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European Structural and Investment Funds

Guidance for Member States on Article 42(1)(d) CPR– Eligible management costs and fees

DISCLAIMER

This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for colleagues and bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the programme implementation and to encourage good practice(s). This guidance is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.

1. BACKGROUND

1.1. REGULATORY REFERENCES

Regulation	Articles
Reg. (EU) N° 1303/2013 Common Provisions Regulation *(hereafter CPR)*	Article 42 – Eligible expenditure at closure
Reg. (EU) N° 480/2014 Commission Delegated Regulation *(hereafter CDR)*	Article 12 – Criteria for determining management costs and fees on the basis of performance Article 13 – Thresholds for management costs and fees Article 14 – Reimbursement of capitalised management costs and fees for equity-based investments and micro-credit

1.2. PURPOSE OF THE GUIDANCE

Financial instruments (FIs) are a form of support whose success hinges on the performance of bodies implementing them. One of the decisive parameters to align the interests of the managing authorities (MA) and the bodies implementing FIs is the remuneration paid to the latter in the form of performance-based management costs and fees.

In 2007-2013 management costs and fees paid to bodies implementing FIs were calculated on the basis of the amounts contributed to the FIs and were, in many cases, decoupled from their performance (e.g. from the disbursements to final recipients). The legislation also set rather high limits for management costs and fees considered as eligible expenditure.

Article 42(1)(d), (2), (5) and (6) CPR provide for a new approach to eligible management costs and fees, introducing a requirement for their performance orientation and a new calculation method of thresholds as further stipulated in Articles 12, 13 and 14 CDR.

The purpose of the guidance is to clarify how to apply the new approach to management costs and fees of bodies implementing FIs in accordance with Article 38(4)(b) CPR, based on questions asked by the Member States, in particular during the preparation of the CDR, as well as bilateral requests for clarification received afterwards.

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 intermediate bodies (IB) under Article 38(4)(c) CPR. Dedicated guidance will be developed for these implementation options.

2. GUIDANCE

2.1. GENERAL RULE

Article 42(1)(d), (2), (5) and (6) and Article 42(2) CPR lay down that management costs and fees will be considered as eligible expenditure at closure provided that they respect the performance-based criteria of Article 12 CDR and the thresholds set out in Article 13 CDR or Article 14 CDR, respectively. In addition, further conditions for the eligibility of capitalised management costs and fees for equity-based instruments and micro-credit are defined by Article 42(2) CPR and Article 14 CDR.

2.2. THE SCOPE OF MANAGEMENT COSTS AND FEES

Article 42(5) CPR refers to management costs as comprising direct and indirect costs which are reimbursed against evidence of expenditure whereas management fees are referred to as an agreed price for services rendered. Such agreed price may be established via a competitive market process, if the latter is applied when selecting the body implementing FI(s).

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 FI as part of the preparation of investment decisions (by including also scouting costs for risk capital instruments), 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 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, which are part of the cost of the investment. As simple and non-exhaustive examples, in the past the Commission has considered the following categories of costs as eligible management costs compatible with the principles of sound and efficient financial management:

– staff costs, including travel and subsistence expenses, the cost of renting offices, equipment, IT systems, consumables and supplies, directly linked to the management and investment of contributions from programmes to FIs; such costs being incurred in carrying out activities such as selection and tendering procedures, controls, monitoring and reporting, consultancy, information and publicity;
– overheads of the body implementing the FI 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.

Managing authorities and bodies implementing FIs, 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: This could be achieved e.g. by using a bonus / malus scheme where for instance the full reimbursement of management costs is linked to the fulfilment of agreed targets in relation to the relevant performance criteria.

Provisions regarding the calculation and payment of management costs incurred or of the management fees of the FIs must be included in the funding agreement between a MA and a body implementing FI(s), in line with Annex IV(1)(h) CPR.

These provisions must take into account, the performance-based criteria provided by Article 12(1) CDR, namely:

- the disbursement of contributions provided by the ESI Funds programme,
- the resources paid back from investments or from the release of resources committed for guarantee contracts[1],
- the quality of measures accompanying the investment before and after the investment decision to maximise its impact, and
- the contribution of the FI to the objectives and outputs of the programme.

