MS comments on the guidance note on management costs and fees after EGESIF meeting on 17 June 2015

	MS	MS comment	COM reply
1	**FR**	Dans un premier temps, il parait nécessaire de clarifier la notion de « contribution du programme », qui est la base du calcul des plafonds pour les coûts et frais de gestion : S'agit-il uniquement des contributions FESI ? **La participation d'un gestionnaire à un instrument financier (pouvant être assimilée à de l'autofinancement) doit-elle être intégrée dans ces contributions, en tant que cofinancement national** ? Le règlement parle de « contributions du programme **versées** à l'instrument financier », or l'autofinancement n'est pas versé à l'IF (mais le complète). De même, la Commission peut-elle confirmer que le remboursement des coûts et frais de gestion (considérés comme dépense éligible) dans le cadre d'un appel de fonds, se fait au taux de l'axe? **En fonction des réponses de la Commission, cela pourrait signifier que lorsqu'un gestionnaire apporte la contrepartie nationale (via de l'autofinancement) au FESI sur un IF, seule la moitié des coûts et frais de gestion générés par un instrument est remboursée** (ex : lorsqu'une opération est constituée à 50 % de FEDER et à 50 % d'autofinancement, **c**ela signifie-t-il que sur 100 € de coûts de gestion, 50 € sont remboursés par du FEDER ? Les 50 € restant sont à la charge du gestionnaire ?) Si tel est le cas, ce serait un encouragement à mobiliser plus de fonds publics sur un instrument financier (puisque les couts et frais de gestion seront remboursés sur la base des contributions publiques (hors apport du bénéficiaire gestionnaire)), ce qui diminue fortement l'effet levier des fonds publics, et contraire aux principes de bonne gestion des instruments de partage des risques. Par conséquent, les autorités françaises propose à la Commission d'illustrer par un exemple, l'intégration des coûts et frais de gestion dans une demande de paiement à la Commission. Cet exemple proposerait plusieurs cas de figure : avec et sans autofinancement du bénéficiaire, et pourrait intégrer toute la chaine de traitement de la dépense : la programmation d'un instrument (plan de financement conventionné), le CSF (intégrant les coûts et frais de gestion), l'appel de fonds, le remboursement du FEDER à l'instrument financier. **Cet exemple devra être intégré à la note.**	The notion of "programme contribution" is clarified in footnote 6 of the guidance note. "Programme contribution" means the total of the ESIF contribution and the corresponding national co-financing. The national co-financing may be from public resources or private resources in the case of programmes based on total expenditure. According to Article 38(9) CPR, national co-financing can be paid into the financial instrument (here in the sense of financial instrument operation, i.e. the programme contribution and the subsequent support paid to the final recipients), at different levels, including at the level of/by the fund of funds or the financial intermediary. So if such a body provides resources which are considered as national co-financing, these resources will be included in the basis for the calculation of the eligible management costs and fees of this body. The total eligible expenditure for a financial instrument, i.e. the investment in final recipients and the management costs and fees, independently of whether the national co-financing is public or private, will be reimbursed at the co-financing rate of the axis under which this financial instrument is implemented. The COM also recalls that financial instruments are repayable and normally also include gains. Both can be used to cover the costs which are not covered by ESIF reimbursement. Please see also Q&A "g" in the revised guidance note.

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2	**FR**	p. 3 : la Commission indique que les coûts et frais de gestion peuvent être combinés : un montant forfaitaire peut donc être facturé en complément d'une facture « au réel ». La Commission peut-elle préciser, dans la note, les obligations en termes de suivi de ces frais, et de mesures visant à éviter tout risque de double financement d'une même dépense dans ce cadre?	The MAs may select as bodies implementing financial instruments public or private/commercial entities. Whereas some of them will work on the basis of cost reimbursement (e.g. for non-profit organisations), for others management fees (decoupled from the real costs, possibly including a profit element) may be more appropriate. It is up to the MAs and the bodies implementing financial instruments to decide which form of remuneration or a combination of them to choose. For costs reimbursement, the MA will indeed need to make sure that the same cost is not reimbursed twice. The control mechanisms may be the same or similar to those used by the MA for the implementation of the usual grant support. In the case of fees, there is no check against evidence of incurred expenditure.
3	**FR**	p. 4 : La Commission peut-elle confirmer que les 4 critères basés sur la performance sont cumulatifs ? Si oui, peut-elle donner des exemples pour chacun des critères? En effet, il est difficile d'objectiver comptablement certains critères (exemple : la qualité des mesures d'accompagnement des investisseurs (critère 3)). Si non, sont-ils au choix de l'AG ?	Explanation has been added to the revised guidance note (p.4).
4	**FR**	p. 7 : la Commission propose une méthode de calcul « *pro-rata temporis* » basée sur un reporting quotidien. Certains gestionnaires ne peuvent faire un suivi des décaissements que de manière mensuelle. La Commission peut-elle confirmer que le *pro-rata temporis* peut être calculé de manière mensuelle ?	The Commission considers that *pro-rata temporis* calculation should be meaningful, i.e. should reflect changes on a daily basis. MAs can choose between the two methods 30*no. of months/360 (simplified method corresponding to the day-count convention in the Eurosystem in its monetary policy operations) or real days/365. Fund managers should be requested to use a method reflecting daily changes which is in line with the usual market practice of accounting.
5	**LV**	Please explain if management fee of the body implementing financial instrument is determined through a competitive tender according to Article 13(6) CDR, is it possible to have only a base remuneration and not have a performance-based remuneration (i.e. set at zero)? For example, in a typical venture capital fund there is only a base remuneration during the investment period, and the fund managers (the body implementing financial instrument) receives carried interest as their	According to Article 42(5) CPR, the eligible management costs and fees "shall be based on a performance based calculation methodology" and to this end the criteria of Article 12(1) CDR must be taken into account, also in the case of a competitive

