EN 2021

24

Special Report

Performance-based financing in Cohesion policy:

worthy ambitions, but obstacles remained in the 2014-2020 period

EUROPEAN
COURT
OF AUDITORS

Contents

Executive summary

I Delivering results is key in order to achieve the EU's policy objectives and thus also to strengthen the Union's economic, social and territorial cohesion. Making Cohesion policy more performance-based is a shared objective of the European Parliament, the Council and the Commission.

II The 2014-2020 common provisions regulation provided for an explicit 'performance framework' for Member States' operational programmes, including milestones and targets to attain with European Structural and Investment Fund investments. Moreover, three instruments gave Member States financial incentives to achieve results and optimise their use of funding:

— The requirement to fulfil specific prerequisites ('ex-ante conditionalities') to create an investment-friendly environment from the start of the programmes. These were also aimed at ensuring that the necessary conditions for the effective and efficient use of European Structural and Investment Funds were in place for Member State expenditure to be reimbursed from the EU budget;

— A mandatory performance reserve of around €20 billion (or 6 % of Cohesion spending), which could be released for successful priority axes, or had to be re-allocated to other priority axes of the same programme or to other programmes in the same Member State; and

— Performance-based funding models which linked EU financial support directly to pre-defined outputs or results.

III Our audit assessed the use of these instruments in 2014-2020. In particular, we examined whether:

— these instruments were well designed to incentivise performance and shift the focus to achieving results;

— the Commission and Member States used them effectively; and

— their use made a difference in the way Cohesion funding was allocated and disbursed.

IV All three instruments had the potential to incentivise performance and to shift focus to achieving results. Moreover, the instruments are complementary being

applicable at different stages and to different aspects of programme implementation, but they all link Cohesion funding to performance and results.

V The Commission and Member States have been only partially successful in using the three instruments to make the financing of Cohesion policy more performance-based. Our assessment is more positive for ex-ante conditionalities than for the performance reserve, and least positive for performance-based funding models (except simplified cost options, which already existed before 2014).

VI Member States fulfilled most but not all ex-ante conditionalities before programmes started. Action plans on outstanding ex-ante conditionalities were agreed and largely completed, but in some cases only late in the period. The assessment of ex-ante conditionalities by the Commission was designed as a one-off exercise rather than monitoring their fulfilment throughout the period. 'Enabling conditions' (their successor for the 2021-2027 period) require fulfilment throughout the period. However, the monitoring and reporting arrangements for enabling conditions need further clarification.

VII In 2019, the Commission released 82 % of the €20 billion performance reserve for the 2014-2020 period. The amounts released were based mainly on Member States' achievement of their spending and output targets, as hardly any result indicators were used for allocating the performance reserve. Overall, the allocation of the performance reserve had only a limited impact on programme budgets. The use of a mandatory performance reserve has been discontinued for 2021-2027 and replaced by a mid-term review. However, provisions are vague and do not set out how actual programme performance will affect the allocation of funds.

VIII Member States showed very limited interest in using the two new performance-based funding models, i.e. 'joint action plans' and 'financing not linked to costs'. The Commission was more successful in promoting the use of the more traditional simplified cost options, though not all these are performance-based. 'Financing not linked to costs' will become the dominant EU funding model in the coming years, mainly due to its mandatory use under the Resiliance and Recovery Facility. However, we consider that there is a need to further clarify the applicable rules on its use in Cohesion policy so that Member States are more likely to use this innovative funding model.

IX Overall, our audit confirmed that the introduction of the performance framework in the 2014-2020 period has contributed to a cultural change in the financial management of Cohesion policy. However, our audit also showed that performance-

based financing is not yet a reality in Cohesion policy. In particular, while the three new instruments led to new approaches to implementation, they did not make a noticeable difference to the way EU funding was allocated and disbursed.

X We address the following recommendations to the Commission:

— Make the best use of enabling conditions in the 2021-2027 period;

— Prepare the ground early for an effective mid-term review for the 2021-2027 period;

— Clarify the rules underlying the 'financing not linked to costs' funding model; and

— Clarify the approach for providing assurance on EU funding through the 'financing not linked to costs' model.

XI During the 2021-2027 period, the Cohesion policy funds will run simultaneously with the Recovery and Resilience Facility. Some of the lessons from using instruments for a performance-based Cohesion funding in 2014-2020 may also be applicable to the Recovery and Resilience Facility, where funding will also be performance-based.

Introduction

Focusing the EU budget on results was a priority for the 2014-2020 period

01 Results from EU spending make an essential contribution towards achieving the EU's policy objectives. The EU's Financial Regulation requires all EU spending to satisfy the principles of sound financial management[1] in order to maximise value for money. In 2015, the Commission launched an initiative called 'EU budget focused on results'[2], aimed at increasing transparency and accountability in EU spending and putting results at the core of the EU budget.

02 Making Cohesion policy more performance-based was an explicit objective of the European Parliament and the Council when adopting the legislative package for the 2014-2020 European Structural and Investment (ESI) Funds in December 2013[3].

03 Cohesion policy is implemented by managing authorities in the Member States through about 390 operational programmes (OPs), under the Commission's supervision and guidance. For 2014-2020, the overall budget for Cohesion policy amounted to around €357 billion, around a third of the overall EU budget. For 2021-2027, the budget will be around €373 billion (in current prices). ***Box 1*** provides some background information on Cohesion policy in the two periods.

---

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, Article 33.

[2] European Commission, Mid-term review/revision of the multiannual financial framework 2014-2020 - An EU budget focused on results, COM(2016) 603 final, 14 September 2016; European Commission, EU Budget Focused on Results (BFOR).

