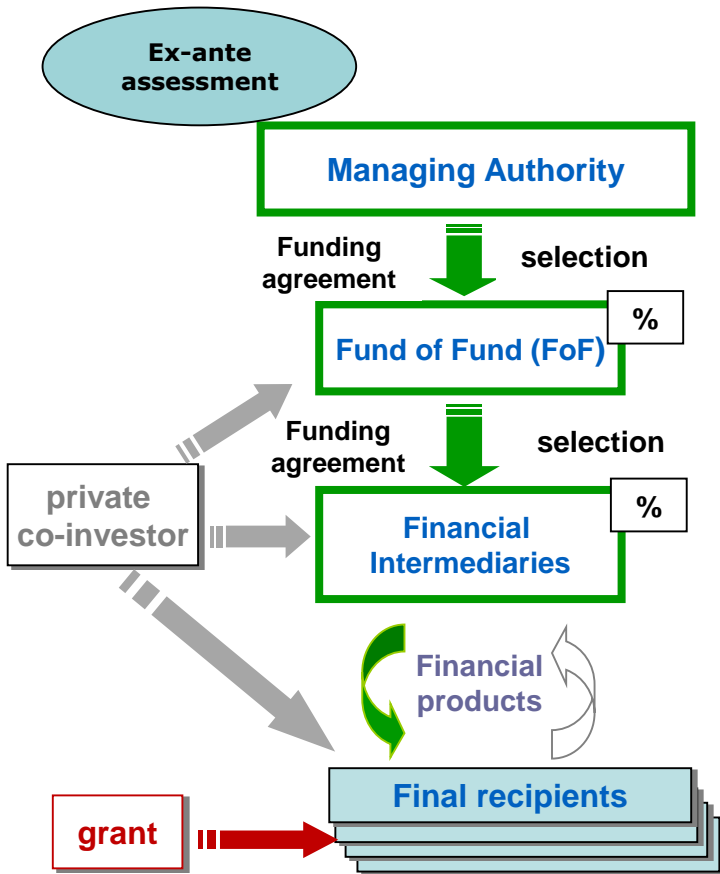


Financial instruments - Commission guidance notes (and new off the shelf instruments)

Warsaw, 8 March 2016

Hanna Dudka, Robert Pernetta
European Commission, DG REGIO

FIs life cycle - guidance



1. Ex-ante assessment*
2. MA decision to set up FI (implementation option*)
3. Selection* of a body implementing FI
4. Signature of funding agreement
5. ESIF programme contribution (payments*)
6. Implementation, e.g.
 - Investments in final recipients (eligibility*)
 - Management costs and fees*
 - Treasury management*
 - Preferential remuneration of private investor*
 - Combination grant + FI*
 - State aid *
 - ...
7. Reporting and monitoring*
8. Winding up

* Guidance note completed or in preparation

Guidance notes: state of play

(notes in today's presentation are marked in bold)

Finalised

- Short guide for MA
- Glossary
- Ex-ante assessment
- Working capital
- **Payments**
- **Management costs and fees**
- **Combination of support**
- **Treasury management**
- **ESIF/EFSI (brochure)**

Forthcoming guidance

- **Selection of bodies implementing FIs**
- **Preferential remuneration of private investor**
- Implementation options
- Eligibility in FIs
- Reporting on FIs
- State aid

"Off the shelf" instruments

- Referred to in Article 38(3)(a)
- Contain standard terms and conditions of a particular instrument
- Are optional
- Adopted as Annex to Regulation (No 964/2014)– available in all EU languages
- 3 "off the shelf" instruments adopted in 2014
- **2 new "of the shelf" instruments" to be adopted soon**

"Off the shelf "instruments (OTS)(1)

Existing OTS

(Commission Implementing Regulation (EU) No 964/2014)

- Loan for SMEs based on a portfolio risk sharing loan model (Risk Sharing Loan)
- Guarantee for SMEs (partial first loss portfolio, capped guarantee)
- Renovation Loan (energy efficiency/renewable energies) based on a Risk sharing loan model

New OTS

soon to be adopted

- Equity fund (co-investment facility) for SMEs
- Urban Development Fund – a loan fund

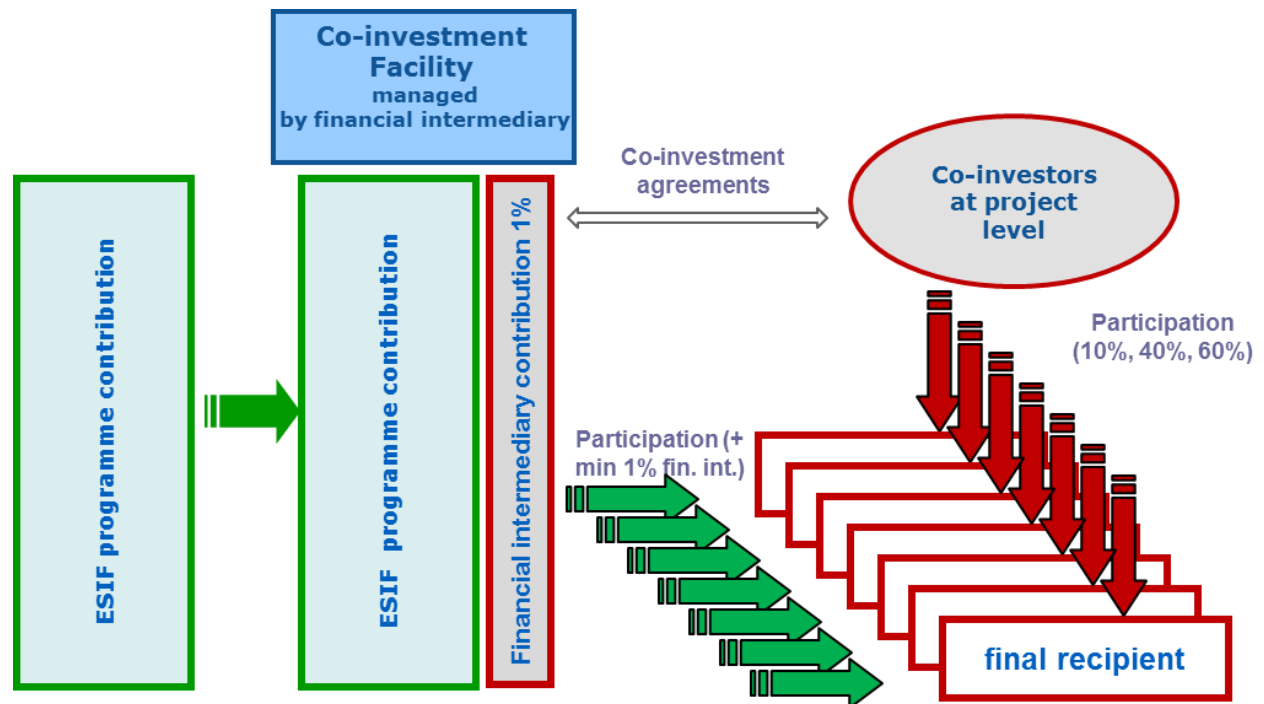
"Off the shelf "instruments (OTS)(2)