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		performance-based remuneration after the realization of investment portfolio. It is important to align financial instruments with the accepted market practices, terms and conditions, especially when attracting private investors.	tender according to Article 13(6) CDR. These criteria should ensure that the fund manager acts in the interest of the ESIF. Receiving carried interests as the only performance-based element of remuneration would incentivise the maximisation of profit/financial returns and for example neglect the contribution of the financial instrument to the objectives of the ESIF programme under which it is implemented. Regarding carried interests please also see Q&A "f". in the revised note[1].
6	**UK**	As a general point, the UK is concerned that there is a perverse incentive built into this guidance to make investments early rather than to make the right investments. The 2.5% performance fee is based on investments that have yet to pay back. Fund Managers need to be properly incentivised to deliver and the guidance and incentives need to be aligned.	The thresholds are set in the Delegated Regulation 480/2014 (CDR). As such they are the outcome of preceding discussions with stakeholders and negotiations with the Member States. To ensure that "right investments" are made vs. incentivising early but possibly "worse" investments, Article 12 CDR requires that the performance criteria of the management costs and fees are based on, *inter alia*, resources paid back and contribution to the objectives and outputs of the programme.
7	**UK**	We are also concerned that the thresholds are too low. We recognise that the 2007-13 ceilings may be too permissive and are not against greater efficiency, but the proposed thresholds may go too far the other way.	Please see the answer to question 6 above, first paragraph.
8	**UK**	The guidance is phrased in very black and white terms as regards loans and equity. In the UK the picture is more mixed in terms of the use of mezzanine and convertible funds especially where funds are drawn down on a deal by deal basis.	For financial instruments providing quasi-equity, the thresholds for equity apply. Please see Q&A "h" in the revised guidance note.

[1] This refers to the revised note containing TC to highlight modifications made to the version discussed at the EGESIF meeting on 17 June 2015.

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9	**UK**	UK Managing Authorities have commented that it is unusual in equity funds not to have a carried interest element – this doesn't appear to have been factored in. Grateful if consideration could be given as to how this can be accommodated.	Please see Q&A "f" in the revised guidance note.
10	**UK**	Section 1.2, page 2, last paragraph – The guidance says what it does not cover. It needs to say as part of this that it does not cover the scenario where management costs and fees conform to market terms or are arrived at through a competitive tender (Commission Delegated Regulation Art 13(5) and 13(6)).	The guidance note covers the cases of Article 13(5) and (6); the structure of paragraph 2.4.1 has been reorganised to emphasise this better.
11	**UK**	Section 2.2, page 3, footnote – Reference to the Commission Guidance Note on selection. Thank you for the information provided on this in the meeting. Grateful if the Commission could provide any further update on when this will be available. This note is of course highly relevant to discussions that are ongoing in the UK at present.	Guidance note on selection was presented at the EGESIF meeting on 21 October.
12	**UK**	Section 2.2, page 3, 3rd paragraph – Could the Commission please clarify how the performance element is factored in when remuneration is based on management costs only (i.e. how does the performance element work for costs as opposed to fees)?	If for the remuneration the reimbursement of costs is the only option available, performance-orientation could be achieved e.g. by using a bonus / malus scheme where for instance the full reimbursement of costs is linked to the fulfilment of agreed milestones in relation to the relevant performance criteria. Please also see the relevant text introduced in the revised guidance note on p. 3-4.
13	**UK**	Section 2.3, page 4 – This should mention the possibility of costs and fees for preparatory work to be covered by Technical Assistance.	Article 59 CPR defines that Technical Assistance on the initiative of the MS can be used "to reinforce the capacity of "Member States authorities" (…) "beneficiaries" (…) and "relevant partners" in accordance with Article 5(3)(e) of the CPR. A body implementing FI (including fund of funds) in accordance with Article 38(4)(a) and (b) becomes a beneficiary in the sense of Article 2(10)CPR when it is selected. The minimum requirements which it needs to fulfil to be selected are defined in Article 7(1) CDR. They are meant to provide the reassurance to the MA that the body has the necessary capacity to carry out its tasks. In addition, when the body is selected, it has the right to receive management costs and fees which are meant to cover all the expenses necessary for it to fulfil its tasks in an appropriate way. Therefore, TA is eligible neither for

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			building up nor for operation of a body implementing financial instrument(s).
14	**UK**	Section 2.3, page 5, 1st tiret – This should contain a reference to the possibility that the resources to repay after the end of the eligibility period may be insufficient.	The text of the guidance note explains that if Article 44 and 45 resources are not sufficient, management costs and fees for equity-based and micro-credit instruments to be incurred after the end of the eligibility period, subject to conditions referred to in the guidance note, will be considered eligible.
15	**UK**	Section 2.3, page 5, 2nd tiret – Is there any guidance on how to discount the amount?	Please see Q&A "o" in the revised guidance note.
16	**UK**	Section 2.4.1, page 5, 1st paragraph – We propose that this section should contain a reference to CDR Article 13(5) and 13(6), to make clear that thresholds can be exceeded in these cases.	Please see the reply to Q10 above.
17	**UK**	Section 2.4.1, page 5, 2nd paragraph – It is important that the drafting doesn't inadvertently suggest that the management costs and fees should always be below the thresholds. We do not want this to be seen as a rule – it is legitimate to go up to the thresholds.	Please see the reply to Q10 and 16 above.
18	**UK**	References at Section 2.4.2, page 7 (general – cap rate – threshold) and section 2.4.3, page 10 (flat rate thresholds) – are these the same thing? If not, how does the flat rate threshold differ from the general cap rate threshold?	Thank you for spotting the inconsistency. In both cases the same "general-cap rate" –threshold is meant. The guidance note, p. 11, has been revised accordingly.

