MS comments on the guidance note on ex-ante assessment following EGESIF presentation on 17 December 2014

N°	MS	MS comment	COM reply
1)	CZ	*"The ex-ante assessment needs to be completed before any programme contribution is made (i) for the setting up of a new FI or (ii) the continuation of an existing FI "* [1] *It is highlighted that even if the decision is for the continuation of an existing financial instrument which would receive additional OP resources from 2014-2020, compliance with public procurement and state aid rules needs to be ensured.* Q: Does footnote two mean that the FI from 2007-2013 period may continue in 2014-2020 period with new ESIF allocation only if the "manager of the FI" is selected again in compliance with the public procurement rules and state aid assessment is also done again?	As a general rule, the managing authorities, the bodies implementing funds of funds and the bodies implementing FIs shall comply with applicable law, in particular on State aid and public procurement. It is the responsibility of the referred entities to assess its applicability. Contracting authorities, as defined in EU/national public procurement law, shall award public contracts in accordance with those rules. The applicable Union State aid rules shall be those in force at the time when the managing authority or the body that implements the fund of funds contractually commits programme contributions to a FI, or when the FI contractually commits programme contributions to final recipients, as applicable.
2)	CZ	*"Needs to justify the contribution of OP resources to each new or existing FI (including EU level FIs). Nonetheless, if more than one FI is to be launched at same time, the work can be combined in one ex-ante assessment as long as it includes different bundles of assessments taking into account of the specificities of the OP in question. If the managing authority wishes to launch at a later stage a new FI, it must be based on a new or updated ex-ante assessment;"* Q: Would the Commission specify the "different bundles of assessments taking into account the specificities of the OP in question"?	Each managing authority based on ex-ante assessment decides to make an OP contribution to a FI. If, for instance, one ex-ante assessment covers the entire territory of a country and all types of investment priorities it is necessary that for each OP the respective analysis (for e.g. in terms of investment priorities, geographical area) is distinguished within the entire ex-ante assessment report. **Guidance amended.**

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3)	CZ	*"The following reasons justify the need for a thorough ex-ante assessment for financial instruments, <u>to be carried out by a competent specialist:</u>* • *Financial instruments offer a variety of intervention possibilities which can be adapted to the intervention need and thus are more complex in their design than traditional grants.* • *Their implementation requires a relatively higher initial investment in a delivery infrastructure involving, e.g. fund of funds, financial intermediaries.* • *They support economic activities closer to the market, where a possible distortion by inappropriate public intervention would especially be undesirable. Moreover, because of their leverage effect, their distortion potential can be multiplied.* • *They require specific know-how about financial markets and products <u>which is certainly not one of the core competencies of the public administration.</u>* • *The experience from the programming period 2007-2013 shows that in several cases, over-dimensioned financial instruments were set up which now leads to absorption issues."* Q: Above, the guidance enables a MA to carry out the ex-ante assessment itself or outsource it. Here, is it implied that the ex-ante	A competent specialist might be also an employee(s) of the managing authority even if the know-how about financial markets and products may not be a core competence of this managing authority. **Guidance amended.**

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		assessment should be rather outsourced? E.g. bullet point 4 almost directly implies it…	
4)	CZ	*"It has to be underlined that in the case of FIs the beneficiary is the body that implements the funds of funds or the financial instrument, as appropriate, whereas for grants, in the context of State Aid schemes, the beneficiary is the body that receives the aid. In any case, grant award decisions should also be based on a thorough assessment of the relevant project application according to the programme's established project selection procedures and taking into account factors such as the need for the project, the assessment of its added value, lessons learnt from similar projects and expected results."* Q: Would the Commission kindly include "financial intermediary" in the definition or alternatively demonstrate the relation of a body that implements the financial instrument and a financial intermediary?	Please refer to "glossary guidance fiche".
5)	CZ	*"If it takes place in parallel to the preparation of the OP then it can be expected that the content of the OP will be directly impacted by the ex-ante assessment(s)."* Q: What is the implication of the statement for a MA? Does the MA have to include e.g. summary findings of the ex-ante assessment in an updated version of the OP?	There is no requirement to include a summary of the ex-ante assessment in the revised version of the programme. The managing authority should be careful when putting any details on FIs into the multiannual programmes bearing in mind that ex-ante assessment may need to be revised.