Co-Investment facility (equity)

It takes the form of
an **equity fund**

It will attract
additional
investments in SMEs
from private co-
investors on a **deal
by deal basis**

Maximum total
amount of
investment: 15 m€
per final recipient



"Off the shelf "instruments (OTS)(3)

Urban Development Fund

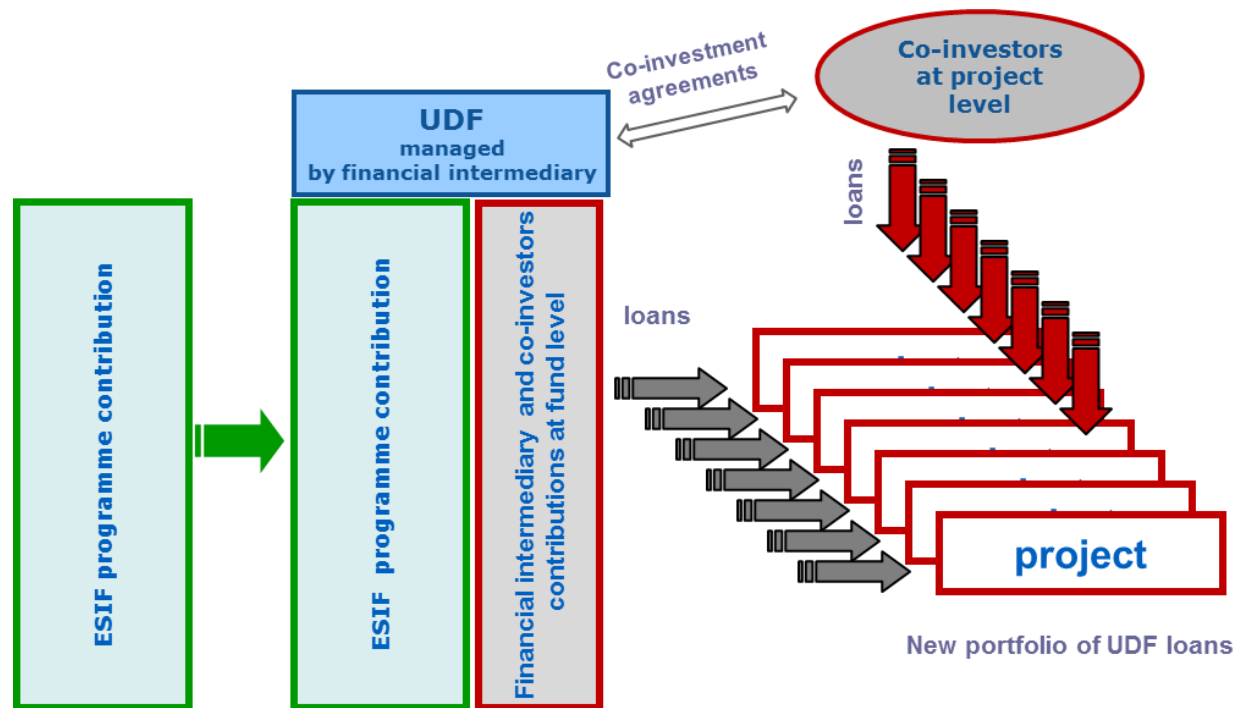
It takes the form of a loan fund

Private **co-investment of at least 30% of the loan fund**

(including the financial intermediary's co-financing)

UDF will finance **urban development projects in assisted areas**.

Maximum total amount 20 m€ per urban development project



2014-2020 Commission guidance Combination (1)

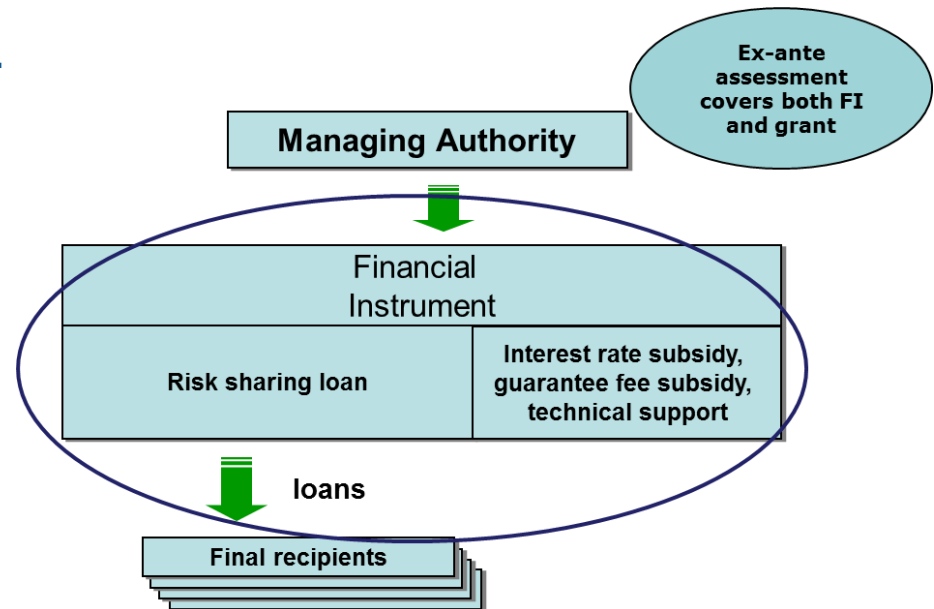
- **Two types of combination** - the legal framework contains explicit provisions - CPR 37(7)(8)(9)
- The two types of combinations are envisaged also in Financial Regulation:
 - Combination of a grant and a FI within a **financial instrument operation**
 - **Combination at the level of final recipient within two operations**