[3] Regulation (EU) 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions, Recitals (3), (16) and (23).

Box 1

Cohesion policy in a nutshell

The main objective of the EU's Cohesion policy set by the Treaty is to strengthen the economic, social and territorial Cohesion by reducing disparities between the level of development of the regions[4]. In recent years, Cohesion policy has also gradually become one of the EU's main investment tools for implementing its overarching priorities and strategies, starting with the Lisbon strategy in the 2007-2013 period and continuing with the Europe 2020 strategy for 2014-2020.

In the 2021-2027 period, Cohesion policy will support five policy objectives, with a focus on 'a more competitive and smarter Europe', 'a greener, carbon-free Europe towards a net zero carbon economy', 'a more connected Europe by enhancing mobility', 'a more social and inclusive Europe implementing European Pillar of Social Rights' and 'a Europe closer to citizens'. Cohesion policy will also support the objectives of the European Green Deal.

In the 2014-2020 period, Cohesion policy was delivered through three of the five ESI Funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF), the other two funds dealing with rural development and fisheries.

04 On 24 June 2021, the European Parliament and the Council agreed on the common provisions regulation (CPR)[5] setting out the rules for 2021-2027. For most of the 2021-2027 period, the Cohesion policy funds will be implemented simultaneously with the Recovery and Resilience Facility (RRF) with a budget of €672.5 billion (including €312.5 billon in grants). The RRF is aimed at mitigating the economic and social impact of the COVID-19 pandemic by funding Member States to achieve agreed milestones and targets[6].

---

[4] Treaty on the Functioning of the European Union, Article 174.

[5] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisionson the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

[6] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

Performance budgeting: what does it entail?

05 Performance budgeting is the systemic use of information about outputs, results and/or impacts to inform, influence and/or determine the allocation of public funds[7]. The Organisation for Economic Co-operation and Development (OECD) defines three[8] broad categories of performance budgeting: presentational, performance-informed and performance-based budgeting. In this report, we use the term 'performance-based financing' analogously to the latter, but also comprising the financing of programmes and operations.

Performance-based financing in Cohesion policy in the 2014-2020 period

06 The 2014-2020 CPR introduced two main components aimed at making Cohesion spending more focused on results. First, there was an explicit 'performance framework', requiring Member States to set out specific objectives to be achieved with investments from the ESI Funds. Second, specific instruments for performance-based funding in Cohesion policy were introduced to give Member States financial incentives and to optimise their use of EU financial support:

— The requirement to meet specific ex-ante conditionalities (EACs) needed to create an investment-friendly environment from the start of the programmes and to ensure that the necessary conditions were in place for Member State expenditure to be reimbursed from the EU budget;

— A mandatory performance reserve of 6 % of each Member State's total allocation, which could be re-allocated to other priority axes of the same programme or to other programmes in the same Member State based on the 2019 performance review; and

— Broadening the use of performance-based funding models. In particular, two funding models ('joint action plans' (JAPs) and 'financing not linked to costs' (FNLTC)) were introduced, the latter in 2019. These linked EU funding directly to

---

[7] OECD, Budgeting and performance in the European Union: A review by the OECD in the context of EU budget focused on results, OECD Journal on Budgeting, Volume 2017/1, section 1.2.1.

[8] OECD, Incentivising performance in public investment policies delivered at national and subnational levels: Managing across temporal and institutional horizons, 31 March 2017, pp. 8-9.

the achievement of pre-defined outputs, results or conditions. At the same time, Member States were encouraged to apply 'simplified cost options' (SCOs) which had already been piloted in the 2007-2013 period.

07 In the 2014-2020 period, the ESI Funds were also subject to a 'macroeconomic conditionality', where EU funding could be re-programmed or suspended if a Member State failed to comply with rules of sound economic governance. However, this rule was never applied.

Constraints on performance orientation in Cohesion policy

08 The Commission is responsible for making sound use of EU financial support, including when it shares the management of these funds with Member States[9]. However, there are a number of particular constraints in making Cohesion policy more performance-based[10]:

— Total allocations to Member States (known as their 'financial envelopes') are agreed from the outset during the multiannual financial framework (MFF) negotiations. As a result, there is no flexibility to re-allocate funds between Member States over the period;

— The seven-year MFF lays down maximum amounts ('ceilings') for each category of expenditure, which should not be adjusted except in extremis.

09 An additional difficulty lies in the fact that performance, including the achievement of results, depends on many different actors: the Commission, national, regional and local authorities in the Member States, and public and private-sector participants. They are all involved in achieving objectives, milestones and targets, and have to ensure that EU and national funds are spent efficiently, effectively and in accordance with the rules. Account also needs to be taken of territorial differences which may affect a programme's performance. External factors, as recently illustrated by the COVID-19 pandemic, also have a significant potential impact on programme implementation.

---

[9] Treaty on the Functioning of the European Union, Article 317; Regulation (EU, Euratom) 2018/1046, Article 62(3).

[10] European Commission, Mid-term review/revision of the multiannual financial framework 2014-2020, COM(2016) 603 final, p. 14; ECA annual report 2017, paragraphs 3.6-3.7; ECA review 8/2019 'Delivering performance in Cohesion' (Briefing paper), paragraph 26.

Audit scope and approach

10 Our audit assessed the use of instruments for performance-based financing in Cohesion in the 2014-2020 period. In particular, we examined whether:

— these instruments were well designed to incentivise performance and shift the focus to achieving results;

— the Commission and the Member States used them effectively; and

— their use made a difference in the way Cohesion funding was allocated and disbursed.

