

**MS comments on the guidance note on phased payments following EGESIF presentation on 25 February 2015**

N°	MS	MS comment	COM reply
1)	DE	<p>1. In the context of the Guideline on requests for payments the Commission (CION) stated that the own contribution by a final recipient neither counts as national co-financing nor as leverage.</p> <p>a) Isn't that a contradiction to page 4 of the presentation that shows the different levels of national co-financing and as such also the level of the final recipients? Moreover, we don't see any legal provision for this statement. Art. 38 para 9 says that National public and private contributions, including where relevant contributions in kind as referred to in Article 37(10), may be provided at the level of the fund of funds, at the level of the financial instrument or at the level of final recipients. Our point of view is supported by the reference guide on financial instruments, section 7.4 about co-financing that states: "Significant additional flexibility is introduced whereby national public &amp; private cofinancing contributions under programmes may be provided at the level of the financial instrument (fund of funds or financial intermediary) or at the level of the investment in final recipient (including in-kind contributions where relevant, except for the EAFRD)".</p> <p>b) Does the before mentioned statement includes also the kind of financial instrument that the managing authority implements directly according to Art. 38 para 4 lit. c) CPR?</p> <p>c) This guideline refers to financial instruments that are implemented according to Art. 38 para 4 lit. a) and b) CPR.</p>	<p>a) The expenditure in relation to financial instrument has to comply with the provisions of Article 42(1)(2)(3). In this regard eligible expenditure covering support to the final recipient is covered either by the provision of Article 42(1)(a) which refers to the payment to final recipient (this will be the case of a loan or equity) or by Article 42(1)(b) which refers to resources committed for guarantee contract (this will be the case of a guarantee). Thus, there is no possibility to declare under Article 42 the own contribution by the final recipient as eligible expenditure.</p> <p>The reference to the level of final recipient made in Article 38(9) and in the guidance note covers only the situation where a co-investment (in addition to the ERDF investment through a financial instrument) is made directly into final recipient. For example a business angel co-invests simultaneously and along ERDF resources in the same enterprise.</p> <p>As regards contributions of land or real estate the exception provided for in article 37(10) covers only contributions of land or real estate in specific financial instruments.</p> <p>b) the eligibility rules apply under Article 42(1)(a)(b) apply also to financial instruments implemented in accordance with Article 38(4)(c).</p> <p>c) the guidance note on payments does not include expression</p>

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		<p>Which “own contribution” is meant here: private or public contribution? Financial or material contribution?</p> <p>2. In the past there have been a lot of questions raised by MA with regard to financial instruments. Do CION plan to update the questions and answers at the end of the document?</p> <p>3. According to section 3.4 of the Closure Guidelines projects may be flexibly co-financed on several levels, also on the level of the final recipient. Which kind of document has the MA to provide for this kind of co-financing?</p>	<p>"own contribution"</p> <p>2. The guidance note was updated with new relevant questions raised in relation to the subject covered by the note.</p> <p>3. Eligible expenditure at the level of investment into final recipients have to comply with provisions under Article 42(1)(a)(b)</p>
2)	UK	<p>Annex Q&amp;A</p> <p>i) Under the fund of funds model does the 60% threshold for drawdown of the second tranche apply to the total of all the funds managed?</p> <p>ii) If this is the case, if one or more funds under this model do not perform as well as the others, will it delay payment of subsequent tranches?</p> <p>iii) Would it not be fairer to treat all funds as individual FIs with regard to payments, so as not to possibly penalise better performing funds within a fund of funds FI?</p>	<p>i) Yes. The payment to the final instrument is the payment from MA to the beneficiary (in this case fund of funds). Thus, the 60% threshold applies to the amount paid from MA to the Fund of funds and included in the previous application for interim payment.</p> <p>ii) Yes, indeed the underperformance of one financial intermediary has an impact on the implementation of the entire amount paid from MA to FoF. The task of FoF is however proper management of ESIF programme allocation to financial instrument operation.</p> <p>iii) Article 41(1)(c ) refers to 60% and 85% of the amount included in the previous application for interim payment. Linking the next phased payment to only one individual allocation in the performing financial intermediary would imply not compliance with the threshold of 60% (or 85%).</p>