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19	**SK**	We disagree with the mechanism of the Base remuneration for the first 12 months, more specifically in the case of the implementation via a Fund of Funds (FoF). We consider the mechanism in which the base remuneration of 3% is valid for the first 12 months after the signature of the Funding Agreement and the calculation which is tied to the effective payment to the FoF to be unsystematic and not aligned with aim to implement financial instruments efficiently. The current mechanism suggested by the Guidance motivates FoF to wait and postpone signature of the Funding Agreements until the payment to the FoF can be realised in order to maximize its management fees. In Slovakia the FoF named Slovak Investment Holding (SIH) signed respective Funding agreements with the Managing Authorities (MA) in April 2015, knowing that the effective payment to the FoF would take few months due to the need to finalize MAs' ESIF internal procedures and development of IT system (called ITMS). MAs and SIH signed the Funding agreements early so SIH can obtain mandate for implementation of financial instruments in order to immediately start working on the implementation of financial instruments (state aid, structuring of FI, etc.), and to engage in dialogue with multilateral financial institutions (EIB, EBRD, etc.) on co-investment and further leveraging of financial instruments. The Base remuneration mechanism for the first 12 months penalises SIH for being efficient and starting the implementation of financial instruments as early as possible. Therefore we suggest to adjust the Base remuneration for the first 12 months by: a) calculating it from the date of signature of the Funding agreement (aligned to Date of signature of the Funding agreement) or b) adjusting the 3% for the first 12 months after the effective payment to FoF (aligned to Date of effective payment to FoF) or	The calculation methodology is set in the Delegated Regulation 480/2014 (CDR). As such it is the outcome of preceding discussions with stakeholders and negotiations with the Member States. The guidance note must not deviate from the text of the CDR. Any of the options proposed by SK would represent such deviation. With the signature of the Funding Agreement, the first payment of max 25% of the committed amount can be made by the MA to the FoF. The objective of the MCF is to incentivise the implementation of the FI, i.e. a smooth selection of financial intermediaries and the subsequent disbursements to final recipients. For instance, if the MCF were linked to the mere fact of signing the funding agreement, the incentive of the FoF for a speedy implementation would not be ensured. According to Article 7 CDR, when a MA selects a body to implement the FI, the MA needs to reassure itself that the body *inter alia* has an adequate capacity, including organisational structure, governance framework and accounting system. The key parameters of an FI, such as structuring and expected leverage, should be known before the signature of the funding agreement, as they are mandatory part of it (re: Annex IV CPR). Finally, according to Article 42 (5) CPR, preparatory costs incurred before the signature of the funding agreement may be considered eligible.

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		c) recalculating the eligible 3 % over the period starting with the effective payment to the FoF and ending 12 months from the signature of the funding agreement. In this case, the overall eligible costs would not exceed 3% for the period of 12 months, but in individual months it could be higher than 3%. These suggestions would address delays caused outside of the reach of the FoF.	
20	**LT**	2.2" The question of what constitutes eligible expenditure regarding management costs is dealt with in the first instance by national rules. Such eligible expenditure may include costs incurred by the body implementing the financial instrument as part of the preparation of investment decisions and the subsequent monitoring and follow-up of investments (e.g. technical studies, audit, legal expertise, etc) but should not include costs which are directly imputable to the preparation and/or implementation of **individual** projects or investment plans by final recipients, such as the costs of obtaining planning consent, technical feasibility studies, project management expenses, etc which **are part of the cost of the investment**." Are financial intermediary's consultation costs of potential investees or borrowers when preparing investment decisions also considered as the eligible expenditure? Such activities are vital for the microcredits to socially sensitive target groups. What is the criteria for eligibility in this paragraph: i) that the costs are imputable to the preparation to **individual** projects; or ii) that they are included into the cost of the investment (consultation is never included in the cost of the investment)?	The eligibility rules for management costs must be defined as part of national eligibility rules (cf Article 65 CPR). The Commission cannot therefore take a position on whether a given cost category is/will be eligible or not. The guidance note clarifies however that costs which are directly attributable to concrete investment project, such as the costs of obtaining planning consent, technical feasibility studies, project management expenses, should be included in the costs of the investment project and not in the management costs of the body implementing the financial instrument. Overhead costs may include e.g. rent, insurance or salaries of senior management that cannot be attributed directly to the concrete project supported by the financial instrument(s).
21	**LT**	"2.2 - overheads of the body implementing the financial instrument provided that they are based on actual costs and are allocated pro rata to the operations according to a duly justified fair and equitable method." Please include in brackets examples of the costs eligible under the overheads	Please see the reply to question 20 above.
22	**LT**	"Managing authorities and bodies implementing financial instruments, including funds of funds, will agree on the form of remuneration which is appropriate in a given case: management costs, management fees or a combination of them. However, as the CPR requires that management costs and fees are performance-based, remuneration based on management costs only must also respect this requirement."	Please see the reply to question 12 above.