11 As part of our audit work, we reviewed the regulatory framework, the Commission's procedures and guidance, and relevant documentation and literature on performance-based funding in the EU and Cohesion policy context.

12 We also analysed data provided by the Commission on the completion of action plans for EACs and on the performance review. For our analysis, we selected 14 OPs from four Member States (Germany, Italy, Poland and Romania) covering both ERDF/CF and ESF funding under five thematic objectives closely linked to Europe 2020 and eight related action plans for EACs (see ***Annex I***). We also surveyed the managing authorities of these 14 OPs on the Commission's support in meeting EACs, on Member States' checks to ensure the reliability of performance data, and on barriers to the uptake of performance-based funding models.

13 Moreover, we interviewed Commission staff as well as experts in developing and implementing performance-based funding models at the Organisation for Economic Co-operation and Development (OECD), the World Bank, the European Policy Research Centre (EPRC), the Center for European Policy Studies (CEPS) and in four Member States (Austria, the Netherlands, Portugal and Germany).

14 Finally, for this audit, we also draw on our previous reports on performance orientation in Cohesion policy and our opinions on Commission legislative proposals (see ***Annex II***).

15 Our audit work covered the period up to December 2020. We also reviewed the latest developments and identified some risks and opportunities for the 2021-2027 period. This audit does not, however, address the budget re-allocations made in 2020 in response to the COVID-19 pandemic[11].

[11] Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative); Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak.

Observations

Ex-ante conditionalities

An innovative tool to create the necessary conditions for effective spending

16 EACs are one of the main innovations for the 2014-2020 period. EACs concern, for example, the existence of an underlying legal framework, the administrative capacity to manage the funds and the existence of a strategic framework to guide investments from the ESI Funds[12].

17 Before OPs could be adopted, Member States had to either prove that they had fulfilled the EACs, or propose action plans explaining how they would fulfil them by 31 December 2016. Member States had to report on the completion of these action plans in their annual implementation reports, to be submitted by 30 June 2017, or in progress reports due in August 2017[13].

18 Member States had to fulfil 29 thematic EACs linked to certain types of investments and seven general EACs (see ***Box 2*** and ***Figure 1***).

---

[12] ECA special report 15/2017 'Ex-ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments', Annexes I and II.

[13] Regulation (EU) 1303/2013, Article 19(2).

Box 2

Examples of thematic EACs in 2014-2020

EAC 1.1 *"Research and innovation: The existence of a national or regional smart specialisation strategy"* required Member States to establish a strategy for investment in research to help target EU funding better at investments with a high growth potential.

EAC 2.2 *"Next Generation Network (NGN) Infrastructure: The existence of national or regional NGN Plans"* required Member States to establish plans for investments in broadband infrastructure, identifying commercially viable areas where investments should primarily come from the private sector and others with low profitability that would require public contributions, including EU funding.

EAC 4.1 requires Member States to *"promote cost-effective improvements of and investment in energy efficiency when constructing or renovating buildings"* as required by EU directives. This should act as an incentive for market actors to produce and purchase efficient energy services and take measures to improve energy efficiency.

19 Some of the general EACs addressed specific aspects related to the rule of law and EU values, such as anti-discrimination, gender equality or the rights of persons with disabilities as well as the effective application of public procurement law or state aid rules, but there was no general condition in relation to the rule of law.

20 In a previous audit, we already found that EACs provided a consistent framework for assessing Member States' readiness to implement EU funds and that the Member States perceived them as a positive element[14]. At the same time, we also noted a number of weaknesses in the design of EACs. These were also the areas on which we focused in this audit.

[14] ECA special report 15/2017, paragraphs 38 and 94.

The Commission and Member States did not address EACs in a timely manner

EAC assessment based on broad criteria

21 Starting in 2014, Member States had to assess themselves on whether they fulfilled the EACs. This self-assessment was based on the criteria specified in the CPR[15] and had to be validated by the Commission. The CPR criteria were often broad, left considerable room for interpretation, and often did not refer to specific quantifiable targets even where such targets could be derived from EU legislation.

22 In 2014, the Commission issued additional guidance on how Member States and its own services should assess progress in achieving EACs. Nevertheless, we identified inconsistencies in the way the Commission assessed and validated progress made by Member States in completing their EAC action plans. This remained the case until the end of the 2014-2020 period, as ***Box 3*** illustrates.

Box 3

Inconsistencies in the Commission's assessment of EACs

Four Member States (Italy, France, Romania and Cyprus) failed to complete their action plans for EAC 6.2 in the waste sector by the reporting deadline at the end of August 2017. As a consequence, the Commission notified the Italian and Romanian OPs that it intended to suspend payments. In February 2019, the Commission actually suspended payments to the Italian OP, but not the Romanian OP. For the other two OPs (France and Cyprus), the Commission kept negotiating the completion of the action plans. In the case of Cyprus, the action plan was still not completed by December 2020.

Assessment of EACs designed as a one-off exercise at the beginning of 2014-2020

23 At the OP adoption stage, around one third of thematic EACs remained unfulfilled. The Commission identified issues with at least some of the EACs for 26 of the then-28 Member States. Only Austria and Denmark fulfilled all relevant EACs at the time of adoption of their OPs. The remaining 26 Member States adopted a total of 761 action plans on how they planned to fulfil EACs after OP adoption.

[15] Regulation (EU) 1303/2013, Article 19 and Annex XI.

24 These figures do not give any indication of the potential impact of unfulfilled EACs on performance. Nevertheless, they illustrate that non-fulfilment of EACs was not an isolated case, but concerned multiple areas and many Member States.