The MA needs to take into consideration all the above criteria. However, the quality of measures accompanying the investment before and after the investment decision to maximise its impact will be relevant only if such measures were included in the funding agreement: They will be determined by a specific scope of services which aim at improving the impact of the project(s) supported by a FI and that are provided by the body implementing the FI to the final recipient(s). They can include e.g. a regular follow-up of project implementation (including the link to output and performance indicators) or financial, business or technical consultancy throughout the implementation of the project.

The MA sets out how to translate the above criteria into more concrete 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 FI(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; measurable social and/or environmental impact – always comparing values achieved to those initially agreed in the funding agreement.

If arrangement fees or part of them, such as advisory, legal or accounting fees, are charged by the body implementing the FI to final recipients, these must not (even partially) be included in the management costs and fees to be paid to the body by the MA and declared by the latter as eligible. Otherwise, the body implementing the FI would be remunerated twice for the same service: by the final recipients and by the MA.

2.3. ELIGIBILITY PERIOD OF MANAGEMENT COSTS AND FEES

As a general rule, management costs and fees are eligible as of the date of the signature of the relevant funding agreement, provided that all other eligibility criteria are fulfilled.

Management costs and fees incurred for the preparatory work in relation to the FI 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.

The eligibility period for management costs and fees ends on 31 December 2023, however, more flexibility is provided for equity-based instruments and micro-credit for

[1] Resources committed for guarantee contracts mean the amount of programme contribution (ESI Funds + national co-financing) which has been committed or set aside by the manager of the guarantee fund to cover losses which may result from new loans or other risk sharing instruments disbursed to final recipients by financial intermediary/ies for new investments. The commitment is done when the manager of the guarantee fund signs a legal agreement with the financial intermediary/ies.

which the repayment periods are usually longer and which require more intensive assistance:

According to Article 42(2) CPR and Article 14 CDR, management costs and fees that are related to equity-based instruments and micro-credit investments made into final recipients within the eligibility period but which are to be paid to the fund manager within 6 years after the eligibility period may be considered eligible expenditure at closure if:

– the repaid resources which are attributable to the support from ESI Funds in line with Article 44 and 45 CPR are not able to cover such management costs and fees, e.g. because these resources are insufficient, including when being used for further investments through the same or other FI or preferential remuneration of private investors or public investors operating under the market economy principle in line with Article 44 (1) CPR;
– the amount corresponding to their capitalised (discounted) total value at the end of the eligibility period is paid into an escrow account[2] specifically set up for that purpose[3]; and
– they respect the ceilings provided in Article 14 (2) and (3) CDR (please see section 2.5 of the note).

2.4. THE AMOUNT OF ELIGIBLE MANAGEMENT COSTS AND FEES, IN ACCORDANCE WITH ARTICLE 42(1)(D) CPR

2.4.1. APPLICABILITY OF THRESHOLDS FOR ELIGIBLE MANAGEMENT COSTS AND FEES AT CLOSURE

To be considered eligible at closure, management costs and fees charged by bodies that implement FIs, including funds of funds, must not exceed the thresholds which are set out in Article 13(1), (2) and (3) CDR, subject to exceptions provided for in Article 13(5) and Article 13(6) CDR.

As these represent ceilings, managing authorities are encouraged to lay down in the funding agreement management costs and fees below the thresholds, as appropriate in the context of the given FI(s) and in line with sound financial management.

If the management costs and fees effectively paid exceed the ceilings, the part exceeding the ceilings will be treated as ineligible under the ESIF. In other words, managing authorities may pay such higher management costs and fees to bodies implementing FIs 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. in accordance with

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2 Escrow account as defined in Article 2(26) CPR means a bank account covered by a written agreement between a managing authority or an intermediate body and the body implementing a financial instrument, or, in the case of a PPP operation, a written agreement between a public body beneficiary and the private partner approved by the managing authority or an intermediate body, set up specifically to hold funds to be paid out after the eligibility period, exclusively for the purposes provided for in point (c) of Article 42(1) CPR, Article 42(2) CPR, Article 42(3) CPR and Article 64 CPR, or a bank account set up on terms providing equivalent guarantees on the payments out of the funds.

3 Please note that according to Article 14(4) CDR any resources left in the escrow account after the period referred to under Article 42(2) CPR or as a result of an unexpected winding-up of the financial instrument before the end of that period, are to be used in accordance with Article 45 CPR.

Article 44(1)(c) CPR from resources attributable to the support from ESI Funds programmes which are paid back or from own resources.