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		Please include an example into the Guidelines how the performance-based remuneration is used in management costs. Do we understand correctly that all the set percentage limits must be complied with (unless the actual costs are lower) and the only difference is much administrative work with supporting documents.	
23	**LT**	2.2 "the quality of measures accompanying the investment before and after the investment decision to maximise its impact, and <…>" We understand that the MA has to take into account all 4 criteria set in Art. 12 of the CDR. However if there are no accompanying measures and they are not feasible in case of a specific FI this criteria could have no weight and it would be treated as appropriate taking into account?	Please see the reply to question 3 above.
24	**LT**	Article 2.3 states that <…>*management costs and fees are eligible as of the date of the signature of the relevant funding agreement<…>.* In 7th page of the Guidelines, article 2.4.2 it is provided that *regarding the beginning of the period, it is for instance:* *for the base remuneration of the fund of funds manager, the date of the effective payment of programme contributions to the fund of funds.* 9th page of the Guidelines, article 2.4.3 (example for calculation), the simplistic calculation of the management costs and fees shows that the management costs and fees were not calculated and paid for the period 1 Jan-31 Jan. In addition, in accordance with the Delegated act, the base remuneration is calculated on the basis of programme contributions paid to the fund of funds/financial instrument. How can the eligible management costs and fees incurred during the period from the signature of relevant funding agreement to the date of programme contribution payment to the FoF or FI be calculated and paid to the fund manager?	The management costs and fees can be paid by the managing authority to the body implementing financial instrument according to the provisions agreed in the Funding Agreement which represents a bilateral legal agreement between them. Therefore, management costs and fees which are incurred / paid after the Funding Agreement has been signed are eligible. However, the maximum amount of the eligible management costs and fees at closure is determined by the calculation of the thresholds set out in Article 13(1), 13(2) and 13(3) CDR. In addition, the Commission encourages the managing authorities to proceed with the first payment of programme contribution as soon as possible after the signature of the Funding Agreement to launch the implementation of the financial instrument(s) to ensure smooth implementation on the ground, i.e. investment in final recipients. The first payment of the programme contribution is not linked to any further requirement than the signature of the Funding Agreement.

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25	**LT**	a) Are there any criteria that should be considered while setting the discount rate to be used? b) Could 0 % discount rate be used, in case actual interest rate can't be calculated for the whole remaining project period after the end of eligibility period? Logically, the discount rate to be used, would be the same as interest rate paid during the period for deposits held in escrow accounts. However, the problem is that interest rates might be changing each year, due to the time limits (set by financial institutions) on deposits agreements - agreements for deposits are limited to max. 12 months, therefore discount rate for the whole period is not known and it can be only estimated. The problem is that if the estimated discount rate will be higher than actual interest rate, this would cause lack of financing. Due to this, we would like to clarify, if it is appropriate to use the most conservative discount rate (i.e 0 %) and to use money earned from interest in escrow, according to Regulation (EU) No 1303/2013 of the European Parliament and of the Council article 45? c) Do we understand correctly that for the calculation of the capitalized management costs and fees the performance-based remuneration criteria are not used (including also the 4 criteria set in Art. 12 of the CDR)?	Re a) and b) please see Q&A "o" in the revised guidance note. Re a) To be considered eligible, the management costs and fees agreed with bodies managing financial instruments providing equity and microcredit must comply, equally to all other financial instruments, with requirements of Article 12(1) CDR regarding the criteria for performance-based management costs and fees, i.e. the remuneration of such bodies must be linked to their performance towards reaching agreed targets, which were set for the criteria of Article 12(1). For further explanations please also see point 2.5 of the revised guidance note.
26	**LT**	2.4.1 Par. 5 "The above situations set the rules for <u>eligible</u> management costs and fees. Management costs and fees exceeding the ceilings will be treated as ineligible. Managing authorities may pay such higher management costs and fees to bodies implementing financial instruments if they consider it justified (and in compliance with state aid rules in relation to a possible overcompensation of a fund manager) but such management costs and fees must not be covered from ESI Funds programme resources, but others, e.g. from resources attributable to the support from ESI Funds programmes which are paid back according to Article 44(1)(c) of the CPR, or from own resources. Please amend the paragraph to make clear that in such case not entire management costs and fees are not eligible but only the difference between the amounts, i.e. the exceeding part of costs and fees."	The drafting has been amended in the revised guidance note.
27	**LT**	2.4.2 "Article 13(1), (2) and (3) CDR defines the thresholds for management costs and fees declared as eligible at closure as "the sum of" […]. This means that any of the **thresholds should be understood as an aggregate value over the whole eligibility period** and not on an annual basis" Please explain what is meant under „agregate" as the indicated articles provide very exact percentages. Does the example in 2.4.3 fully reflect this „agregate"?	"Aggregate value" means the sum/total at the end of the eligibility period. This sum/total results from adding the amounts calculated in accordance with the pro rata temporis calculation, and using the relevant rates p.a., as specified in Article 13(1) and 13(2). Paragraph 2.4.3 shows how these "pro rata temporis" amounts are calculated step by step in a

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			concrete example until a certain point of time. The following paragraphs explain that the calculation will be continued with the objective to obtain the total amount at the eligibility period. This total amount will represent the Article 13(1) or 13(2) threshold, i.e. the one linked to the implementation progress.
28	**LT**	2.4.2 "Regarding the beginning of the period, it is for instance: for the base remuneration of the fund of funds manager, the date of the effective payment of programme contributions to the fund of funds, In section 2.3 it is stated that "management costs and fees are eligible as of the date of the signature of the relevant funding agreement". Since the payment of programme contributions to the FoF can take up to 2 months, according to the definition of the beginning of the period, the FoF manager would not receive a base remuneration cost/fee for the specific works assigned in the funding agreement. In our opinion the two provisions contradict each other (eligibility as of the date of signature and calculation from the date the contribution is made). The same comment applies to the example provided in 2.4.3 as for the period of *1 Jan-31 Jan.* *eligible management costs and fees of FoF: €0*	There is no such contradiction. Please also see the reply to question 24 above.
29	**LT**	2.4.3 Calculation of eligible management costs and fees in the following schematic scenario. The Comission explained that all 4 criteria set in Art. 12 of the CDR must be taken into account. However in the schematic scenario for the part of performance-based remuneration only programme contributions paid are taken into account. Does that mean that the percentage limit indicated in Art. 13.2(b) is a ceiling for the costs to be calculated adding 4 amounts resulting from different importance of the 4 criteria (or the capped amount could be a sum of 4 equally weighted parts of the remuneration-based management fee/costs)? Please provide any other examples of the possible formula for taking into account the 4 criteria.	Paragraph 2.4.3 shows only how to calculate the maximum eligible management costs and fees at closure, determined by Article 13(1), 13(2) and 13(3). This maximum amount will be used to "cap" the management costs and fees to be declared as eligible to the Commission by the managing authorities. The management costs and fees to be paid by the managing authority to the body implementing the financial instrument(s) have to respect performance-