25 Of the 761 action plans, Member States had reported 746 (98 %)[16] as completed by the end of August 2017. The 15 outstanding action plans concerned eight Member States: Cyprus, Spain, France, Greece, Ireland, Italy, Luxembourg and Romania. By 2018, most of these Member States had completed their action plans. However, the action plans for one Italian OP and one Cypriot OP remained uncompleted as of December 2020.

26 In the 2014-2020 period, the assessment of EACs was designed as a one-off exercise. The CPR required Member States to assess whether they fulfilled the EACs at the time of OP adoption (or, in certain circumstances, by December 2016), and the Commission to validate this assessment. However, the CPR did not require Member States and Commission to monitor whether EACs remained fulfilled throughout the programme's lifetime. It is thus unclear whether the achievements reported in this process had been sustained throughout the entire 2014-2020 period.

Limited evidence on the impact of EACs on the effectiveness of spending

27 Member States' expectations regarding the impact of EACs differed. In most cases they did not consider that their fulfilment would automatically make the implementation of Cohesion policy more effective; they perceived EACs rather as a useful self-assessment tool[17]. Our audit work in recent years confirms that even if a Member State formally fulfils an EAC, this in itself does not necessarily mean that the situation on the ground has improved and that it has created the conditions for achieving results (see examples in ***Box 4***).

---

[16] ECA special report 15/2017, paragraph 34.

[17] ECA special report 15/2017, paragraphs 38-39.

Box 4

EACs fulfilled, but not always linked to improvements on the ground

In our audit on combating child poverty, we established that the Member States examined had all adopted anti-poverty strategies in line with EAC 9.1 "Existence and implementation of a national strategic policy framework for poverty reduction"[18]. However, we found several weaknesses in the implementation of these strategies. For Poland and Romania, for example, we concluded that national authorities had not monitored implementation effectively, and that the targets set in the strategies had already been met at the time of adoption.

In our audit on state aid, we found that the fulfilment of the relevant general EACs by Member States did not necessarily result in better compliance for Cohesion policy projects on the ground[19]. Our 'statement of assurance' audits also showed that non-compliance with state aid rules continued to be a frequent source of errors in Cohesion spending after 2017[20].

28 At the same time, the introduction of EACs may have made an indirect contribution - without them, the conditions for spending EU funds on the ground would have been even more challenging. A 2017 Commission study concluded that EACs made the deployment of the ESI Funds more effective and structured[21]. It acknowledged, though, that the evidence was limited and that conclusions may be premature. Since then, the Commission has not carried out a further assessment of the impact of EACs on the effectiveness of spending on the ground.

Non-fulfilment of EACs rarely had financial consequences

29 In the 2014-2020 period, there was a direct link between the non-fulfilment of EACs and the disbursement of EU funds for the priorities concerned at two stages, as

---

[18] ECA special report 20/2020 'Combating child poverty – Better targeting of Commission support required', paragraph 65.

[19] ECA special report 24/2016 'More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy', paragraph 105.

[20] ECA annual report 2018, paragraph 1.30.

[21] European Commission, Staff Working Document: The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds, 31 March 2017, SWD(2017) 127 final, parts C and D.

the Commission had the power to suspend payments if Member States failed to fulfil the relevant EACs[22]:

— firstly, at the OP adoption stage, the Commission could suspend interim payments pending completion of the action plans where it could demonstrate significant prejudice to the achievement of specific objectives;

— secondly, it could suspend payments where action plans had not been completed by 31 December 2016.

However, non-fulfillment of EACs was not, in itself, sufficient grounds for suspending payments.

The Commission did not suspend any payments for non-fulfilment of EACs at the OP adoption stage

30 As regards the first stage, we found that the Commission had not imposed any payment suspensions at the time of OP adoption, even though around one third of thematic EACs remained unfulfilled (see paragraph ***23***). We also found, however, that Member States imposed their own suspensions accounting for around 2 % of ERDF/CF funding and 3.5 % of ESF funding[23]. This may have prevented the Commission itself from imposing suspensions. It also illustrates that EACs, at least at the beginning of the 2014-2020 period, had an effect on the implementation of the ESI Funds.

31 As regards the second stage, the Commission developed procedures to monitor the implementation of Member States' action plans[24] and defined criteria for possible payment suspensions[25]. According to the Commission, a suspension was only possible if there was "sufficient information and legal basis to proceed". Failure to complete an action plan was not, in itself, sufficient to trigger a suspension. Under the CPR, any

---

[22] Regulation (EU) 1303/2013, Article 19(5).

[23] ECA special report 15/2017, paragraphs 61 and 62.

[24] European Commission, Procedure for monitoring and assessing the implementation of action plans to fulfil applicable ex ante conditionalities by DG EMPL, updated version for annual implementation report 2017, 28 July 2017.

[25] European Commission, ESI funds procedure on suspension of payments due to the failure to complete action plans to fulfil ex ante conditionalities, version 3.0 – 26 June 2017, Regio DDG.02.

discretionary payment suspensions imposed by the Commission had to be proportionate, taking into account "the actions to be taken and the funds at risk"[26].

32 Meanwhile, Member States were not obliged to report systematically on the intermediate progress of their action plans until the reporting deadline in 2017, nor to provide information to allow a systematic and consistent assessment of whether the conditions for suspending payments existed. Without a clear and measurable link in the CPR between EACs and the achievement of OP specific objectives, it was almost impossible for the Commission to justify suspension decisions. Consequently, although the burden of proof to justify suspensions was on the Commission, it did not have access to the information it needed to do so.