However, where the body implementing the FI, including fund of funds, was selected through a competitive tender in accordance with applicable rules that would set the remuneration level, and the competitive tender proved the need for higher management costs and fees, then according to Article 13(6) CDR the thresholds do not apply and the management costs and fees corresponding to the level of remuneration set by the competitive tender are considered eligible. The Commission considers this situation as truly exceptional since a competitive tender is normally expected to result in lower remuneration levels due to competition. Please also note that under certain national legislation, a maximum threshold may need to be specified in the tender.

Furthermore, in line with Article 13(5) CDR where the majority, i.e. more than 50%, of the capital invested in financial intermediaries providing equity is provided by private investors or public investors operating under market economy principle, and the programme contribution[4] is provided *pari passu* with the private investors, the management costs and fees have to conform to market terms and must not exceed those payable by the private investors. This provision introduces thus a mechanism allowing to claim higher (or lower) eligible management cost and fees than those under Article 13(1)(2)(3) CDR, in recognition of the market-conform conditions and the private investor benchmark.

2.4.2. THRESHOLDS FOR ELIGIBLE MANAGEMENT COSTS AND FEES AT CLOSURE

Article 13(1)(2)(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.

The CDR sets out different thresholds for management costs and fees in function of whether the body concerned implements a fund or fund or a FI providing loans or guarantees or equity or micro credit or "other" products, i.e. technical support, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) CPR.

When establishing the eligible management costs and fees at closure **for any given body implementing a fund of fund or FI providing any of the products referred to in the previous paragraph**, a pair of thresholds need to be calculated and **the lower amount resulting from the calculation will determine the amount of its eligible costs and fees.** Whereas the first of the two thresholds is calculated based on the progress in the implementation, the second represents a "general - cap rate" – threshold. For bodies implementing fund of funds the first threshold is set out in Article 13(1) CDR and the second in Article 13(3)(a) CDR. For the bodies implementing the FIs providing any of the products referred to above, the first one is set in Article 13(2) CDR and the second one is the threshold specific for the provided product of Article 13(3)(b) to (f) CDR.

The thresholds linked to the implementation progress consist of two elements: base remuneration, and performance-based remuneration. As a principle, the base

[4] Programme contribution means the relevant ESI Fund and the corresponding national co-financing, public or private as applicable.

remuneration is calculated as a percentage of amounts entrusted to the implementing body for further investments whereas the performance-based remuneration is calculated as a percentage of the amounts effectively disbursed:

- The amounts entrusted for implementation mean programme contributions paid to the given fund, with the exception of equity funds, where they refer to programme contributions committed under the relevant funding agreement.
- The amounts disbursed by the implementing body are in the case of fund of funds programme contributions paid to the financial intermediaries, in the case of guarantee funds programme contributions committed to outstanding guarantee contracts, and in all other cases programme contributions paid to final recipients, as well as resources re-invested which are attributable to programme contributions.

The percentages for both, the base remuneration and the performance-based remuneration are calculated on the basis of rates *p.a.* applied *pro rata temporis* on the above mentioned amounts[5]. The *pro-rata temporis* calculation incentivises early disbursements and to be meaningful should reflect changes on a daily basis.

For the calculation *pro rata temporis,* Article 13(1) and (2) CDR defines the beginning and the end of the period for which a given calculation is to be made depending on whether the body concerned implements a fund of funds or a FIs providing any of the products referred to above.

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,
- for the base remuneration for equity fund manager, the date of the signature of the funding agreement (since the base remuneration is linked to the amount committed), or
- for the performance remuneration of a guarantee fund manager, the date of the commitment of the guarantee.

Regarding the end of the period, it is for instance:

- for the base remuneration of a fund of fund manager, the end of the eligibility period, repayment to the managing authorities or the date of winding up whichever is earlier, or
- for the performance remuneration of a loan fund manager the date of repayment of the investment (loans) by final recipients, the end of the recovery procedure in case of default or the end of eligibility period, whichever is earlier.

The below table outlines the "general - cap rate" – thresholds set in Article 13(3) CDR, as well as the rates *p.a.* applicable to base remuneration and performance remuneration, as provided in Article 13(1) and (2) CDR.

[5] The *pro rata temporis* calculation is applied to all financial instruments with the exception of performance-based remuneration for financial instruments providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) CPR, as stipulated in Article 13(2)(b)(v) CDR.