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6)	CZ	*"In addition, it may be subject to audit given its legally binding content."* Q: Just to make sure, may be subject to audit or should be subject to audit? We kindly ask for more explanatory wording.	'May' means that it can be potentially subject to an audit and that the ex-ante assessment may be within the scope of that audit which could be carried out by any EU or national/regional level audit bodies. **Guidance amended.**
7)	CZ	*"The quality control and approval of the ex-ante assessment is the responsibility of the managing authority. It will therefore not be subject to the Commission's approval. The regulation provides that the ex-ante assessment shall be submitted to the monitoring committee for information and the managing authority is encouraged to ask the monitoring committee members for input and feedback. Regarding such a specific topic, it is recommended that the monitoring committee should include private sector representatives involved, for instance, in SMEs access to finance (e.g. banking sector, microfinance, venture & risk capital representatives, as well as business angels or business associations, etc.).* *The monitoring committee should stimulate the ex-ante discussion with the main organisations involved, with the purpose to reach a common vision on the ex-ante. The summary, findings and conclusions of the ex-ante should also be published within three months from their date of finalisation."* Q: Would it be enough that the MA will – itself or via outsourced specialist – involve the relevant partners in the course of the	The monitoring committee referred to in Article 37(3) is the place where the partnership principle materialises. It is not reasonable to expect that all the relevant partners will be involved in the process of preparation of ex-ante assessment. It could for example be the case that specialists/key stakeholders from the partnership are involved in a steering group set up to follow the process of preparing the ex-ante assessment. This is up to the managing authority to decide.

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		elaboration of the ex-ante assessment? MA may include them in the MC, but it may cause unnecessary overlaps when the already involved partners would provide similar feedback during MCs. Selection of FI-specialized members of MCs through transparent process may also be additional burden to MAs.	
8)	CZ	*"The managing authority could also consider setting up a governance process for the ex-ante assessment whereby relevant members of the partnership participate in a steering group for the ex-ante assessment."* Q: Does it refer to "steering committee" defined by CPR in article 108 or to a distinct body set up for the sake of ex-ante assessment? We ask for clarification.	Steering group means here a subgroup set up to follow the process of preparing the ex-ante assessment and is not linked to any definition in the CPR. The steering committee referred to in CPR 108 is a steering committee in the context of the Joint Action Plan only.
9)	PL	*Content: Regulatory reference**(s)*** Q: general remark: ESI Fund Guidance on FI does not include information on an ex-ante risk assessment (Article 8 of the Delegated Regulation (EU) No 480/2014). Although an ex-ante risk assessment is not the same as the ex-ante assessment, it should be stated that an ex-ante risk assessment might be a part of the latter. The risk analysis for guarantee products might be run within the ex-ante assessment and it is not necessary to carry out a separate risk	The ex-ante risk assessment referred to under Article 42(1)(b) CPR in relation to guarantee products should be established for the specific guarantee product. The ex-ante assessment should assess the expected leverage which will have impact on the multiplier ratio to be established by the ex-ante risk assessment. The ex-ante risk assessment should be normally established in the process of setting up the FI and reconfirmed in the funding agreement signed between the managing authority (or Fund of

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		study for each guarantee product. The role of monitoring committee in case of ex-ante risk assessments for guarantees should be also clarified.	Funds) and the financial intermediary. The CPR does not foresee any role for the monitoring committee for ex-ante risk assessment.
10	PL	"*Experience of the 2007-2013 programming period showed that decisions to set up financial instruments were not always made on this basis, because there was no legal requirement for that, leading in some cases to problems with disbursements, 'parking of funds' and over allocation of resources to financial instruments."* Q: Poland suggest adding: "because there was no legal requirement for that" and "in some cases"	Articles 43 and 44 of Regulation 1828/2006 refer to business plans, investment strategies and even evaluation of gaps by the holding fund. In addition, there was already a reference to this in the last paragraph of section 2 "*Finally, it has to be underlined that some of the requirements of Article 37(2) are not entirely new*[1]*, but, for 2014-2020 they are reorganised and completed in the CPR."* *2 Legal provisions for 2007-2013 foresee that the funding agreement needs to include investment strategy and planning (article 43(3)(a) of Reg. 1828/2006)* *The business plan (Article 43(2) of Regulation No 1828/2006 until the amendment by Regulation No 846/2009) would have to include at least (a) the targeted market of enterprises or urban projects and the criteria, terms and conditions for financing them; (b) the operational budget of the financial engineering instrument; (c) the ownership of the financial engineering instrument; (d) the co-financing partners or shareholders; (g) the justification for, and intended use of, the contribution from the Structural Funds;* *Evaluation of gaps between demand and supply – Article 44(1)(a) of Regulation No 1828/2006: as regards financial engineering instruments supporting enterprises, primarily SMEs, including micro-enterprises, the conclusions of an evaluation of gaps between supply of such instruments, and demand for such instruments;"* **Guidance amended.**
11	PL	*"The ex-ante assessment needs to be completed before any programme contribution is **made (i) for the setting up of a new financial instrument or (ii) the continuation of an existing***	Article 38(3)(b) provides for the possibility of contribution by the managing authority to the already existing financial instrument. COM will replace "continuation of an existing financial instrument "