Commission suspended payments for only two OPs in the 2014-2020 period

33 During the first three years of the 2014-2020 period, the Commission examined the need to suspend payments in relation to 15 out of the 761 action plans covering eight Member States (see paragraph ***25***). However, pre-suspension letters could only be issued after Member States had reported by the end of August 2017 on the implementation of their actions plans. In late 2017, and following the analysis of the progress made by Member States in fulfilling the EACs, the Commission sent pre-suspension letters for five action plans on five different OPs (in Spain, Italy, and Romania).

34 In April 2018 and February 2019, the Commission decided to suspend payments to two of these five OPs (Spain and Italy). The suspension for the Spanish OP was lifted in March 2019, whereas payments to the Italian OP remained suspended.

[26] Regulation (EU) 1303/2013, Article 19(5).

Outlook for 2021-2027: 'enabling conditions' applicable throughout the period and a new 'rule of law' conditionality introduced

35 For the 2021-2027 period, EACs will be replaced by 'enabling conditions'[27]. Overall, there are 20 enabling conditions as compared to 36 EACs. Most of these enabling conditions are broadly consistent with former EACs. Moreover, the general EACs have been replaced by horizontal enabling conditions. These horizontal conditions concern aspects related to public procurement and state aid, as well as the EU charter of fundamental rights and the UN convention on the rights of persons with disabilities. ***Figure 1*** provides an overview of the 2014-2020 EACs and the 2021-2027 enabling conditions.

36 Unlike in 2014-2020, Member States are required to apply enabling conditions throughout the 2021-2027 period. Moreover, until the end of this period, the Commission can suspend payments if Member States stop fulfilling enabling conditions[28]. This represents a significant strengthening of the role the Commission can play in how Member States implement the Cohesion policy funds.

37 However, similarly to the situation in 2014-2020, the CPR does not require the Commission to inform the European Parliament and the Council about Member States' compliance with enabling conditions in the 2021-2027 period. Such reporting could help to underline the importance of fulfilling enabling conditions to ensure the effective and efficient spending of EU funds.

38 On 16 December 2020, the European Parliament and the Council adopted Regulation 2020/2092 laying down rules to protect the EU budget in cases where Member States breach the principles of the rule of law[29]. The new 'rule of law' conditionality supplements the enabling conditions set out under the 2021-2027 CPR and other instruments and processes that promote the rule of law and its application. In particular for the Cohesion policy funds, the Commission can propose measures only in cases where specific procedures under the CPR do not adequately ensure the sound financial management of the EU budget or protect the EU's financial interests.

---

[27] Regulation (EU) 2021/1060, Annexes III and IV.

[28] Regulation (EU) 2021/1060, Article 15(6).

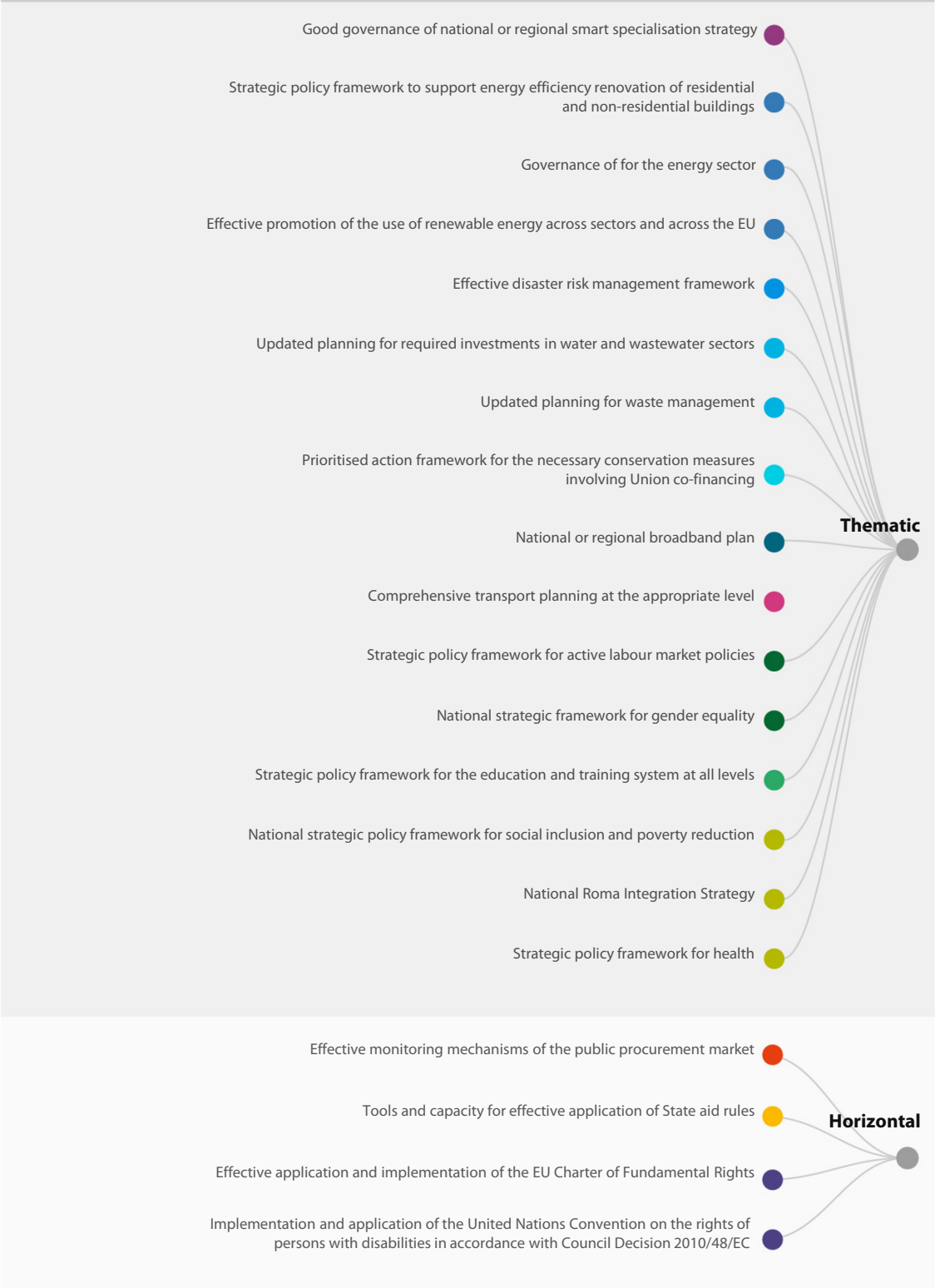
[29] Regulation (EU, Euratom) 2020/2092 of the EP and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