2014-2020 Commission guidance

Combination (2)

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

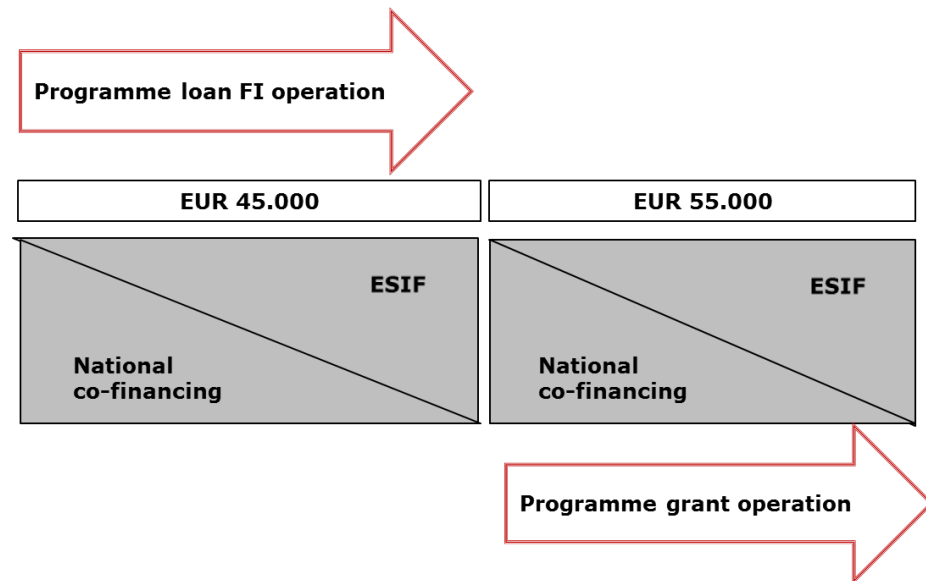
1. Grant is **directly related to financial instrument** targeting the same final recipients (interest rate subsidy, guarantee fee subsidy, technical support). **It is NOT a grant for the investment in final recipient.**
2. Grant and financial instrument constitute a **single FI operation** and is financed 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 investment**. The same entity receives support from a grant and from a FI. Combination **can cover 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

Phased payments (1)

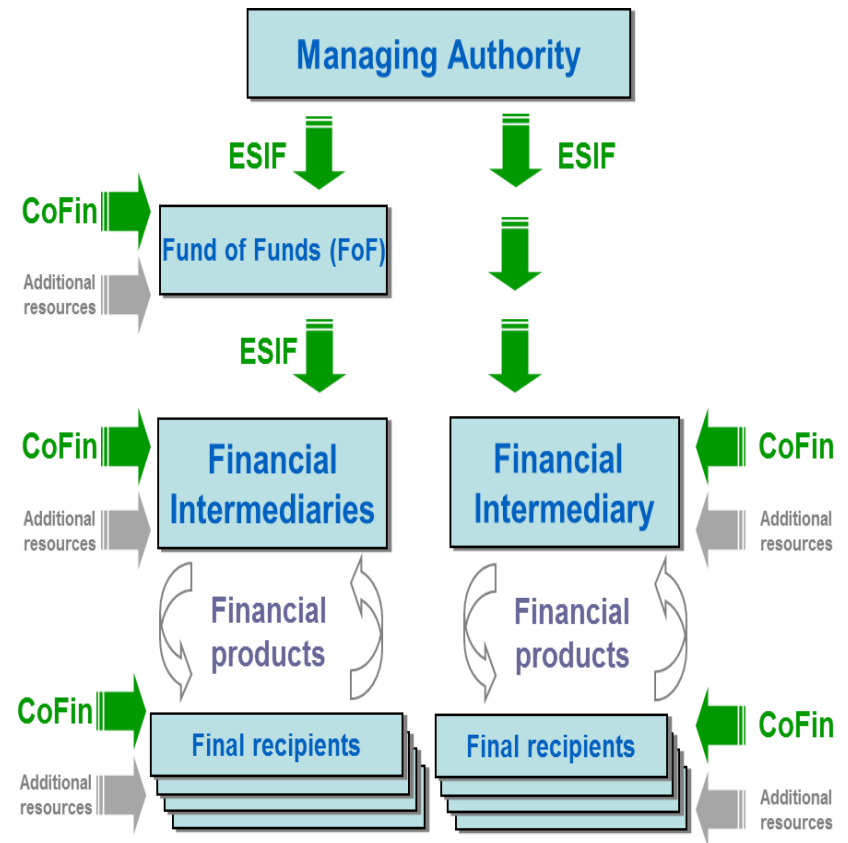
Main concepts:

1. 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 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**