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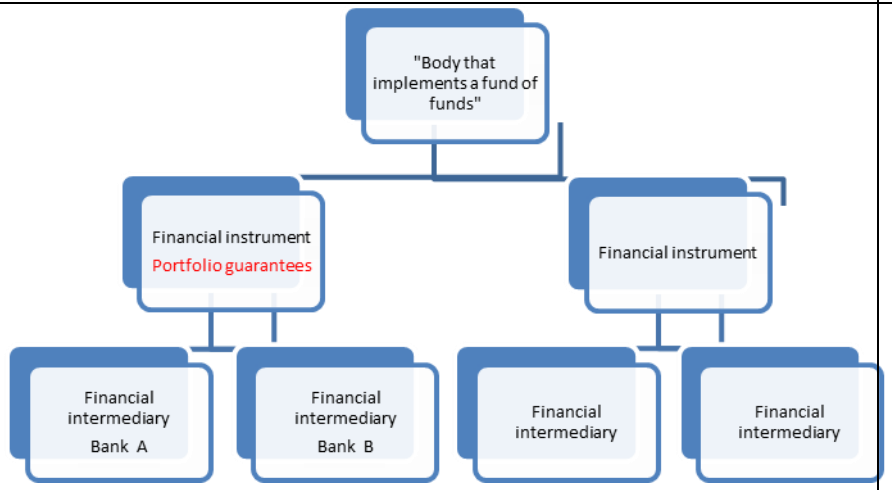
			based criteria of Article 12(1) CDR to be considered as eligible and included in the amount to be declared to the Commission, i.e. within the capped amount.
	LT		
		1) For Body who implements a fund of funds Regulation No.480/2014 Article 13 1(b) provides that for a body that implements a fund of funds, management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013 shall not exceed the sum of 0,5 % per annum of programme contributions **paid by the fund of funds to financial intermediaries**, calculated pro rata temporis from the moment of effective payment by the fund of funds until repayment to the fund of funds, the end of the eligibility period or the date of winding up, whichever is earlier. **In case of portfolio guarantees financial intermediary of the financial instrument receives funds only when it has defaulted loans (according to payment demand). That means that funds are not paid to financial intermediary in the beginning of implementation of financial instrument. All resources are managed by the "body that implements a fund of funds". We would like to ask what in this case would be considered as a „paid by the fund of funds to financial intermediaries"?**	In the example the body implementing the fund of fund acts for the part of appropriations for the portfolio guarantee as a body implementing a financial instrument providing guarantees. For more explanations please see p. 9 of the revised note. Please also note that financial institutions providing loans guaranteed by the ESIF-supported guarantees are neither bodies implementing a financial

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			instrument providing guarantees nor bodies implementing a financial instrument providing loans in the sense of Article 13 CDR.

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		Regulation No.480/2014 Article 13. 2: For bodies implementing financial instruments providing equity, loans, **guarantees,** as well as micro-credits, including when combined with grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of that Regulation shall not exceed the sum of: (a) **a base remuneration which shall be calculated as follows:** <…> (ii) for a financial instrument in all other cases, 0,5 % per annum of programme contributions **paid to the financial instrument**, calculated pro rata temporis from the date of effective payment to the financial instrument until the end of the eligibility period, the repayment to the managing authority, or to the fund of funds, or the date of winding up, whichever is earlier; <…>. **Do we understand correctly that in this case the management fee will be calculated from the funds allocated for financial instrument in the fund of funds or a financial instrument when there is no fund of funds?** **Regulation No. 480/2014 Article 13.2:** (b) **a performance-based remuneration which shall be calculated as follows:** <…> (iii) for a financial instrument providing guarantees, 1,5 % per annum of the **programme contributions committed to outstanding guarantee contracts** within the meaning of Article 42(1)(b) of Regulation (EU) No 1303/2013, as well as from re-used resources attributable to programme contributions <…> **Do we understand correctly that in this case the management fee will be calculated from the guarantee cap for committed guarantees which is equal to "programme contributions committed to guarantee contracts"?** *"Guarantee Cap" means the maximum aggregate net amount which the Guarantor may be liable to pay under the Guarantee and calculated, as the product of:* *(i) the Actual Portfolio Volume (=committed loans);* *(ii) the Guarantee Rate (=guarantee percentage);* *(iii) the Guarantee Cap Rate (=percentage of Portfolio possible losses);* *(iv) the Disbursement Ratio (=disbursed loans/ committed loan*100).* *And „the programme contributions committed to outstanding guarantee contracts" will be calculated as follows:* *"Guarantee Cap" for outstanding guarantee contracts, calculated as a product of:* *(i) the Outstanding Portfolio Volume (already disbursed loans – returned loans);* *(ii) the Guarantee Rate (=guarantee percentage);* *(iii) the Guarantee Cap Rate (=percentage of Portfolio possible losses).*	In the case where the FI is implemented in a structure with a FoF, the base remuneration will be calculated on the basis of the programme contribution paid to the body implementing the FI providing the specific product (the financial intermediary) by the FoF. If there is no FoF, the payment will be from the MA to the body implementing the FI providing the specific product. The performance-based remuneration will be calculated on the basis of the programme contributions committed to outstanding guarantee contracts. Article 8(c) CDR requires that the programme contribution committed to a financial instrument providing guarantees must reflect the ex-ante risk assessment referred to in Article 8(b) CDR which sets the appropriate multiplier ratio referred to in Article 8(a) CDR. The programme contribution committed should indeed correspond to the maximum possible amount that may be called in the case of the default of the loans in the loan portfolio covered by outstanding guarantee contracts. The exact method of calculation of this maximum amount is not subject of the provisions related to management costs and fees and as such not in the scope of this guidance note.