Figure 1 – 2014-2020 EACs and 2021-2027 enabling conditions

Note: Ex ante conditionalities are shortened and simplified in comparison to the legal base.

Source: Regulation (EU) 2021/1060, Annex III Horizontal enabling conditions and Annex IV Thematic enabling conditions; Regulation (EU) 1303/2013, Annex XI Ex ante conditionalities.

Enabling conditions 2021-2027



Performance reserve and review

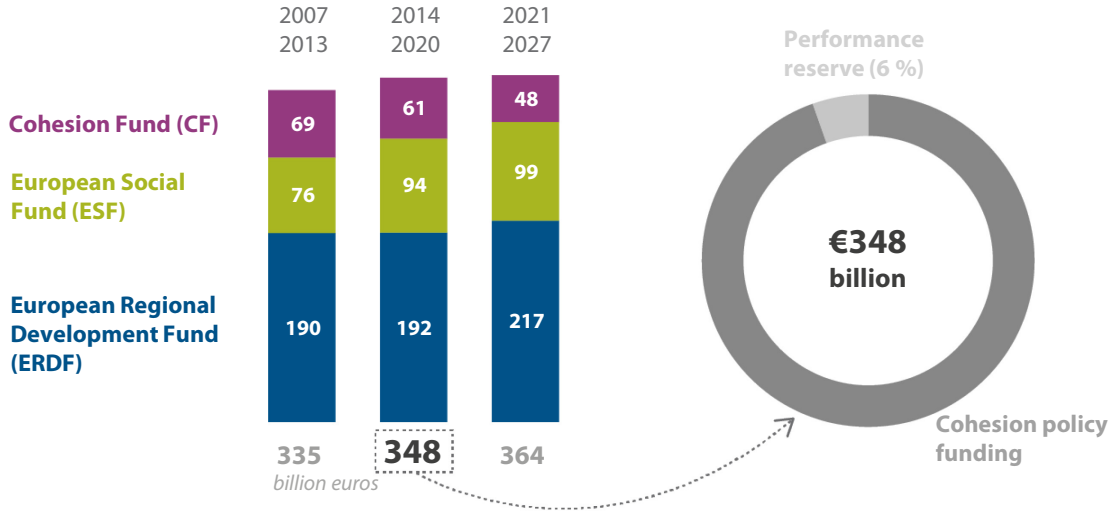
Setting aside part of the funding for better performing measures

Release of the performance reserve on the basis of the 2019 performance review

39 The performance reserve was an attempt to link budgetary decisions to performance, and particularly outputs. The release of the reserve was conditional on meeting relevant milestones for each priority axis by the end of 2018, as determined by a performance review[30]. This performance review was to be carried out in 2019, taking account of the performance data reported by Member States for the period 2014-2018.

40 In the 2014-2020 OPs, a performance reserve of around 6 % of EU funding (some €20.2 billion) was built into the allocations under the 'investment for growth and jobs' goal (excluding the 'European territorial cooperation' (ETC) goal), as shown in ***Figure 2***.

Figure 2 – Cohesion budget (for the last three periods) and the 2014-2020 performance reserve



Notes: ERDF allocation refers only to the Investment for Growth and Jobs goal (European Territorial Cooperation (ETC) goal is excluded). Croatia joined the EU in 2013 and the UK withdrew in 2020. Figures for the 2021-2027 period show Cohesion policy allocations (in current prices).

Source: ECA based on Commission data.

41 A performance reserve already existed before 2014-2020. In the 2000-2006 period, it was mandatory, although the criteria for assessing performance did not have

[30] Regulation (EU) 1303/2013, Article 20.

to be set out in the OPs. In the 2007-2013 period, Member States could apply it voluntarily. Compared to previous periods, the key innovations for 2014-2020 were the mandatory use of a performance framework derived from the OPs' intervention logic, the breakdown of the reserve at the level of priorities, and the explicit linking of the release of the reserve (for each priority axis) to satisfactory performance, measured on the basis of milestones set out in the OPs at the time of the performance review.

A performance review based on a large number of indicators and milestones

42 In 2019, the Commission carried out its performance review for 300 ERDF/CF and ESF OPs with a performance reserve. These performance frameworks comprised a set of indicators, milestones and targets for each priority axis of these ERDF/CF and ESF OPs[31]. Overall, the review concerned 1 917 different priority axes within these OPs and 5 802 indicators. There were four types of indicators:

— Financial (input) indicators to measure spending. Each priority had to have such an indicator;

— Key implementation steps to complement output indicators where no outputs were expected by the end of 2018;

— Output indicators (common or programme-specific) to measure the implementation of actions; and

— Result (common or programme-specific for ESF OPs and programme-specific for other funds) indicators to measure achievement of the specific OP objectives where appropriate and closely linked to supported policy interventions.