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3)	HU	<ul style="list-style-type: none"> <li>• <b>Q+A annex, point (b):</b> Please provide numerical examples to the case study presented under point (b) of the Q&amp;A annex for the sake of easier understanding.</li> </ul>	Numerical examples have been added
4)	SI	<p>Given the high value-added of the document "Calculating interim Payments and Payments of the final balance" (COCOF, 09/00 36/01-EN), which explains the calculation of Funds' Contribution on the Basis of Either the total Eligible Expenditure or the public Eligible Expenditure for the allocation of grants with concrete examples, we believe that such a display would be necessary also to for the scope of financial instruments 14/20.</p> <p>In this context, we ask for an extension of Annex of Guidance Note on Financial Instruments: Payments, showing calculation of Funds' Contribution on the Basis of Either the total Eligible Expenditure or the public Eligible Expenditure with concrete examples, which can further clarified written rules.</p>	Numerical example has been presented in Annex 1
5)	EI	<ol style="list-style-type: none"> <li>1. Please clarify whether the payments will be made by the managing authority directly to final recipients (article 41, paragraph 2, CPR 1303/2013) or to the financial institution/ Fund that will be selected, as it happens now</li> <li>2. Please define in details the kind of administrative costs and fees that are considered eligible</li> <li>3. Please clarify in general and give numerical examples</li> </ol>	<ol style="list-style-type: none"> <li>1. In financial instruments implemented in accordance with Article 38(4)(c) there is no financial instrument set up. Thus, in the case of loans there will be direct investment from MA into the final recipient.</li> <li>2. Separate guidance note on management costs and fees has been developed.</li> </ol>

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		<p>regarding point (b) of the annex of this guide (national and ESIF co financing and relevant “reimbursement” rates)</p> <p>4. Please provide guidance and clarification on the clearance and payments procedures (eg. Dates until these must be completed, supporting documents that must be submitted by the Bank, actions to be made by the involved operators, etc.)</p> <p>5. Please provide guidance and clarification concerning article 44 of CPR 1303/2013.</p>	<p>3. Numerical examples have been added</p> <p>4. COM refers to the provisions on preparation, examination and acceptance of accounts under Article 137-139 CPR. As regards the payment and information flow between the fund manger and MA the exact scope, timing and requirements are to be agreed between MA and the fund manager.</p> <p>5. This will be subject of a separate guidance note</p>
6)	PL	<p>The fiche on payments is not comprehensive. It should be completed with the information on:</p> <p>a) Payments in case of the direct implementation of FI by the managing authority in accordance with art. 41(2) CPR;</p> <p>b) Payments in case when there is combination of different forms of support (financial instrument and grant) within the same operation (art. 37(7)(8) CPR;</p> <p>c) Payments in case of guarantees, art. 8 DA;</p> <p>d) Withdrawal of payments from the payment application and adjusting the payment application, art. 10 DA;</p> <p>e) Withdrawal of irregularities from the payment application: is it necessary if the irregularity is only at</p>	<p>a) a question on payments in case of implementation under article 38(4)(c) has been added</p> <p>b) a question on payments in case of combination has been added</p> <p>c) a question on declaration of eligible expenditure in guarantees has been added</p> <p>d) a question on withdrawals has been added</p> <p>e) this will be subject of separate guidance note</p> <p>f) a practical example has been presented in Annex 1</p>

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		<p>the level of the final recipients, what if the irregularity concerns the resources mentioned in art. 43 and 44 – is it necessary to correct the payment application in such cases?;</p> <p>f) It would be helpful if the fiche on payments also included some practical example – how art. 41 CPR can be applied in practice. Such practical example was included in the fiche no. 18 from May 2012 called <i>Application for payments including expenditure for financial instruments</i>.</p>	
7)	PL	<p>Article 22 of Regulation (EU) 908/2014; In regulatory references at least art. 1 of Regulation (EU) 821/2014 should be added.</p>	Yes, reference has been added
8)	PL	<p>However, in some cases delays occurred in disbursing the funds to final recipients and management costs were not always linked to performance. Moreover, a serious concern has been in some cases the practice of over- allocation of resources to financial engineering instruments which then remain in the funds, accumulating interest and management costs and fees, instead of being disbursed to the final recipients. <del>Such practices resulted in circumvention of the automatic de-commitment rule and have been discouraged by the Commission, namely through guidance issued in 2008 and 2011, as they were considered not to be in accordance with sound financial management and delayed the positive effect investments could have on the economy.</del></p>	The wording was revised.