Body implementing	"General – cap rate"- Thresholds Article 13(3) CDR	Article 13(1) and (2) CDR	
		Base remuneration: rates *p.a./pro rata temporis*	**Performance remuneration: rates *p.a./pro rata temporis***
Fund of Funds	7.00%	For first 12 months* 3.00%	0.50%
		For next 12 months* 1.00%	0.50%
		Following years 0.50%	0.50%
Loans	8.00%	0.50%	1.00%
Guarantees	10.00%	0.50%	1.50%***
Equity	20.00%	For first 24 months* 2.50%**	2.50%
		Following years 1.00%**	2.50%
Micro credit	10.00%	0.50%	1.50%
Other	6.00%	0.50%	0.50%

* This relates to the period after the signature of the funding agreement, the higher rate can be used only within this period but effectively only for the time from the effective payment of programme contributions to the FoF.
** For equity, base remuneration linked to amounts committed to the FI
***For guarantees, performance remuneration is linked to amounts committed for guarantees

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.

In practice, it is normally known before the funding agreement is signed that the same body will act for some of the allocations as fund of funds manager and for some as e.g. manager of a guarantee fund. In such a case the funding agreement signed with this body should differentiate these two roles and the type of remuneration from the very beginning. In case the decision of whether the body acting as a fund of funds manager starts acting as e.g. manager of a guarantee fund is taken later, MAs should be aware of the risk that the implementation of the guarantee fund may be postponed to maximise the management costs and fees due for the management of the fund of funds (especially in the first 12 or even 24 months after the signature of the funding agreement when higher percentages for the base remuneration of the fund of funds manager apply).

Nevertheless, as soon as the decision is taken at the fund of fund level to allocate a specific amount to the guarantee fund, as of the moment of this decision and as substantiated by a corresponding material proof, the basis for the calculation of the base remuneration of the fund of fund managers decreases by the amount allocated to the guarantee fund. In addition, this amount does not count as basis for the calculation of the performance remuneration of the fund of funds manager as there is no other body (financial intermediary), i.e. also no additional workload related to selection and governance, involved. However, as of this moment this amount counts as the basis for calculation of the base remuneration of the guarantee fund manager and depending on the implementation progress will also serve as the basis for the calculation of its performance remuneration.

2.4.3. AN EXAMPLE FOR CALCULATION OF ELIGIBLE MANAGEMENT COSTS AND FEES AT CLOSURE

The below example illustrates the calculation of eligible management costs and fees in the following schematic scenario:

On 1 January 2015 MA signs the funding agreement with a fund of funds manager (FoF) for an amount of €100 million (=committed amount);

1 Jan-31 Jan

- *eligible management costs and fees of FoF: €0*

On 1 February 2015 the MA pays to the FoF €25 million (25% of the committed amount)[6];

1 Feb-31 May

- *eligible management costs and fees of FoF: €0.25 million = €25 million * 3% * 120 days/360 days[7] [base remuneration]*

On 1 June 2015 the FoF signs agreements with two specific funds: one for loans (€15 million) and one for equity (€10 million) fund;

1 Jun-30 Jun

- *eligible management costs and fees of FoF: €0.06 million = €25 million * 3% * 30/360 [base remuneration]*
- *eligible management costs and fees of the loan fund: €0 million*
- *eligible management costs and fees of the equity fund: €0.02 million = €10 million * 2.5% * 30/360 [base remuneration]*

On 1 July 2015 the FoF pays €15 million to the loan fund and €10 to the equity fund;

1 Jul-31 Dec

- *eligible management costs and fees of FoF:*

  *€0.375 million = €25 million * 3% * 180/360 [base remuneration] AND €0.062 million = €25 million * 0.5% * 180/360 [performance remuneration]*

  Total: € 0.437 million

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[6] The 25% correspond to the phased payments from the Commission to the MAs according to Article 41(1) CPR. It is recommended that the payments from the MAs to the Fund(s) follow this scheme as well, in the spirit of sound financial management.

[7] This simplified method for *pro rata temporis* calculation uses 30 days per month and 360 days per year corresponds to the day-count convention in the Eurosystem in its monetary policy operations. Managing authorities are free to use the other method for the daily-based calculation, i.e. using the real number of month days and 365 days for the year.