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30	**CZ**	Article 13, Par. 2, letter v) sets out: "for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, 0,5 % of the grant amount paid within the meaning of Article 42(1)(a) of that Regulation for the benefit of final recipients." Article 13, Par. 3, letter f) sets out: for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, 6 % of the total amount of programme contributions paid to the financial instrument. The above mentioned clauses seem to be in contradiction It can be demonstrated through following example If there is CZK 100 million transferred to the financial instrument which are later gradually disbursed to final recipients within a period of a few years in the form of an interest subsidy, the management fee can reach CZK 0,5 mil. (CZK 100 mil. multiplied by 0,5 % = CZK mil. 0,5), see the rule set out in Article 13, Par. 2, letter v). In accordance with the rule stated in the Article 13 Par. 3, letter f) it would be possible to pay out in total CZK 6 mil. (CZK 100 mil. x 6 % = CZK 6 mil.). However with regard to the wording of the Article 13, Par. 2, letter v), we can assume that management fee for such case will never be higher than CZK 0,5 mil. **Question** Why the Article 13, Par. 3) letter f) have been incorporated into that wording, given that the Article 13, Par. 2, letter v) is sufficient here ? We would appreciate an example in the respective guidance to be included to clarify how to calculate the management fee in case of interest rate subsidies.	As explained in the guidance note, to determine the maximum amount of eligible management costs and fees (for any type of financial instrument, including those which also provide grants in accordance with Article 37(7) CPR), two thresholds need to be calculated: one linked to implementation progress (cf. Article 13(1) and 13(2) CDR) and the "general-cap rate" threshold (cf. 13(3) CDR). The lower amount resulting from the calculation of both will determine the maximum amount of management costs and fees to be declared to the Commission. In the case you referred to indeed the amount resulting from the threshold under Article 13(3)(f)CDR will be always above the amount resulting from the threshold calculated under Article 13(2)(a)(ii) and (b)(v) CDR so the latter will in practice determine the amount of eligible management costs and fees at closure. Please also note that the calculation of the threshold linked to implementation progress provided in your question is not correct. It omits the base remuneration according to Article 13(1)(a)(ii) CDR. In your example, assuming that the CZK 100 million were paid to the financial instrument on 1.1.2014 and remained in the financial instrument until the end of the eligibility period, i.e. 31.12.2023, the base remuneration would amount to CZK 5 million.

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31	**CZ**	For the sake of clarity, the MAs will welcome a set of sound financial management principles applicable to management costs and fees, for instance on the basis of audit reports from the 2007-2013 period.	The main problems encountered in the 2007-2013 programming period were related to the fact that the level of management costs and fees were decoupled from the performance of the financial instruments and the audit trail could be incomplete in some cases. The new legal framework, as explained in the guidance note, ensures the establishment of a performance based remuneration system aligned with the principles of sound financial management, as the principles of economy, efficiency and effectiveness. There are several performance based criteria mentioned in Article 12 of CDR. The managing authorities should pay attention to the requirements arising from the CPR, the Commission Delegated Regulation and Commission Implementing Regulations in terms of management verifications and reporting in order to ensure, through the funding agreements, the necessary level of information to be communicated by the Fund of Funds and/or financial intermediaries.
32	**CZ**	**2.2 The scope of management costs and fees, p. 4)** *„These provisions take into account the performance-based criteria provided by Article 12(1) CDR, namely:* – *the disbursement of contribution provided by the ESI Funds programme,* – *the resources paid back from investments or from the release of resources committed for guarantee contracts,* – *the quality of measures accompanying the investment before and after the investment decision to maximise its impact, and* – *the contribution of the financial instrument to the objectives and outputs of the programme.“* **Questions/comments:**	Please see the reply to questions 3 and 23 above.

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		The guidelines should clarify if all of the criteria shall be applied or MA may select some of them, with orientation weighs, if applicable. Is it obligatory to use all four types of performance-based criteria and to divide this part of management fee in different fractions? If yes, what proportions should be set out among different criteria? The guidelines should provide examples regarding „the quality of measures“. We would like to clarify through an example how the criterion “the quality of measures accompanying the investment before and after the investment decision to maximize its impact” should be designed?	
33	**CZ**	1.2 "This guidance note does not cover other implementation options available, namely: contribution to FIs at EU-level implemented directly or indirectly by the Commission under Article 38(1)(a) CPR, investment in capital of legal entities under Article 38(4)(a) CPR and loans and guarantees implemented directly by MA or IB under Article 38(4)(c) CPR. Dedicated guidance notes will be developed for them." What is the indicative schedule of these guidance materials, when will they be presented to EGESIF? Implementation option 38(4)(b) is the most appropriate for the current state-of-affairs of FIs and should be followed by guidance on option 38(4)(a) in our opinion.	Please refer to the timing for future guidance notes presented in the EGESIF meeting on 21 October. In addition, please see Q&A "a" in the revised guidance note.
34	**CZ**	2.2 "Such agreed price may be established via a competitive market process, if the latter is applied when selecting the body implementing financial instrument(s)[2]." In Commission’s view is in-house selection in compliance with national laws considered competitive market process in this respect? What is the indicative schedule of guidance on selection, when it will be presented to EGESIF?	Please see the reply to question 11 above.
35	**CZ**	2.2 "The MA defines how to translate the criteria into more concrete requirements/targets for the purpose of remuneration, adapted to the requirements of the operational programme and local needs and conditions. The performance of a body implementing financial instrument(s) should always be tracked in relation to target values agreed normally in the respective Funding Agreement. For instance, performance could be linked to the number of eligible SMEs that receive financing; geographical or sectorial coverage; ability to raise additional resources; jobs created – always comparing values achieved to those initially agreed." Is the paragraph referring to specific type of indicators? To specific output / result / additional FI performance indicators?	The paragraph refers to targets which need to be agreed with the body implementing financial instruments(s), taking into account performance-based criteria listed in Article 12(1) CDR. The examples given could correspond to Article 12(1)(d) provided such targets reflect the objectives and outputs of the priority axis under which the relevant financial instrument is implemented. It is in the discretion of the MA and the body implementing the financial instrument to agree on the appropriate