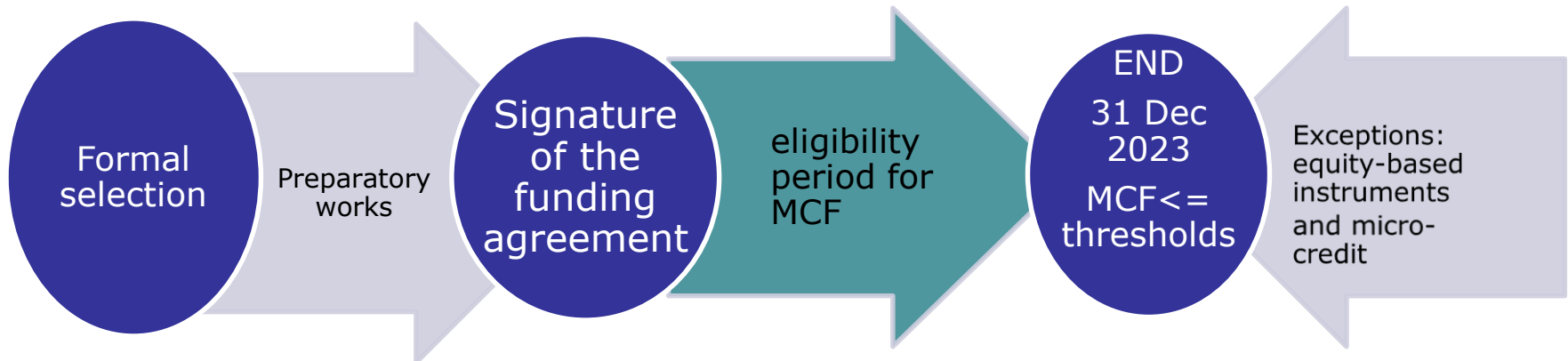
Applicability!

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

2014-2020 Commission guidance

Management Costs and Fees/MCF (1)

Eligibility period



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

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 (3)

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 revolving funds or from own resources (but state aid rules apply)

2014-2020 Commission guidance Treasury management (1)

- **Relevant only** to the ESIF support paid into the FoF and FI but not yet invested in final recipients (*not relevant under direct implementation of FIs by MA– Article 38(4)(c)*)
- 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 ESIF programme) resources;
 - should be used until the end of the eligibility period for the same purposes (either within the same FI, or if wound up - in another FI or form of support, in line with the objectives of the priority axis / measure)

2014-2020 Commission guidance Treasury management (2)

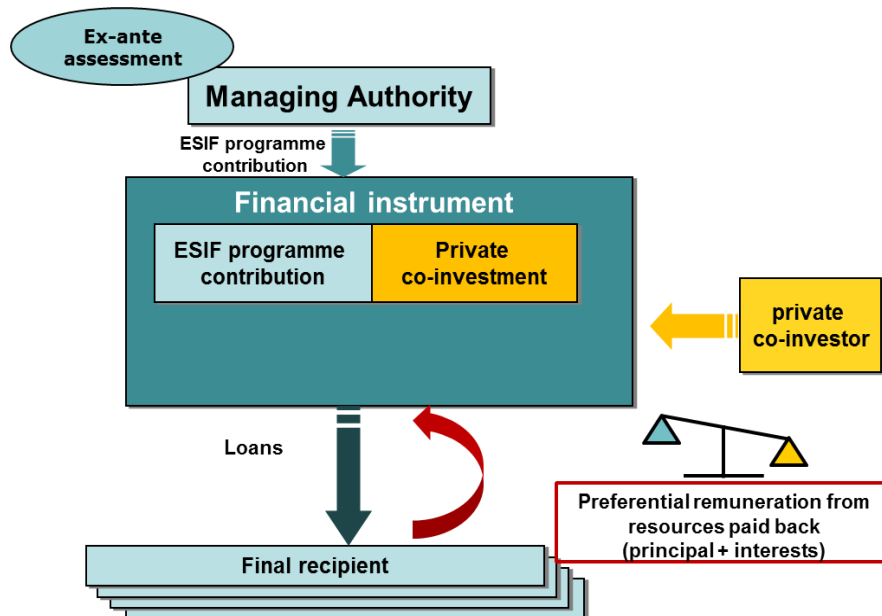
- Within the same FI, it is recommended that the use of gains should **"mirror"** the use of the initial ESIF contribution:
 - by being added to the capital of the fund and used for investments in FR, and
 - being used to cover a proportionate share of the MCF
- The interest and other gains used in accordance with Article 43 are **not eligible** expenditure at closure.
- **Reporting**
 - FI/MA – reporting modalities to be part of the Funding Agreement; MA to ensure that adequate records of the use of gains are maintained (Art 43(3))
 - MA/COM – MA to send information on gains generated from the ESI Funds support in annual reporting on FI (Article 46(2)(g) CPR)

2014-2020 Commission guidance

Preferential remuneration of private investor

Purpose of the guidance note:

- to explain the concept of preferential remuneration and its use in the context of ESIF FIs
- **NOT** to provide guidance on establishing a particular need or level of preferential remuneration.



Main considerations

- the presence of private co-investors is desired in ESIF FIs;
- to attract private investor there might be a need for a specific incentive, (in terms of higher profit or lower risk) which constitutes "preferential remuneration";
- this incentive is not paid from the initial ESIF programme contribution but from resources paid back;
- need and level of preferential remuneration in ex-ante assessment;
- since public resources are concerned State aid considerations are relevant.

2014-2020 Commission guidance

Selection of body implementing FI

- Guidance in finalisation
- Concerns selection of FoF managers and financial intermediaries
- Body implementing FI is a service provider (remunerated for that task)

Key principle applicable to selection

- Public procurement rules and principles apply
- No general derogation for the selection of bodies implementing FIs

Situations falling outside public procurement rules:

- EIB and EIF
- International Financial Institutions
- In-house entities
- Inter Administrative Cooperation

Selection of intermediate body

2014-2020 Commission guidance

ESI Funds & EFSI - brochure on complementarities (1)

European Fund for Strategic Investment (EFSI) features:

- The Investment Plan for Europe is based on three pillars – first pillar is EFSI
- EFSI support will take the form of financial instruments (**no grant support**)
- EFSI has its own governance: **Steering Board** and **Investment Committee**
- EFSI has **no geographical or sectorial** allocations
- EFSI is **State aid free**
- EFSI, through EIB and EIF, will support **high risk** profile projects or projects bringing **additionality**