- *eligible management costs and fees of the loan fund: €0.037 million = €15 million * 0.5% * 180/360 [base remuneration]*

- *eligible management costs and fees of the equity fund: €0.125 million = €10 million * 2.5% * 180/360 [base remuneration]*

On 31 December 2015 €10 million of loans are disbursed and € 5 million equity are disbursed to final recipients;

1 Jan 16 –31 Jan 16

- *eligible management costs and fees of FoF: €0.02 million = €25 million * <u>1%</u> (as these are the next 12 months after the Funding Agreement was signed!) * 30/360 [base remuneration] AND*

  *€0.01 million = €25 million * 0.5% * 1/12 [performance remuneration]*

  Total: €0.03 million

- *eligible management costs and fees of the loan fund: €0.006 million = €15 million * 0.5% * 30/360 [base remuneration] AND*

  *€0.008 million = €10 million * 1% * 30/360 [performance remuneration]*

  Total: €0.014 million

- *eligible management costs and fees of the equity fund: €0.02 million = €10 million * 2.5% * 30/360 [base remuneration] AND €0.01 million = €5 million * 2.5% *30/360 [performance remuneration]*

  Total: €0.03 million

Since in the example more than 60% of the programme contributions paid to the FI have already been disbursed, the next step will most probably be the transfer of the second tranche of €25 million by the MA to the FoF. This would reinitiate the cycle and first increase the basis for the calculation of FoF base remuneration (as of the day of the new payment, the basis would be the sum of the previous payment and the new payment) and then also the basis for all the other calculations.

At the end of the eligibility period the total amount resulting from the above calculation for the whole implementation cycle per fund will be compared with the respective "General –cap rate"- thresholds per fund. The lower of the two thresholds per fund will represent the amount of eligible management costs and fees at closure per fund: the fund of fund, the loan fund and the equity fund. The sum of the eligible management costs and fees for the three funds (provided that no further funds were created between 31 January 2016 and the end of the eligibility period) will represent the total eligible management costs and fees at closure for the FI as a whole.

2.5. THE AMOUNT OF ELIGIBLE CAPITALISED MANAGEMENT COSTS AND FEES FOR EQUITY-BASED INSTRUMENTS AND MICRO-CREDIT, IN ACCORDANCE WITH ARTICLE 42(2) CPR

Article 14(2) CDR sets a specific threshold for eligible capitalised management costs and fees for micro-credit to be paid to the fund manager after the end of the eligibility period. It is calculated as follows: 1% p.a. of the programme contributions paid to the final recipients as eligible loans within the eligibility period but which have yet to be paid back, calculated *pro rata temporis* from the end of the eligibility period until the repayment of the investment, the end of the recovery in the case of defaults or the maximum period of six years in line with Article 42(2) CPR, whichever of the three is earlier.

Article 14(3) CDR provides a specific threshold for eligible management costs and fees for equity-based instruments to be paid to the fund managed after the end of the eligibility period. It is calculated as follows: 1.5% *p.a.* of the programme contributions paid to the final recipients as eligible equity investment which have yet to be paid back, calculated *pro rata temporis* from the end of the eligibility period until the repayment of the investment, the end of the recovery in the case of defaults or the maximum period of six years in line with Article 42(2) CPR, whichever of the three is earlier.

It is important to note that to be considered eligible, the management costs and fees agreed with bodies implementing FIs providing equity and microcredit must comply, equally to all other FIs, 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).

Article 42(6) CPR and Article 14 CDR provide for flexibility with regard to the eligibility period and the amount of eligible management costs and fees at closure: the discounted amount of management costs and fees for bodies implementing FIs providing equity and microcredit, which are actually paid after the eligibility period (subject to the conditions set in the above articles, including the limits for the amount of such discounted management costs and fees in line with Article 14 (2) and (3)) can be declared as eligible in addition to the respective eligible management cost and fees calculated in line with Article 42(1)(d) CPR and Article 13 CDR.

2.6. MONITORING OF MANAGEMENT COSTS AND FEES

According to Article 12(2)CDR, the MA has to inform the monitoring committee about the provisions regarding the performance-based calculation of management costs and fees of the FIs. The Commission recommends that the monitoring committee is informed before the relevant funding agreements are signed as it was good practice in some cases in the 2007-2013 period already. The monitoring committee also receives reports on an annual basis on the management costs and fees effectively paid in the preceding calendar year.