The use of common indicators enables the Commission to make comparisons between programmes and to aggregate indicator values.

Conditions for the release of the performance reserve

43 The performance framework for each priority axis had to include at least one financial (input) indicator and one output indicator; the use of result indicators and key implementation steps was optional. To qualify for the release of the performance reserve, indicators had to achieve at least 85 % of their milestone value; where more than two indicators were used, the 85 % threshold was reduced to 75 % for one of the

[31] European Commission, Guidance for Member States on performance framework, review and reserve, EGESIF_18-0021-01, 19 June 2018, version 2.0.

indicators[32]. For priorities that had not achieved their milestone values, Member States had three months to propose an OP amendment to re-allocate the reserve to those priorities which had achieved the milestones.

44 The initial rules for ERDF/CF operations stipulated that indicators should only be reported once operations had been fully implemented[33]. Project expenditure, used to calculate financial indicators, would only qualify for reporting in the annual implementation report if incurred and certified to the Commission by the end of 2018[34].

45 Member States were allowed to revise the original OP milestone values and indicators before the performance review in 'duly justified cases', such as a significant change in economic, environmental and labour market conditions[35]. In 2014, the Commission proposed secondary legislation which allowed incorrect assumptions leading to under or over-estimations to be used as justification for revising milestones[36].

46 In the 2014-2020 period, the Commission could suspend interim payments in the event of 'serious failure' to achieve milestones[37]. To use this option, the Commission needed to communicate the underlying implementation weaknesses to the Member State concerned and give it the opportunity to take corrective action.

47 We previously stated that the performance review was unlikely to trigger a significant reallocation of Cohesion spending to better-performing programmes and priorities[38]. We also expressed reservations about the suitability of nearly half of the milestones specified as criteria for releasing the performance reserve and for

---

[32] Commission Implementing Regulation (EU) 215/2014 of 7 March 2014 laying down rules for implementing Regulation (EU) 1303/2013, Article 6.

[33] Commission Implementing Regulation (EU) 215/2014, Article 5(3).

[34] Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 laying down detailed rules implementing Regulation (EU) 1303/2013, Annex V.

[35] Regulation (EU) 1303/2013, Annex II, Article 5.

[36] Commission Implementing Regulation (EU) 215/2014, Article 5(6).

[37] Regulation (EU) 1303/2013, Article 22(6); Commission Implementing Regulation (EU) 215/2014, Article 6.

[38] ECA annual report 2013, paragraph 10.56.

suspending payments for under-performance[39]. In 2017, the OECD assessed the performance reserve as limited in scope and questioned the rigour of its performance-linkage[40].

48 We also reported on the difficulties encountered by Member States in setting targets for common output and result indicators[41]. This was confirmed by the Commission's own impact assessment in 2018[42].

Changes to the rules before the 2019 performance review led to additional flexibility for Member States

Conditions and criteria adjusted from 2014 onwards

49 The 2014-2020 period started with delays: the European Parliament and the Council adopted the legal framework only in December 2013 and it took until December 2015[43] to adopt most OPs. This and further delays in implementing projects on the ground meant absorption of funding was slower than initially planned. By the end of 2017, i.e. three years after the start of the seven-year period, expenditure claimed by the Member States represented only 16 % of available 2014-2020 budget allocations[44].

50 From 2014 onwards, the Commission introduced several changes to the rules for the 2019 performance review (see ***Figure 3***). These changes led to additional flexibility

---

[39] ECA special report 15/2017, paragraphs 102-106, 108 and 109.

[40] OECD, Budgeting and performance in the European Union, sections 1.2.2 and 1.2.3.

[41] ECA special report 21/2018 'Selection and monitoring for ERDF and ESF projects in the 2014–2020 period are still mainly outputs-oriented', paragraphs 61-62; ECA review 5/2018 'Simplification in post-2020 delivery of Cohesion Policy', paragraphs 41 and 59; ECA special report 15/2017, paragraphs 78-79.

[42] European Commission, Impact assessment accompanying the document 'Proposal for a Regulation of the European Parliament and the Council on the European Social Fund Plus', SWD(2018) 289 final, 30 May 2018, Annex 3.

[43] ECA special report 2/2017 'The Commission's negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion: spending more targeted on Europe 2020 priorities, but increasingly complex arrangements to measure performance', paragraph 47.

[44] ECA review 5/2019 'Outstanding commitments in the EU budget - A closer look' (rapid case review), paragraph 82.

for Member States in their reporting on performance. In particular, they made it possible for managing authorities to report:

— outputs achieved for ERDF/CF operations which were not yet fully implemented (in 2018)[45]; and

— expenditure incurred in 2018 but certified to the Commission by 30 June 2019 for the purposes of the performance review[46].

51 Furthermore, the Commission clarified in 2017 that, to measure the achievement of Member States' annual spending targets, it would take into account not only expenditure incurred and declared by Member States, but also annual pre-financing payments made by the Commission[47]. This meant that Member States that set their milestones based on the n+3 decommitment rule could declare less expenditure to meet their spending targets.