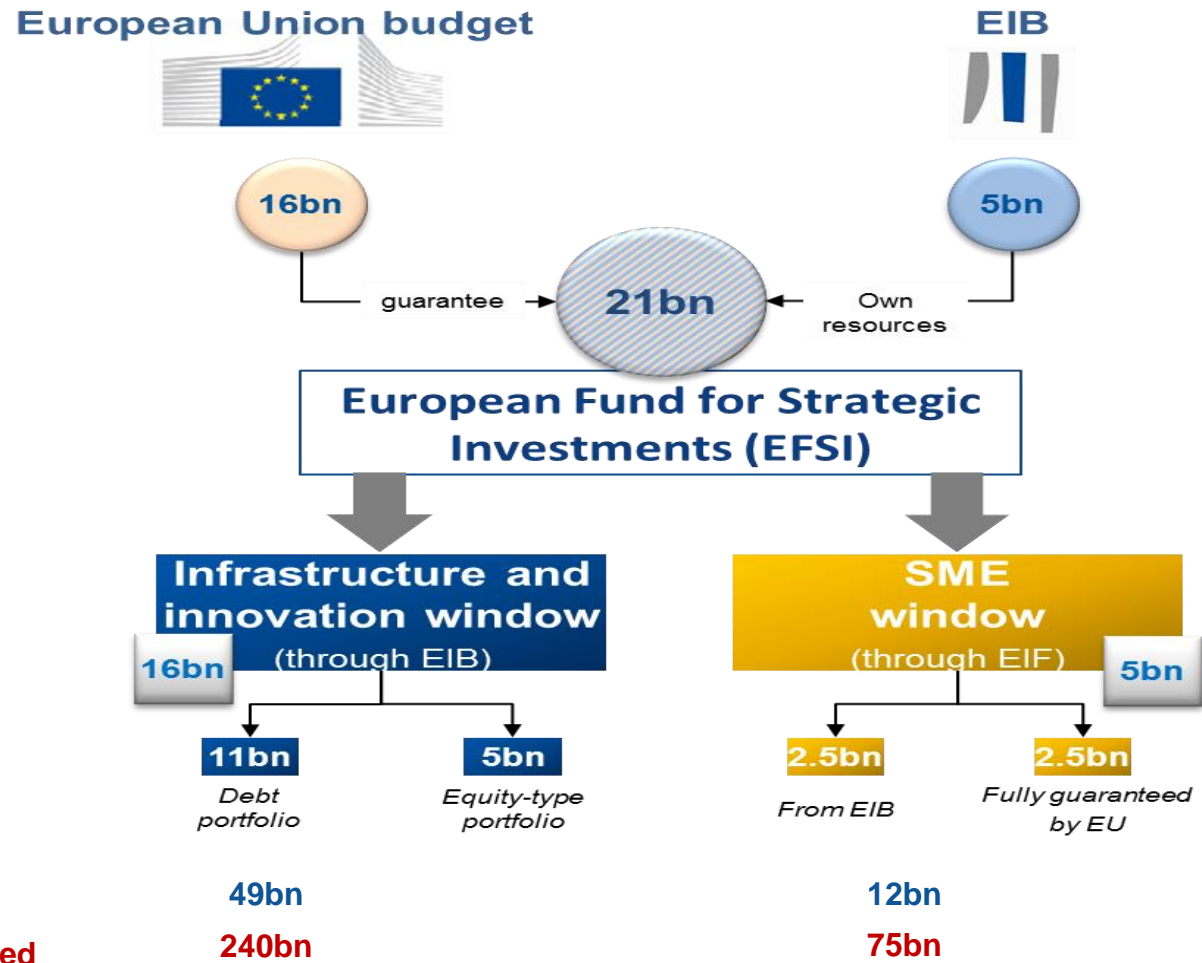
2014-2020 Commission guidance

ESI Funds & EFSI - brochure on complementarities (2)

Amounts available under ESIF and EFSI?

- **ESI Funds** are some **EUR 450 bn**
- **EFSI** shall mobilise **EUR 315 bn** in 3 years (15x leverage), under an EU guarantee of EUR 16 & EIB own contribution of EUR 5 bn, implemented via two components:
 - an Infrastructure and Innovation Window through EIB to support investments of EUR 240 bn
 - an SME window through EIF to support investments of EUR 75 bn

