

FICHE ON THE CONSTITUTION AND THE ALLOCATION OF THE PERFORMANCE RESERVE
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Commission Proposal	Relevant Articles
Common Provisions Regulation COM(2011) 615	Articles 18-20

This paper has been drawn up on the basis of the proposals for regulations adopted by the European Commission on 6 October 2011 and is without prejudice to the on-going negotiations between the European Parliament and the Council. It does not prejudge the final nature of the act, or the content of any delegated or implementing act that may be prepared by the Commission.

1. THE SCOPE OF THE PERFORMANCE RESERVE

The requirement to allocate 7% of the resources to the national performance reserve covers:

- The entirety of the ERDF under the Investment for growth and jobs goal. No performance reserve shall be constituted for the European territorial cooperation goal;
- The ESF, with the exception of the allocation from ESF towards the Youth Employment Initiative (YEI) and of the allocation from the ESF towards support for the most deprived ;
- The Cohesion Fund, with the exception of the amount transferred to the Connecting Europe Facility;
- The EAFRD, with the exception of amounts transferred from Pillar 1 of the Common Agricultural Policy to the EAFRD¹;
- The EMFF with the exception of the amounts managed under Titles VI and VIII (direct management) of the EMFF Regulation.

There will be no performance reserve for the EUR 3 billion constituting the specific allocation for the YEI. Therefore the entire resources for the YEI (both the specific allocation and the ESF allocation) will fall outside the scope of the performance reserve. The allocation for innovative actions for sustainable urban development is also excluded.

2. THE CONSTITUTION OF THE PERFORMANCE RESERVE, COMMITMENT AND DECOMMITMENT

The performance reserve is national for all Funds. The starting point for the constitution of the performance reserve is the financial allocation for each Member State for the ESI Funds, less the amounts which do not fall into the scope of the performance reserve, as set out under point 1. Therefore, the national performance reserve shall be constituted on the basis of each Member State's allocation (taking into account the scope of the performance reserve), separately for the EAFRD, EMFF, the Cohesion Fund and (jointly) for the ERDF/ESF, broken down by category of region, where appropriate.

¹ This will also be the case for the transfers from the EAFRD to Pillar 1 of the Common Agricultural Policy. However as that will no longer be a part of the EAFRD, it will not be included in the Partnership Agreement and EAFRD programmes and will not be relevant for the constitution of the performance reserve.

The breakdown between the ERDF and the ESF for each Member State for the purposes of the national performance reserve is determined on the basis of the respective allocations of each of these Funds to programmes within a Member State as set out in the Partnership Agreement. The ESF allocations to the Youth Employment Initiative are excluded from this calculation (and from the allocation of the performance reserve).

The reference point for the constitution of the performance reserve shall be the Partnership Agreement, which should, for this purpose, include information on:

- The total allocation from each of the ESI Funds to programmes broken down by year (already part of the Partnership Agreement) and broken down, where appropriate, by category of region;
- The allocation from the ESF and the specific allocation towards the YEI (necessary for the purposes of excluding these amounts);
- The amounts transferred from Pillar 1 of the Common Agricultural Policy to the EAFRD (necessary for the purposes of excluding these amounts).

Following the approval of the Partnership Agreement, the Commission shall adopt decisions by means of implementing acts establishing the national performance reserve for the EAFRD, the EMFF and for the Funds under cohesion policy, which shall constitute the financing decision within the meaning of Article 84(2) of the Financial Regulation and, once notified to the Member State concerned, a legal commitment within the meaning of Article 85(1) of that Regulation.

These decisions shall include a financial table setting out the amounts to be committed each year from 2014 to 2020 for each Member State, broken down by Fund and by category of region, where appropriate.

Thereafter, the commitments under each national performance reserve shall be made automatically by the Commission on an annual basis, based on the financial tables included in the Commission decision establishing the performance reserve, without action needed on the part of the Member State.

The performance reserve shall not be subject to the decommitment rules during the programming period. However, any commitments open at the end of the programming period, including any amounts that have not been allocated to programmes from the performance reserve following the performance review, shall be decommitted in accordance with Fund-specific rules.

3. ALLOCATION OF THE PERFORMANCE RESERVE

Following the performance review in 2019, the Commission shall adopt a decision, by means of implementing acts, to determine for each ESI Fund and Member State the programmes and priorities or parts of priorities which have attained their milestones.

The Member State shall thereafter propose the attribution of the performance reserve for the programmes and priorities set out in that Commission decision referred to above, by making proposals for amendment of the relevant programmes.

The Commission shall adopt decisions approving amendments to the respective programmes, including the allocation from the performance reserve, by Fund and, where appropriate, by category of region, to relevant priorities.

The performance reserve can only be allocated to the programmes and priorities or parts of priorities in accordance with the respective Fund specific rules. The performance reserve for a particular category of region can only be allocated to programmes and priorities or parts of priorities covering regions falling into that category.

The allocation from the reserve can only be used for the purposes of the priorities or parts of priorities which have attained their milestones. Therefore, where all the priorities or parts of priorities for a given ESI Fund (and category of region) in the Member State fail to achieve their milestones, the performance reserve for that ESI Fund (and category of region) cannot be allocated.. Where a Member State fails to submit the information necessary for the performance review, the performance reserve for the programmes or the priorities concerned shall also not be allocated and the corresponding appropriations shall be lost.

From a budgetary perspective, the allocation of the performance reserve shall entail decommitment of the allocation from the performance reserve and reconstitution of the appropriations (at the latest) in 2020 in programmes where the Member State has chosen to use the reserve. The general budgetary principles, as they are currently set out in the Financial Regulation, do not allow for the reuse of decommitted amounts. Therefore the reconstitution of appropriations (decommitment of the performance reserve and making these decommitted amounts available again for programmes) will require a modification of the Financial Regulation to allow for a derogation to the budgetary principles in accordance with Article 3 of this Regulation.

4. THE CALCULATION AND PAYMENT OF THE INITIAL PRE-FINANCING

The initial pre-financing shall be calculated on the basis of the allocations made to each of the programmes. Therefore the initial-prefinancing paid following the adoption of the programmes in 2014-2016 shall be calculated excluding the amounts constituted in the national performance reserve. No additional initial pre-financing will be paid linked to the allocation of the performance reserve. The annual pre-financing will always be calculated on the basis of the actual total allocation to the operational programme at the date of its payment each year.

5. TECHNICAL ASSISTANCE OF THE MEMBER STATES

The maximum amount of ESI Funds which can be allocated to technical assistance is determined as a percentage of the funds allocated to programmes. Until the allocation of the performance reserve, it therefore excludes the 7% performance reserve.

The ceilings for the allocation to technical assistance are not affected by the allocation of the reserve – after the allocation of the performance reserve, the allocation to technical assistance should not exceed the respective ceilings set out in Fund-specific rules.

6. THEMATIC CONCENTRATION AND MINIMUM ALLOCATIONS

The Fund-specific rules set out a number of requirements for thematic concentration or minimum allocations or percentages including:

- thematic concentration requirements under the ERDF Regulation;
- thematic concentration requirements under the ESF Regulation
- a minimum allocation to integrated actions for sustainable urban development under the ERDF Regulation;
- a minimum allocation to LEADER under the EAFRD Regulation;
- minimum allocations for control, data collection, storage aid and compensation for RUPs under the EMFF Regulation.

Consistency and compliance with thematic concentration requirements and minimal allocations should be ensured also after the allocation of the performance reserve. The concentration

requirement shall not result in the allocation of the performance reserve to non performing priority axes or parts of priorities