According to Article 46(2)(e)CPR the specific report on FIs includes the information about the management costs incurred or management fees paid, by each FI and by programme and priority or measure.

ANNEX: Questions and Answers

a) This guidance note explicitly refers to FIs managed in line with Article 38(4)(b) CPR only. What about the implementation options according to Article 38(4)(a) and (c) CPR?

Whereas the provisions concerning management costs and fees of FIs managed in line with Article 38(4)(b) CPR in principle apply also to FIs managed in line with Article 38(4)(a) CPR, they are not applicable to FIs managed according to Article 38(4)(c) CPR. In the latter case, the FIs are implemented directly by the MA or the IB and no management is entrusted to a body implementing FIs on their behalf. The specificities of the two implementation options will be dealt with in future guidance.

b) Does the methodology for the calculation of eligible management costs and fees to be agreed between the MA and the body implementing FIs (and included in the funding agreement) need to strictly reflect the calculation methodology as stipulated in Article 13 CDR?

No, the exact method for remuneration is to be decided between the MA and the relevant bodies implementing FIs. However, the remuneration method needs to include performance-based criteria in accordance with Article 12CDR. As explained above, Article 13CDR sets limits for eligible management costs and fees at closure. So the more the remuneration method agreed between the MA and the relevant bodies implementing FIs resembles the method applied in this article, the smaller should be the difference between the actually paid management costs and fees and the costs which will be considered as eligible costs to be claimed for ESI Funds reimbursement.

c) Why are the "general-cap rate" - thresholds of Article 13(3) CDR necessary in addition to the thresholds set out in Article 13(1) and (2) CDR?

The two thresholds together aim at a reasonable balance between the performance of FIs in terms of investments, in line with policy objectives, and the incurred management costs and fees. The thresholds of Article 13(1) and (2) CDR were designed to reward quick disbursements towards final recipients. The "general- cap rate" - thresholds of Article 13(3)CDR were introduced to mitigate the risk that quick disbursement becomes the main incentive and other aspects like quality of the investment are possibly ignored, and that the funds continue to be remunerated years after the work linked to certain investments has largely been concluded.

d) What is the relation of the eligible management costs and fees incurred for preparatory work in relation to the FI before the signature of the relevant funding agreement and the thresholds of Article 13?

As outlined in the guidance note, such preparatory costs and fees may be included in the amount of eligible management costs and fees declared to the Commission. However, even if they are not included in the basis for the calculation of any of the thresholds of Article 13 CDR, the actual remuneration claimed as eligible management costs and fees at closure (i.e. the sum of the preparatory costs and fees incurred before the signature of the funding agreement and the cost and fees incurred during the implementation period) must not exceed the maximum amount which would result from the calculation of the pair of thresholds applicable to the FI in question. The amount of such preparatory costs and fees, as compared to costs and fees incurred for the implementation of the FI(s), is expected to be marginal.

e) The calculation in a "simple example" is already complicated. How are MAs supposed to carry out much more complex calculations?

The bodies implementing FIs in their daily business should set up information and accounting systems to make such calculations automatic.

f) Can additional performance-based remuneration be agreed e.g. with a body implementing an equity fund in the form of gains from the increased value of the fund, such as carried interests?

If the fund manager acts as a "service provider" only, i.e. this body implements programme resources/FI on behalf of the MA, he has the right to receive management costs and fees in line with Article 42(5) CPR, Article 12 CDR and the amount of his eligible management costs and fees at closure is determined according to Articles 13 and 14 CDR. As a result, if carried interests are paid to the manager, as far as they are attributable to ESI Funds support, they would represent Article 44 CPR resources which are used in line with Article 44(1)(c) to cover management costs and fees exceeding the eligible management costs and fees. In any case, the overall amount of management costs and fees paid to the body implementing FI(s) should be justified and in compliance with state aid rules in relation to a possible overcompensation of a fund manager.

If the fund manager acts as a co-investor, i.e. invests his own resources, he can participate in the gains, however, in a normal case on a *pari passu* basis. If *pari passu* risk sharing is not ensured, such arrangement may involve preferential remuneration of a private investor or a public investor operating under the market economy principle. The need for and extent of preferential remuneration needs to be carefully checked and described already in the ex-ante assessment, in particular in light of the state aid rules.

g) If the body implementing FI(s) provides resources which constitute national co-financing, can the eligible management costs and fees be calculated in relation to the whole programme contribution, i.e. the ESI Funds contribution plus the national co-financing provided by the body, or only in relation to the ESI Funds contribution?