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		financial instrument *"* *Q:* The wording is not consistent with art. 37(2) of the CPR which states that the ex ante assessment should be completed before the managing authority **decides** to make programme contributions to a financial instrument and with art. 38 of the CPR, especially art. 38(4), which does not say anything about the continuation of existing financial instrument. Perhaps it should be changed for "investing in the capital of an existing financial instrument". The wording "continuation of an existing financial instrument" raises many problems such as: which rules should apply to which resources, how to ensure consistence with public procurement rules etc. It should also be added that the MA may decide to undertake implementation tasks directly.	by "contribution to an existing financial instrument" **Guidance amended.**
12	PL	**"*4. Practice and examples from 2007-2013 experience"*** Q: This point concentrates merely on the number of evaluations made by the EC and EIB in the past and has little relevance to ex ante assessment for 2014-2020. Therefore with no harm to the overall text the point might be deleted.	The purpose of this section in the note is to provide links, where available, to relevant examples. This is intended to be helpful to managing authorities and other stakeholders by providing practical examples / experience of the relevant legal point(s) covered. At the moment the Commission intends to include such a section in most of the guidance notes; however, we may in the future consider removal or a link to the fi-compass website.
13	PL	**"*It has to be underlined that the JEREMIE and JESSICA studies are not the same as the ex-ante assessment*** *to be carried out*	Yes, there are a number of questions which recall information given in the text. Nonetheless, despite the main body of the text

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		under Article 37(2) of the CPR; however, managing authorities can judge their relevance as a source of information for the performance of the ex-ante assessment." Q: This information is covered by an answer to question (n) in the Annex	having been made available through e.g. the short guide to managing authorities, DG REGIO has received such specific questions and therefore includes them in the Q&A. This will also be useful in the event that a Q&A search-engine is included in the fi-compass
14	PL	"*It is expected that the entire process of ex-ante assessment (preparation - discussion in monitoring committee - decision by managing authorities) will raise awareness and ensure better and stronger ownership of the financial instruments operation by managing authorities. It has to be borne in mind that the body implementing <u>the fund of funds or the financial instrument, as appropriate</u>, is only a beneficiary*[2] *in the logic of the OP and that all the relevant management tasks and the final responsibility stay with the managing authority, therefore it is important that managing authorities understand well the findings and conclusions of the ex-ante assessment."* *Q: Poland suggests adding:* <u>the fund of funds or the financial instrument, as appropriate</u>	**Guidance amended.**
15	Pl	*"The ex-ante assessment of the financial instrument is to be discussed in the context of the monitoring committee and must be completed before the managing authority decides to make programme contributions to a financial instrument. If it takes*	The wording of Article 37(3) CPR "for information purposes" implies that ex- ante assessment does not need to be approved by the monitoring committee. Since under Article 110(1)(i) CPR financial instruments have to be examined by the monitoring

[2] Article 2(10) of the CPR.

