-financed with ERDF at 80% and the co-financing rate of the corresponding priority axis is 60%. This would imply that MA pays to the FI the first ERDF share of EUR 90m (25% of 80% from EUR 450m). In the payment application submitted to the Commission the amount of EUR 112.5m is declared for the FI (EUR 90m ERDF share paid to the FI and EUR 22.5m of national co-financing expected to be paid to the FI). The Commission applies to the expenditure declared for the priority axis the co-financing rate of the priority axis and out of the amount reimbursed to the MS for the expenditure declared for the priority axis, EUR 67.5m (60% applied to EUR 112.5m) is reimbursed for the FI.
- b) On the contrary, if the proportion of national co-financing at the level of the FI operation is lower than the proportion of national co-financing at the level of priority axis/measure, then the amount presented in interim payment application (ESI Funds share paid into the fund plus national share "expected to be paid") is reimbursed by ESI Funds at a higher level than its actual share in the FI operation (*the ESI Funds contribution paid to the FI and even part of national co-financing are reimbursed*). For example, the FI operation presented in example under Annex 1 is co-financed by ERDF at 60% and the co-financing rate of the corresponding priority axis is 80%. This would imply that MA pays to the FI the first ERDF share of EUR 67.5m (25% of 60% of EUR 450m). In the payment application submitted to the Commission the amount of EUR 112.5m is declared for the FI (EUR 67.5m ERDF share paid to the FI and EUR 45m of national co-financing expected to be paid). The Commission applies to

the expenditure declared for the priority axis the co-financing rate of the priority axis and out of the amount reimbursed to the Member State EUR 90m (80% applied to EUR 112.5m) is reimbursed for the FI.

Neither of these situations have a direct impact on the liquidity of the FI. The ESI Funds contribution to the FI operation has to be paid to the FI in any case before being included in the payment application. The possibility of different co-financing rates gives the Member States a certain level of flexibility.

**3. *What information is required from the Fund manager as evidence that a certain level of implementation has been reached in order to allow for submission of payment requests to the MA?***

The declaration on eligible expenditure paid to the final recipient, committed in guarantee contracts or incurred for management costs or paid for management fees should be submitted by the fund manager to the MA. The frequency of payments and the need and scope of supporting documents should be agreed in the funding agreement signed between the MA and the body implementing the FI. The declaration by the fund manager submitted to the MA will serve as a basis for preparation of the information concerning FIs submitted together with payment applications and accounts to the Commission.

**4. *What information is required from the MA for the CA as evidence that a certain level of implementation has been reached?***

The MA has to provide information as set out in the Implementing Act for submission to the CA who then submits it to the Commission together with the payment application. The information will be prepared by the MA on the basis of the declaration provided by the fund manager as stipulated in the funding agreement (i.e. on the basis of evidence concerning amounts paid to final recipients and implementation).

**5. *Can the actual payments to the FI be organised in tranches different to the ones embedded in Article 41 CPR?***

The CPR regulates only the payment flow between the Member State and the Commission so it is not excluded that there might be different arrangements between the MA and the fund manager. Nevertheless, the starting point should be a similar tranching of payments into the fund, since any differentiation will require additional pre-financing by the Member State and thus has liquidity implications. It may also have consequences for management fees and costs due.

It may be justified, in certain cases and circumstances, to differentiate in order to reduce to an acceptable level risk of disruption in financial flows to the instrument and risk exposure of fund manager. The differentiation should however be tailored to the specific risks identified for the instrument and should be set up in a way that does not lead to management costs and fees that are not justified by speed of disbursement to final recipients.

In addition, the Commission would not see a justification for an increase in the first payment to a FI. Any differentiation would be linked rather to contractual commitments entered into with financial intermediaries linked to disbursements.

In all cases the arrangements for payments agreed in the funding agreement must be fully in line with the principle of sound financial management.

**6. *What happens if within the Fund of funds structure one of the FIs reaches or even exceeds the 85% threshold but at the level of the entire fund of fund this threshold is not yet reached because other FIs have slower implementation?***

The potential problems with underperforming FIs should be addressed through appropriate management of contributions from the fund of fund to the FIs and through contractual arrangements between them.

The potential residual risk of disruption in payments due to an underperforming FI should be assessed by the fund manager and, if justified, reflected in the negotiated payment schedule with the MA.

The thresholds of 60% and 85% apply to the amounts included in the previous applications for interim payment which were calculated in relation to ESIF programme contribution committed to the FI (the level of beneficiary).

In case of a FI implemented through a fund of funds the ESIF programme contribution to the FI is the ESIF programme contribution to the fund of funds. Therefore, the thresholds apply to the overall programme contribution at the level of the fund of funds.

**7. *What should be included in the payment applications in relation to FIs implemented pursuant to Article 38(4)(c) CPR?***

As regards FIs implemented pursuant to Article 38(4)(c) CPR the implementation of FIs takes place directly at the level of MA (or delegated intermediate body). There is no payment to the FI.