The eligible management costs and fees are calculated in relation to the programme contribution, i.e. the ESI Funds contribution and the contribution representing national co-financing provided by the body implementing the FI in question, public or private as applicable.

h) Which thresholds apply to FIs providing quasi-equity, such as sub-ordinated loans or preferred equity?

For FIs providing quasi-equity, the thresholds for equity apply.

i) Why are the thresholds normally linked to programme contributions paid to the fund managers and not to contributions committed?

Linking remuneration to resources committed to a fund is not performance-oriented as it does not contain an incentive to disburse the money further down to final recipients. To take into account the specificity of equity instruments in which the preparation of investment is a long procedure, the CDR foresees an exception: the base remuneration of the equity fund is calculated on the basis of the commitment to the fund providing equity. In addition, the rate for the base remuneration of equity fund managers is 2.5% *p.a.* for the first 24 months after the signature of the funding agreement.

j) The tasks of fund of funds involve a significant share of preparatory steps, e.g. deciding on the portfolio or selection of financial intermediaries, before the payment of programme contributions to the latter can take place. Does the calculation methodology take this into account?

Yes. Article 13(1)(a) CDR sets a higher rate for the base remuneration of a fund of funds manager: 3% *p.a.* in the first 12 months and 1% in the next 12 months after the signature of the funding agreement.

k) If there is a change of the body managing a fund of fund during the implementation, would the rate of 3% for the first 12 months after the signature of the funding agreement and 1% for the next 12 months apply for his base remuneration?

These higher rates are justified by the fact that significant share of preparatory work, e.g. selection of financial intermediaries, is needed before the first disbursements to the latter can take place. Therefore, they apply only to new amounts to be implemented by the fund of funds manager (independently of which body exercises this function) and not to a new body exercising the role of the fund of funds manager if there are no such new amounts entrusted to him.

l) In the case of a FIs implemented with a FoF, does the "general - cap rate" - threshold for the FoF apply to the whole instrument, i.e. would also cap the management costs and fees of the financial intermediaries implementing the specific funds, or in such a case the thresholds for the FoF and the financial intermediary are cumulative?

The 7% limit for the aggregate amount of management costs and fees over the eligibility period defined in Article 13(3)(a) CDR is applicable to the management costs and fees charged only by the fund of fund manager. If there are further management costs and fees charged by financial intermediaries, then for these costs and fees the thresholds defined in Article 13(3)(b) to (f) CDR are applied.

m) Do the interest and other gains in accordance with Article 43 CPR count in the calculation of the "general – cap rate" – thresholds under Article 13(3) CDR? Can they be used to pay management costs and fees to the body implementing the FI(s)?

Article 43 CPR resources, i.e. interests and other gains attributable to support from the ESI Funds paid to FIs and resulting from "treasury management" do not formally constitute ESIF programme resources, and as such are not eligible. According to Article 43(2) CPR, they should be used for the same purposes as the initial support from the ESI Funds. This means that Article 43CPR resources should "mirror" the way in which the initial ESI Funds resources are used in the FI. First and foremost, Article 43 CPR resources are to be used for investments in, or to the benefit where applicable of, the targeted final recipients. If they are used within the same FI or following its winding up in another FI, they can also cover the proportional share of management costs and fees to be paid to bodies implementing the FI(s).

n) Do the criteria of Article 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 the financial intermediaries.

Also, according to Article 38(7), in case the FI is implemented via a fund of fund structure, funding agreements must be signed at both levels.

o) Which discount rates should be used to calculate the capitalised management costs and fees for equity and micro-credit according to Article 14(1)CDR?

The CPR and the CDR do not stipulate which discount rates should be used to calculate the amount of capitalised management costs and fees which may be considered eligible at closure. Nevertheless, the economic reasoning would be that this capitalised value paid to the escrow account should just allow paying the management costs and fees which will be due within the 6 years after the eligibility period. In this case the discount rate to be used would correspond to the internal rate of return on the amount paid to the escrow account, i.e. the agreed (expected if there is no fixed interest rate for the whole duration) interest rate of the account if no other returns or expenses are expected.