EFSI - structure and investment target



2014-2020 Commission guidance

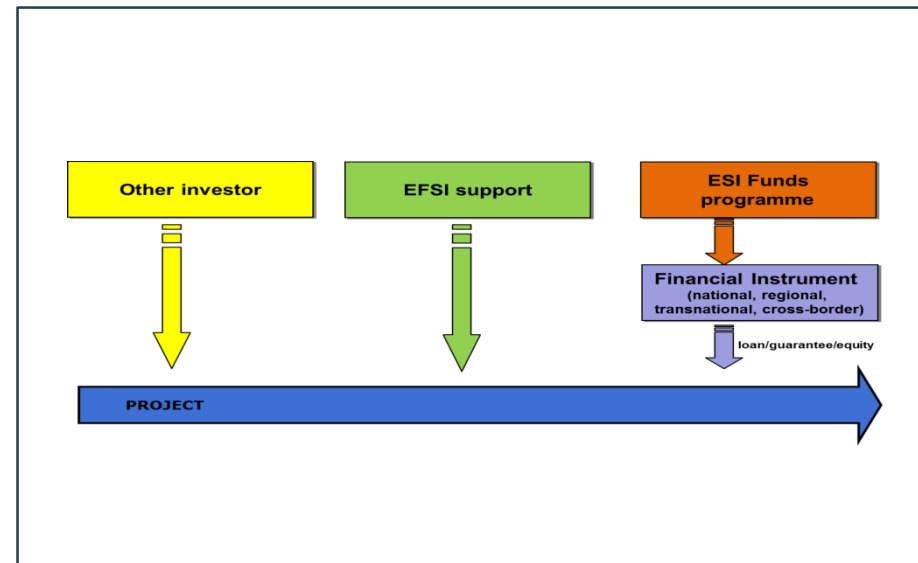
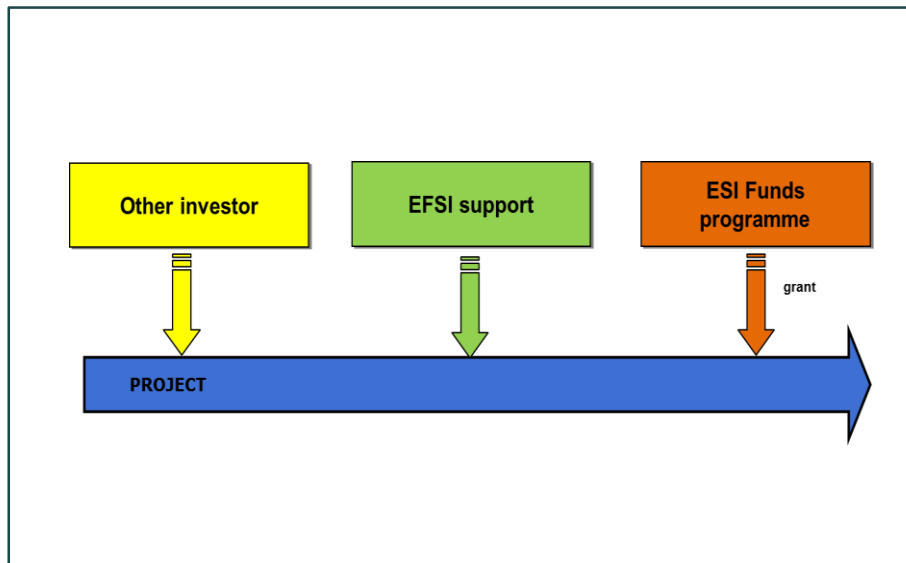
ESI Funds & EFSI - brochure on complementarities (3)

ESIF-EFSI complementarities:

- Legal bases of both ESIF and EFSI allow for contributions to support each other's objectives (**complementarity element**)
- Their **combination** is possible: at **project** level, **financial instrument** level and through **investment platforms**
- Implementation process has to respect applicable rules (**CPR vs EFSI Regulation**)
- **State aid rules** apply on a case-by-case basis

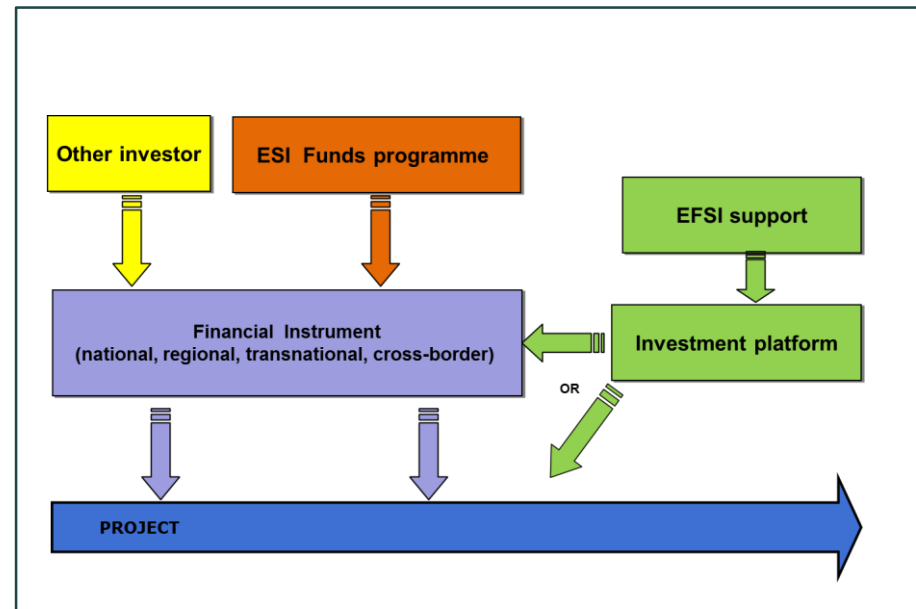
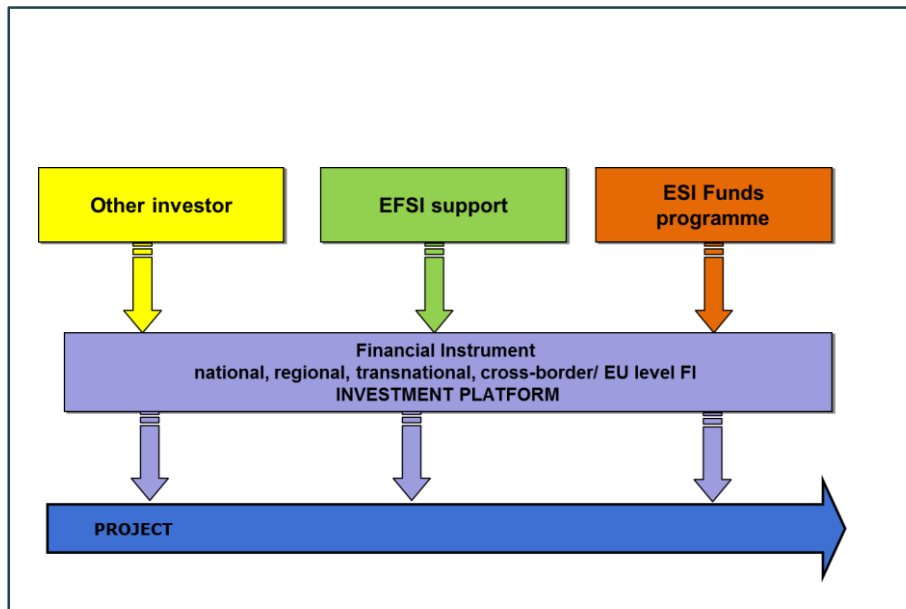
2014-2020 Commission guidance ESI Funds & EFSI - brochure on complementarities (4)

Models for combination of funds at project level



2014-2020 Commission guidance ESI Funds & EFSI - brochure on complementarities (5)

**Models for combination of funds at FI level/at project level
(through an investment platform)**



Thank you!