[2] See guidance note on selection (pending)

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			targets to link the remuneration of the body implementing the financial instrument to its performance with regard to the criteria listed in Article 12(1) CDR.
36	**CZ**	2.3 " Management costs and fees incurred for preparatory work in relation to the financial instrument before the signature of the relevant funding agreement, and which according to the general rule above become eligible after the signature, may only be included in the eligible expenditure if incurred after the date when the formal decision selecting the body concerned was taken." Could the Commission specify how the "formal decision selecting the body concerned" should be evidenced/documented when related management costs and fees are declared as eligible expenditure? Could the Commission similarly specify what is regarded as the "formal decision selecting the body concerned"?	"The formal decision selecting the body concerned" may be evidenced e.g. by a national decree or a written notification to the selected body. The Commission does not preclude which exact form such decision should take.
37	**CZ**	[2.4.2] Imagine a scenario with a body implementing a FI when management costs and fees (MCF) are primarily calculated according to the first threshold (progress in implementation) and at the end of the eligibility period the second threshold "general cap rate" is exceeded. Then the second threshold applies for the eligible MCF and the amount paid to the body implementing the FI as remuneration of MCF has to be "corrected" and the difference exceeding the second threshold has to be paid out of the respective body's own resources as suggested in the part 2.4.1 last paragraph?	The management costs and fees are to be paid to a body implementing a financial instrument according to the provisions of the Funding Agreement. If the amount of these management costs and fees exceeds at the end of the eligibility period the maximum amount of eligible costs and fees calculated in accordance with Article 13 CDR, the difference must be covered by the managing authorities from other resources which are at its disposal, as explained in 2.4.1 last paragraph.
38	**CZ**	[2.4.2.] Second question would be if a body implementing FoF/FI is in Commission's view expected to develop such a business plan that would in advance include expected MCF to be claimed throughout the eligibility period? It is already ambitious to count on a business plan with expected phased payments (made even more complex by the possibility to include expected national co-financing when deemed appropriate). Answer on question c) in Q and A below suggests that calculations of MCF should be made in information and accounting systems of the respective bodies implementing FIs automatically, which suggests business plan as explained above. Could the Commission comment?	The MA and a body implementing a financial instrument must agree on the management costs and fees to be paid to the body when the Funding Agreement is signed (cf. Annex IV (1)(h) CPR). The minimum requirements when selecting a body implementing a financial instrument include "adequate capacity to implement the financial instrument, including organizational structure and governance framework providing the necessary assurance to the managing authority" and "use of accounting system providing accurate, complete and

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			reliable information in a timely manner" (cf. Article 7(1)(c) and (e) CDR, respectively).
39	**CZ**	2.4.2 "Regarding the beginning of the period, it is for instance (...) Regarding the end of the period, it is for instance (…)" Could you provide an exhaustive list for base and performance remuneration for all the implementation levels and all types of instruments? Preferably some sort of an overview table.	Exhaustive information is available in Article 13 CDR.
40	**CZ**	2.4.2 "Furthermore Article 13(4) CDR clarifies that the thresholds must not be cumulated for the same programme contribution, or the same re-invested resources which are attributable to programme contributions, if the same body acts for one part of resources as a fund of fund manager and for another part of resources as e.g. a guarantee fund manager. " We suppose this part of guidance and CDR applies e.g. to FLPG scheme with FoF manager being also a guarantee fund manager providing guarantees to the financial intermediaries issuing new loans. Could the Commission provide more examples of schemes where FoF manager also acts as specific fund manager?	Based on 2007-2013 experience, the Commission is aware of cases where the same body acted as FoF manager and also provided guarantees, i.e. acted as a guarantee fund manager. Therefore, this example is given (p. 9 of the revised guidance note).
41	**PL**	The guidance on MCF should be comprehensive and cover this topic within all possible implementation options including also MCF for FI implemented according to art. 38(1)(a)- IF set up at EU level , art. 38(4)(a) – investment in the capital of existing or newly created legal entities, art. 38(4)(c) – direct implementation of FI, art. 39 – SMEs Initiative. Therefore every more comprehensive approach to MCF in FI is welcomed as it would allow to better understand the issue and compare MCF in different implementation options.	The guidance on the management costs and fees under other implementation options will be included in the guidance notes on the specific implementation options. Please refer to the timing for future guidance notes presented in the EGESIF meeting on 21 October. In addition, please see Q&A "a" in the revised guidance note.
42	**PL**	Guidance on MCF should also include more specific information on management fees rather than a short reference to guidance note on selection, which is pending. Management fees as an agreed price for services rendered may allow to simplify the administrative costs of FI but the draft guidance does not provide any useful information on how to apply it without the risk of breaching the EU regulations.	The fee is an agreed price for a service for which an invoice is presented (no reimbursement of costs). It is the responsibility of the managing authority, and subject to national law, to verify the invoice and to pay it if the agreed services had been delivered.