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9)	PL	<ul style="list-style-type: none"> <li>Introducing phased applications for interim payment in a way that prevents excessive upfront payment of ESIF to financial instruments, <del>while ensuring both the proper functioning and the liquidity of these instruments</del></li> </ul> <p>The practice will show if art. 41 ensure both the proper functioning and the liquidity of FIs. There are serious doubts that 85% limit of spending which enable to submit for third and subsequent applications for interim payment is set too high and may have negative impact on proper functioning and the liquidity of FIs. Therefore the last part of the sentence is not justified.</p>	The suggested part has been deleted
10)	PI	<p><b>3.1 Applicability of provisions under Article 41 CPR</b></p> <p>The provisions under Article 41 CPR on requests for payment including expenditure for financial instruments, apply to financial instruments supported with ESI Funds <del>as referred to in point (a) and (b) of Article 38(1). Two exceptions are provided in the CPR:</del><u>except for:</u></p> <ul style="list-style-type: none"> <li>a derogation granted under Article 39(7) to financial instruments implemented <u>under Article 39(1) point a) and b) within so called “the SME initiative”</u></li> <li>a derogation granted under Article 41(2) to financial instruments implemented in accordance with point (c) of Article 38(4) (i.e. implemented directly by the managing</li> </ul>	<p>Reference to SME initiative has been changed</p> <p>COM prefers to refer to the wording of CPR (subject of intermediate body implementing FI under Article 38(4)(c) will</p>

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		<p>authority <u>or intermediate body</u>).</p> <p>Art. 39 of CPR does not use such term as “SMEs Initiative”</p>	<p>be presented in another guidance note)</p>
11)	PI	<p>Regardless of the actual timing and amounts of programme contributions paid by managing authorities or any other public or private sources constituting national co-financing paid to the financial instrument <u>or at the level of final recipient</u>, Article 41 (1) CPR stipulates that applications for interim payment for programme contributions paid to the financial instrument during the period of eligibility will be phased.</p> <p>This means that the amount of programme contributions paid to the financial instrument which can be included in each application for interim payment <u>cannot exceed</u> 25% of the programme contribution committed in the funding agreement. This amount corresponds to expenditure in the meaning of Article 42(1)(a),(b) and (d) CPR. In practical terms, this implies that managing authorities would normally include payments for programme contributions paid to the financial instrument in four applications for interim payment (if the threshold of 25% is held), or more (if the managing authority requests less than 25% of programme contribution committed in the funding agreement in any payment application) submitted in accordance with Article 135 CPR.</p>	<p>The reference to the level of investment in final recipient has been added</p> <p>No change is required</p> <p>A question on impact of modified funding agreement and increased allocation to FI has been added in the annex to the note.</p>

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		The explanation should be added for case when during the implementation of FI the funding agreement is amended and the amount of programme contribution changes. How such situation affects the payments and the tranches.	
12)	PI	Thus, national contributions can be included in the application for interim payment even if they were not yet paid to the financial instrument <u>or at the level of final recipient</u> together with the ESIF contribution. This means that managing authorities have the flexibility to include in the application for interim payment a limited amount of national co-financing contributions (not exceeding 25% of the total national co-financing agreed in the funding agreement) that is "expected to be paid" to the financial instrument at the various levels of its implementation during the period of eligibility.	The reference to the level of investment in final recipient has been added
13)	PI	Subsequent applications for interim payment in relation to financial instruments can only be submitted when certain minimum percentages of cumulative amounts included in previous applications for interim payment were spent as eligible expenditure <u>in the meaning of Article 42(1)(a)(b) and (d) CPR.</u>	The reference to Article 42(1)(a)(b) and (d) CPR is already made in bullet points following this paragraph.

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14)	PI	<p><b><u>3.3 Information on progress of disbursement of operational programme resources by implementation of the financial instrument.</u></b></p> <p><u>Subsequent applications for interim payment should separately disclose the total amount of programme contributions paid to the financial instruments and the amounts paid as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1).The programme contribution made to the financial instrument in line with the provisions of Article 41 CPR can be declared in payment applications.</u></p> <p>As regards the eligible expenditure of the financial instrument at closure, <u>the application for payment of the final balance should include the total amount of eligible expenditure Article 42(1)(2)(3) stipulates that the total amount of programme contribution effectively disbursed by the financial instrument by the end of eligibility period in accordance with art. 42 CPR, i.e.:</u></p>	<p>COM does not agree with the proposed text as it seems not to cover management costs and fees.</p> <p>COM does not see justification for the change proposed.</p> <p>COM does not see justification for the change proposed.</p>
15)	PI	<p><b><del>4. Relevant practice and examples from 2007-2013 experience</del></b></p> <p><del>The adoption of these provisions by the co-legislator was informed by the objective of providing more flexibility as</del></p>	<p>COM agrees to remove this part</p>

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		<p><del>regards the payment of national contributions to financial instruments, and of avoiding the situation for some programmes during 2007-2013 (over-allocation to financial instruments and funds remaining 'parked' in financial instruments rather than swiftly reaching beneficiaries</del></p> <p>This information is already in point 2 Background so there is no need to repeat it again, especially when it has no added value to the interpretation of the existing rules for 2014-2020.</p>	