Q&A

Back-up slides

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

2014-2020 Commission guidance

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?

A: 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.

2014-2020 Commission guidance

Phased payments (2)

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?

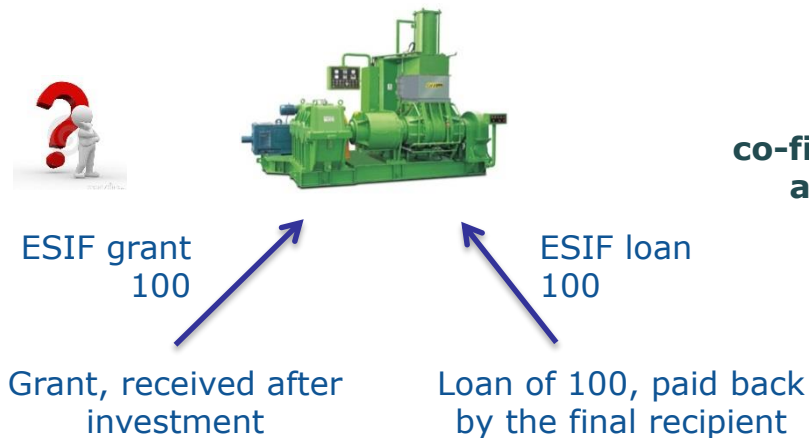
The MA has to amend the funding agreement and pay an additional programme contribution to the FI. This additional payment to the FI may trigger a payment application for up to 25% of the additional committed amount. For the calculation of the maximum next tranche, the total increased commitment should 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 (4)

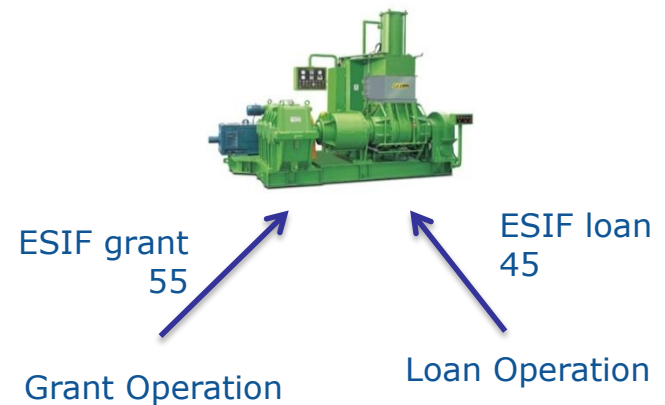
Combination at the level of final recipient within two operations

Investment: 100



co-financing rate
at PA 50%

Investment: 100



- Not allowed by the Regulation** (see above)
 - Even if no over-financing with ESIF** (because of the 50% co-financing rate)
- 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**

2014-2020 Commission guidance

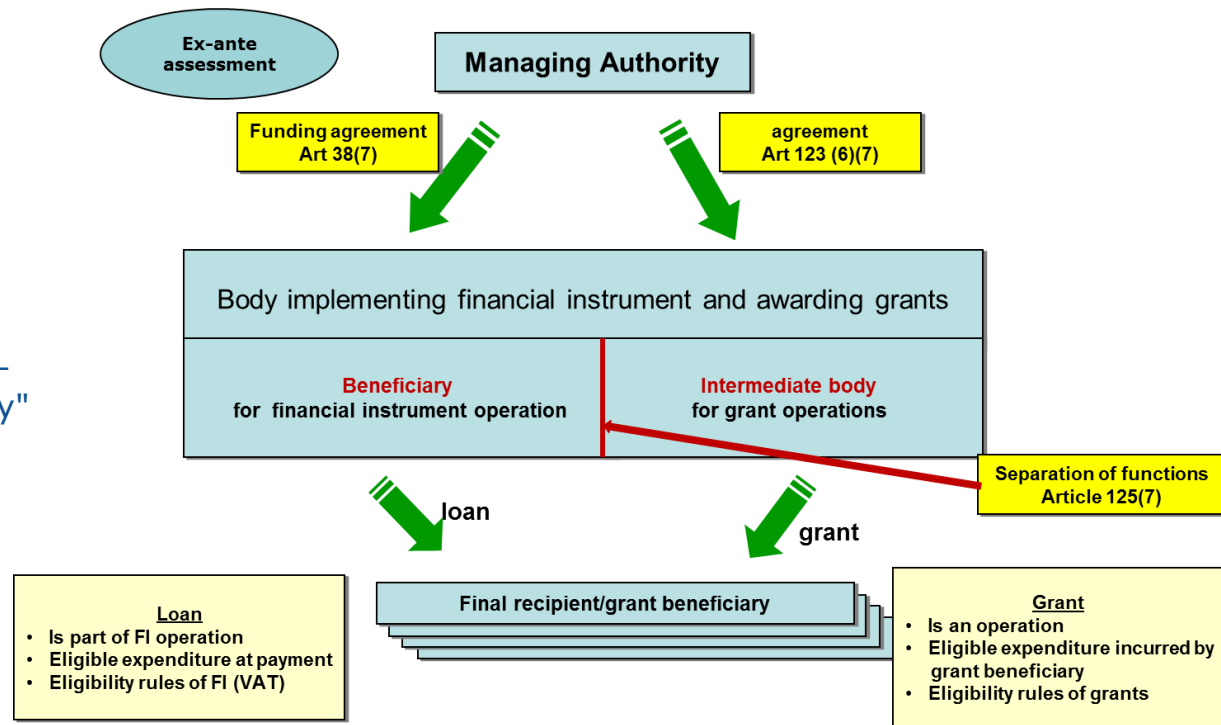
Combination (5)