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		place in parallel to the preparation of the OP then it can be expected that the content of the OP will be directly impacted by the ex-ante assessment(s)." Q: Art. 37(3) of the CPR states that "the ex ante assessment shall be submitted to the monitoring committee for information purposes" not for the discussion. It might be recommended to have the ex ante assessment discussed by the monitoring committee as a good practice, but this is not a legal requirement from the CPR. Therefore the wording should be changed accordingly.	committee in COM view ex-ante assessment should undergo such examination and discussion, similarly and as expected for any other document submitted to the monitoring committee. COM replaced "is to be discussed" by "should be discussed". **Guidance amended.**
16	PL	"*Yes, the ex-ante assessment is also required when financial instruments, funded by previous programme contribution, are currently in place and are expected to receive additional funding. "* *Q:* But the decision should be made on the findings of the ex ante assessment, not before.	The decision on making a programme contribution from programme to an existing financial instrument or to newly created financial instrument (as follows from Article 38(3)(b) CPR) should be based on the ex-ante assessment carried out in accordance with Article 37(2). **Guidance amended.**
17	PL	*"In addition, it is also highlighted that even if the decision is for*	Article 38(3)(b) provides for the possibility of contribution by the managing authority to an already existing financial instrument.

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		<u>the continuation of an existing financial instrument</u> which would receive additional OP resources from 2014-2020, compliance with public procurement and state aid rules needs to be ensured." Q: The wording is not consistent with art. 38 of the CPR, especially art. 38(4), which does not say anything about the continuation of existing financial instrument. Perhaps it should be changed for "investing in the capital of an existing financial instrument".	COM will replace "continuation of an existing financial instrument " by "contribution to an existing financial instrument" **Guidance amended.**
18	PL	*o)* No, the quality control and approval of the ex-ante assessment is the responsibility of the managing authority. Therefore, it is not subject to the Commission's approval ~~and~~. *Q: Poland suggests deleting "and"*	**Guidance amended.**
19	PL	*"The monitoring committee ~~should~~ <u>may</u> stimulate the discussion on the ex-ante assessment with the main organisations involved, with the purpose to reach a common vision. The summary, findings and conclusions of the ex-ante assessment should also be published within three months of their date of finalisation. "* *Q:* This is not a legal requirement from the CPR, however it should be recommended to stimulate such a discussion by the monitoring committee. The wording should be changed accordingly. Poland suggests replacing should by may	In COM view "should" reflects the idea of recommendation.
20	PL	*"p) What is the 'available good practice methodology' referred*	Yes, there are a number of questions which recall information

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		to in Article 37(2)(a) of the CPR?" This answer repeats the information in point 5 of these documents therefore there is no need to repeat the same information again.	given in the text. Nonetheless, despite the main body of the text having been made available through e.g. the short guide to managing authorities, DG REGIO has received such specific questions and therefore includes them in the Q&A. This will also be useful in the event that a Q&A search-engine is included in the fi-compass
21	PL	*Point r) Additional detailed information is available in the ex-ante assessment methodologies for financial instruments indicated in point 5 of this document.* *Q:* There is not such an information in point 5 of this document concerning the examination of financial products in the ex ante assessment. The answer should be clearer.	Rephrased to : 'linked in point 5 of this document' **Guidance amended.**
22	PL	Q: Additional issue to be included in the Annex: s) Please, confirm our understanding of Art. 37(2) that an ex-ante assessment is obligatory only for planned FIs, and if the MA is not planning to implement any FIs, it is not necessary to carry out any ex-ante assessment.	**QUESTION AND REPLY ADDED.**
23	LT	What is the Commission's view on the need to perform ex-ante assessment in the situation when the fund is reduced? Could this aspect be incorporated in the annex of questions & answers?	**QUESTION AND REPLY ADDED.**

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24	SK	Annex, question d) What is the difference between the ex-ante evaluation (CPR 55) and the ex-ante assessment?“ The last paragraph, the last sentence stipulates: „In addition, **it may be subject to audit** given its legally binding content.“ Please clarify in detail above mentioned sentence: • **What should be the subject of audit? What the term “it” stands for**? Does it mean that audit shall cover **only ex ante assessment**? • **By whom the audit should be carried out** (by national audit authorities, by European Commission), please specify.	The ex-ante assessment is one of the legal requirements for the design and setup of financial instruments. In this context it can be potentially subject to any audit carried out by EU or national/regional level audit bodies, given its legally binding content. **Guidance amended.**
25	EL	*"Yes, the ex-ante assessment can be carried out by any competent body possessing the necessary professional expertise."* Q: How, to your opinion, will the required independence be ensured? Could you provide a specific example of the existing experience?	The assessment of both the expertise and the independence of the bodies that carry out the ex-ante assessment is the responsibility of the managing authority. As a general principle the independence is assessed against the neutrality, the objectivity, the impartiality in the proposals put forward.