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		Is it possible that during competitive tender the fee is established and that body that implements FI issues only an invoice for the management of FI? The overall management fee of course does not exceed the applicable thresholds and the calculation for management fee includes the criteria from art. 12 CDR.	The Commission will verify whether for the management (costs and) fees declared as eligible the relevant requirements of the CPR and the CDR (as explained in the guidance note) are met.
43	**PL**	Art. 12(1) CDR include several criteria to be taken into account in the funding agreement. But it is not clear how to apply and measure the criterion on *"the quality of measures accompanying the investment before and after the investment decision to maximise its impact"*. It is not enough to say that *"The MA defines how to translate the criteria into more concrete requirements/targets for the purpose of remuneration".* We expect that COM provide more information, including a practical example, on application of the above-mentioned criterion. Moreover the criterion on "*the contribution of the financial instrument to the objective and outputs of the programme"* is directly related to another criteria concerning the disbursement of contribution provided by the ESI Funds programme and the resources paid back from the investments and from the release of resources committed for quarantee contracts. The more the disbursement of funds for the investments in final recipients the more the objectives and outputs of the programme are achieved. Can different criteria be combined into one?	Additional explanation has been added to the revised guidance note (p.4). The absorption (disbursement of contribution provided by the ESI Funds programme) and revolving effect (resources paid back from the investments and from the release of resources committed for quarantee contracts) are not the same as achieving the objectives and delivering the outputs of the programme. Even if a quick absorption will most probably lead to a quicker progress towards programme objectives/ outputs, it does not yet guarantee that they will be achieved. Please also the UK question no. 6 above. Therefore, these different effects and therefore criteria should be differentiated.
44	**PL**	It is not clear from the guidelines whether the criteria from art. 12(1) CDR apply only to the funding agreement between MA and the beneficiary or also to the funding agreement between the manager of fund of funds and financial intermediary?	The CPR and CDR provisions on the eligible management costs and fees, including Article 12(1) concern both levels: the body implementing a fund of fund and financial intermediaries. Also, according to Article 38(7), in case the financial instrument is implemented via a fund-of-fund structure, funding agreements must be signed at both levels. Please also see Q&A "n" in the revised guidance note.

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45	**PL**	Point 2.4.2 uses reference to different thresholds but it is not always clear to which exactly thresholds -whether from art. 13(1) (2) or (3)? In general point 2.4.2 needs some rewording – enclosed PL's proposition.	The introduction to the table clarifies in which Articles which thresholds are to be found (reference to Article 13(3) has been added in the revised note and in the headings of the table).
46	**PL**	It needs to be clarified in the guidelines that the interest and other gains generated by support from the ESI Funds to FI (art. 43 CPR) are attributable to programme contribution and therefore any payment to final recipient, or commitment in case of guarantees, financed from these resources can be taken into account for the calculation of the performance-based remuneration - art. 13(2)(b) CDR. The draft guidance does not provide any interpretation in this matter.	Please see Q&A "m" in the revised guidance note.
47	**PL**	Can an example be added to point 2.5 concerning *Specific threshold for capitalised MCF for equity-based instruments and micro-credit,* which would help to better understand the application of art. 14 CDR?	Further explanations have been included in the revised guidance note, point 2.5. Please also see the reply to question 25 above.

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48	**PL**	In point 2.4.2 of draft guidelines there is an example for calculation of eligible MCF for the first tranche of the payment to FoF and its further disbursement. It would be helpful if the example contained not only the cycle for the disbursement of the first tranche but also another cycles for the whole project. Such an example can be an annex to the guidelines on MCF. It would also be helpful if there was an example in the guidelines concerning MCF calculation for FI providing guarantees because of special rules for guarantees provided in art. 9 CDR. We understand that in case of guarantees the programme contribution reflects a prudent *ex ante* risk assessment and cannot be higher than the "cap rate" – the limit of losses to be covered by programme resources? We also understand that in case of guarantees implemented by FoF only the amount of payment to financial intermediary is taken into account for the calculation of base remuneration for financial intermediary but in case of performance-based remuneration only the amounts committed to guarantee contracts? Art. 13(2)(a)(ii) CDR explicitly refers only to *"programme contribution paid to the financial instrument*" but we think that in case of guarantees implemented by FoF it should also be allowed to calculate the MCF based on amount of programme contribution committed to financial intermediary in case when the FoF reserves in the funding agreement signed with the financial intermediary that certain amount of programme contribution is made at the disposal of financial intermediary for signing guarantee contracts but the real flow of money between FoF and financial intermediary takes place only when the guarantee claim is made because of loan default. That is the business practice in PL but it seems that it would not be applied for ESIF 2014-2020 because of the provisions on MCF which do not foresee such a situation.	The calculation example given in the guidance note serves illustrating the calculation method. The calculation for the second and any following payment will follow the same rules. Article 8(c) CDR requires that the programme contribution committed to a financial instrument providing guarantees must reflect the ex-ante risk assessment referred to in Article 8(b) CDR which sets the appropriate multiplier ratio referred to in Article 8(a) CDR. This means that the committed amount (in the relevant funding agreement) will correspond to the maximum amount which may be called if underlying loans default. This, however, does not result in any additional specificity regarding the calculation of the eligible management costs and fees at closure: The amount paid (out of the full committed amount) to a body implementing the financial instrument providing guarantee will be the basis for the calculation of the base remuneration of the body (cf. Article 13(2)(a)(ii) CDR), and the amount committed by the body for outstanding guarantee contracts will be the basis for the calculation of its performance-based remuneration (cf. Article 13(2)(b)(iii)). A fund of funds (FoF) and a guarantee fund are distinct, i.e. a FoF cannot implement a guarantee fund. The same body, however, can implement a fund of funds and a guarantee fund. This differentiation is crucial. In your example, once the body implementing the fund of funds decided how much resources should be allocated to the financial intermediary, the first payment to the guarantee provider should take place. Please see also the explanation on p. 9 of the revised note.