In accordance with the provisions of Article 41(2) CPR the application for payment should include payments to final recipients, and in the case of guarantees, resources committed for guarantee contracts.

In case of FIs implemented pursuant to Article 38(4)(c) CPR the annexes to the payment application and to the accounts showing the cumulative expenditure in final recipients should not be filled in.

**8. *What should be included in the payment application in case of combination of a FI with a grant?***

In the case of combination of a FI with a grant within a FI operation in accordance with Article 37(7) CPR, the grant elements (interest rate subsidy, guarantee fee subsidy, technical support) constitute an integral part of FI operation and expenditure related to these grant elements should be declared together with expenditure in final recipients pursuant to Article 42(1)(a) CPR.

In the case of combination of a FI with a grant outside the scope of Article 37 (7) CPR the grant support constitutes a separate operation with distinct eligible expenditure. The expenditure of the grant operation should be declared to the Commission according to the rules applicable to grants.

**9. *What is the procedure for withdrawal of payments made to FIs?***

As provided for in Article 10 CDR Member States and MAs may withdraw the contribution from an ESIF programme to the FI.

When the programme contributions were certified in previous accounts, the payment applications should reflect the withdrawals to contributions from programmes to the FIs supported by the ERDF, the ESF, the Cohesion Fund and the EMFF, in line with Article 10

CDR. These withdrawals, irrespective whether they occur as a result of the revised investment strategy (with reduced ESIF programme contribution) or result of irregularities detected during implementation of the FI, should be registered in the accounts prepared by the CA and disclosed in the appropriate appendixes of the accounts submitted to the Commission, in line with Annex VII CIR. The managing and certifying authorities should ensure an adequate audit trail supporting the adjustments made to payment applications in the context of the said Article 10, thus enabling the audit authority to draw valid conclusions from their sample of operations. This is particularly important when this sample is drawn more than once during the accounting year and/or stratification is applied to FIs. The financial corrections applied by the Member States to FIs should be in line with Article 143 CPR and Article 58 EAFRD 1306/2013 and take account of the Commission's guidance in this respect.

Three different situations may occur in relation to withdrawals of ESIF programme contribution from FI:

1. If the contribution from ESIF programme to the FI has not yet been included in an application for payment then this corresponds to a withdrawal that has no impact on payment application or on accounts. Such withdrawal (being result of a correction or a revised investment strategy) has to be, however, formally reflected in the modified funding agreement signed between the MA and the beneficiary.
2. If the contribution from ESIF programme to the FI has already been included in an application for payment but is not finally certified in the accounts, then the withdrawal will be reflected in the Appendix 1 of the next payment application and Appendix 6 of the accounts both cumulative from the start of the programme reflecting the reduced programme contribution paid to FI. Also in Appendix 8 of the accounts to explain the differences between the amount included in the final interim payment application and the one certified in the accounts
3. If the contribution from ESIF programme to the FI has been already included in the accounts then the following documents are affected:
  - Appendix 1 of the next payment application, which presents cumulative amounts, reflects the reduced programme contribution paid to FI,
  - Appendix 2 to the accounts which covers the amounts withdrawn from FI operation,
  - Appendix 6 to the accounts, which presents cumulative amounts, reflects the reduced programme contribution paid to FI,

**10. *How is the eligible expenditure in case of guarantees to be declared in view of provisions of Article 8 CDR?***

The eligible expenditure in the case of guarantees is the amount of ESIF programme contribution reflecting the ex-ante risk assessment which has been committed in guarantee contracts. This amount should correspond to the disbursed new loans or other risk sharing instruments, which are a multiple amount of the resources set aside. This implies that the CA should present to the Commission in Appendix 1 of Annex VI and Appendix 6 of Annex VII CIR part of the committed programme contribution which corresponds to the resources committed as guarantees for the new loans or other risk sharing instruments disbursed to final recipient.

**11. *How are the payments and tranches affected if the funding agreement is amended and subsequently the amount of programme contribution to the FI is increased?***

If the MA decides to increase the ESIF programme contribution to the FI it has to amend the funding agreement and pay an additional programme contribution to the FI. This additional payment to the FI may in accordance with Article 41(a) CPR trigger a payment application

for up to 25% of the additional committed amount (the difference between the total amount committed in the modified funding agreement and the amount committed in the initial funding agreement). In the same payment application the amount of programme contributions paid to the FI presented cumulatively in column A and B in Appendix 1 of Annex VI CIR has to be increased. With the next payment application the basis for calculating the maximum next tranche (25%) will be the total increased commitment in the funding agreement. For the calculation of the progress in implementation under Article 41(c)(ii) CPR, needed to justify the next payment application, the total amount included in the previous applications (including the application for payment of 25% of the additional commitment) should be taken into account.