Combination at the level of final recipient within two operations

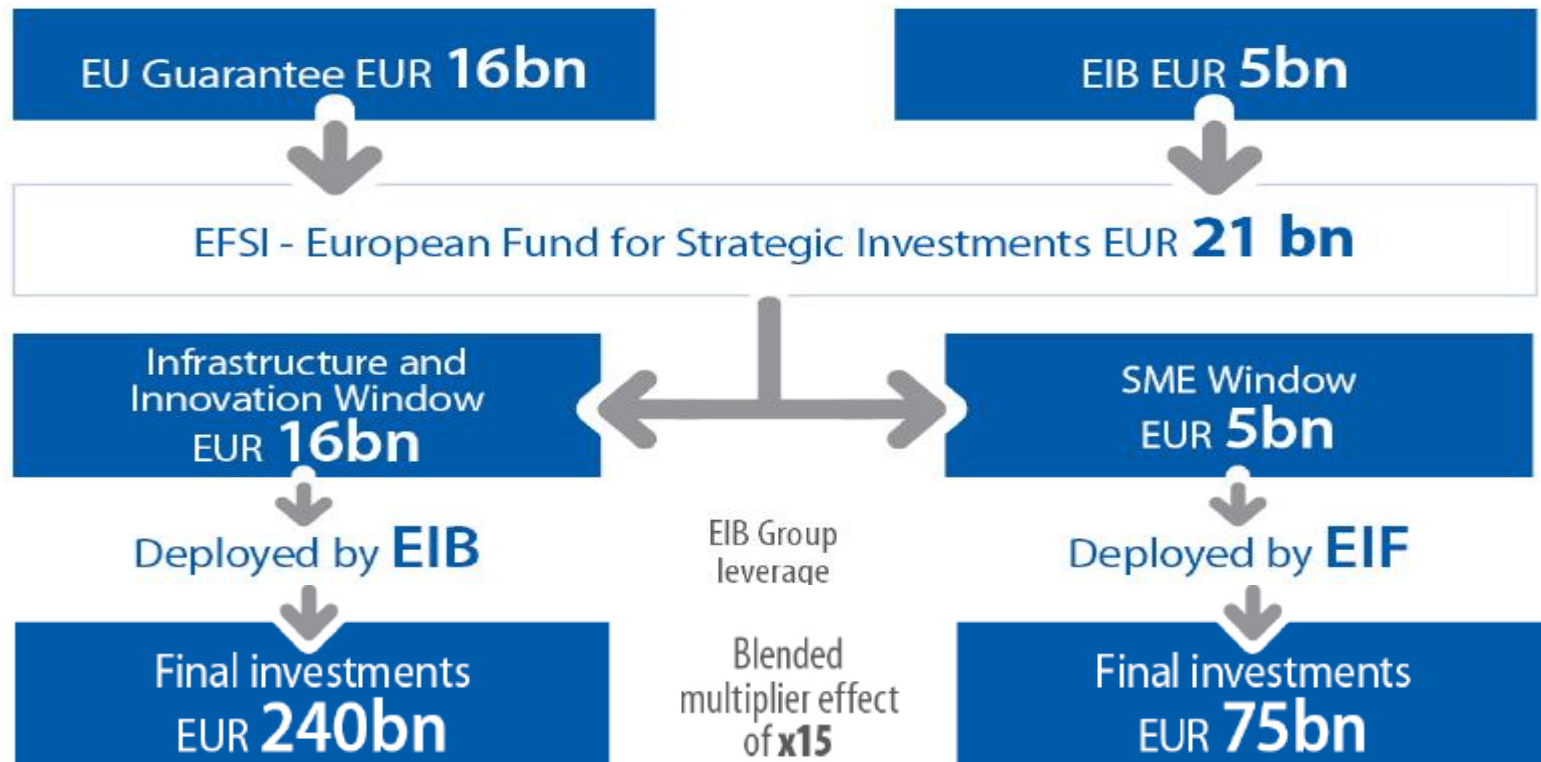
In **combination within two operations** loan and grant can be given:

- **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 ESIF/EFSI (brochure)



2014-2020 Commission guidance

Selection of body implementing FI (2)

Situations falling outside public procurement rules

1. EIB and EIF

- direct award of a contract from MA to EIB/EIF possible
- selection of financial intermediaries by EIB/EIF – EIB/EIF rules on selection apply, Article 7 CDR applies

2. International Financial Institution (IFI)

- direct award of a contract from MA to an IFI is possible if:
 - the MS is member of the IFI
 - implementation of Financial instruments falls within the scope of the statutory mission of the IFI
 - IFI fulfils the criteria of Article 7 DA
- selection of financial intermediaries by IFI – IFI rules on selection apply, Article 7 CDR applies

2014-2020 Commission guidance

Selection of body implementing FI (3)

4. In-house entities

- Conditions according to Case law - *before transposition of Dir. 2014/24/EU or before 18.04.2016*
- Article 12 of Directive 2014/24/EU - *after transposition of Dir. 2014/24/EU or after 18.04.2016*

conditions concern: ownership, control and execution of essential part of activities

- in house entity has to fulfil the criteria of Article 7 DA
- selection of financial intermediaries by in-house entity: if in-house entity is a contracting authority, application of public procurement rules and principles, Article 7 CDR applies

2014-2020 Commission guidance

Selection of body implementing FI (4)

4. Inter Administrative Cooperation

- Conditions according to Case law - *before transposition of Dir. 2014/24/EU or before 18.04.2016*
- Article 12(4) of Directive 2014/24/EU - *after transposition of Dir. 2014/24/EU or after 18.04.2016*

conditions concern inter alia: pursuit of objectives in the public interest, limit on activities on open market

- entrusted contracting authority has to fulfil the criteria of Article 7 DA
- selection of financial intermediaries by entrusted authority: application of public procurement rules and principles or **entrustment**, Article 7 CDR applies

5. Selection of intermediate body

- Selection of IB is subject to public procurement rules and principles (if public service contract)
- Written arrangements between MA and IB
- The IB will select the body implementing the FI according to the procedure³⁷ applicable (e.g. in house)