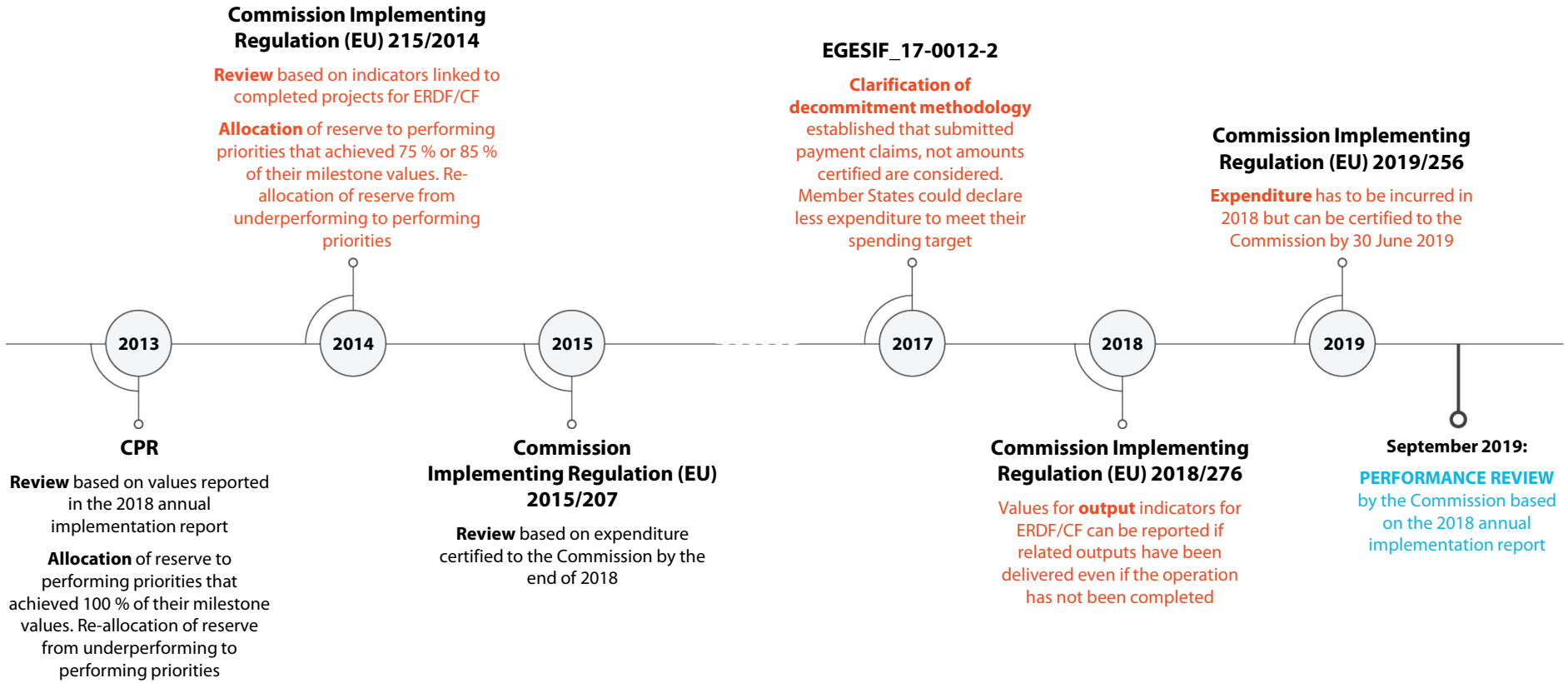
---

[45] Commission Implementing Regulation (EU) 2018/276 of 23 February 2018 amending Implementing Regulation (EU) 215/2014, Article 1(1).

[46] Commission Implementing Regulation (EU) 2019/256 of 13 February 2019 amending Implementing Regulation (EU) 2015/207, Annexes V and VI.

[47] European Commission, Decommitment methodology (n+3) and process in 2014 – 2020 – Update, EGESIF_17-0012-2, 23 November 2017.

Figure 3 – Changes to legislation and guidance on conditions and criteria for the 2019 performance review



Note: Changes and clarifications to the legal base adopted at the start of the 2014-2020 period are shown in red.

Source: ECA based on the ESI Funds legislation in the 2014-2020 period.

Member States could report better performance than under the initial legislation as a consequence of these changes and clarifications

52 These changes allowed Member States to report better performance than they could have under the initial legislation. Member States took these changes into account swiftly when reporting on performance. At the end of 2018, the managing authorities for all seven of the ERDF/CF OPs in our sample reported outputs for non-completed operations and/or expenditure incurred and declared but not yet certified by the end of 2018. For all but one of the 14 OPs examined (which include also ESF), the outputs were reported even before any related expenditure had been declared to the Commission. We also found that 38 of the 57 operations in our sample had not been completed by the end of 2018. Yet, for 32 of these ongoing operations, managing authorities had already reported on output indicators in their 2018 annual implementation reports. Without the changes introduced by the Commission prior to the 2019 performance review, these operations could not have been taken into account for the allocation of the performance reserve.

More than half of the indicators/milestones were amended prior to the performance review

53 Initially, the possibility of amending milestones and targets was limited to the non-exhaustive list of examples of duly justified cases set out in the CPR. In particular, these examples did not include the scenario of the initial targets and milestones set in the programmes having been calculated on the basis of wrong assumptions. In 2014, to address such situations, the Commission gave Member States the possibility to revise milestones and targets if they had been based on incorrect initial assumptions[48]. The Commission also recommended that Member States should request any modifications to the performance framework by no later than 30 June 2018[49].

54 Between 2014 and 2018, Member States made widespread use of the possibility of modifying performance indicators and their values. Our analysis shows that more

---

[48] Commission Implementing Regulation (EU) 215/2014, Article 5(6).

[49] European Commission, Guidance for Member States on Performance framework, review and reserve, p. 15; European Commission, Guidance on the Common approach to the revision of milestones and targets in the performance frameworks, 14 June 2018, version 3.0, pp. 3, 8 and 9.

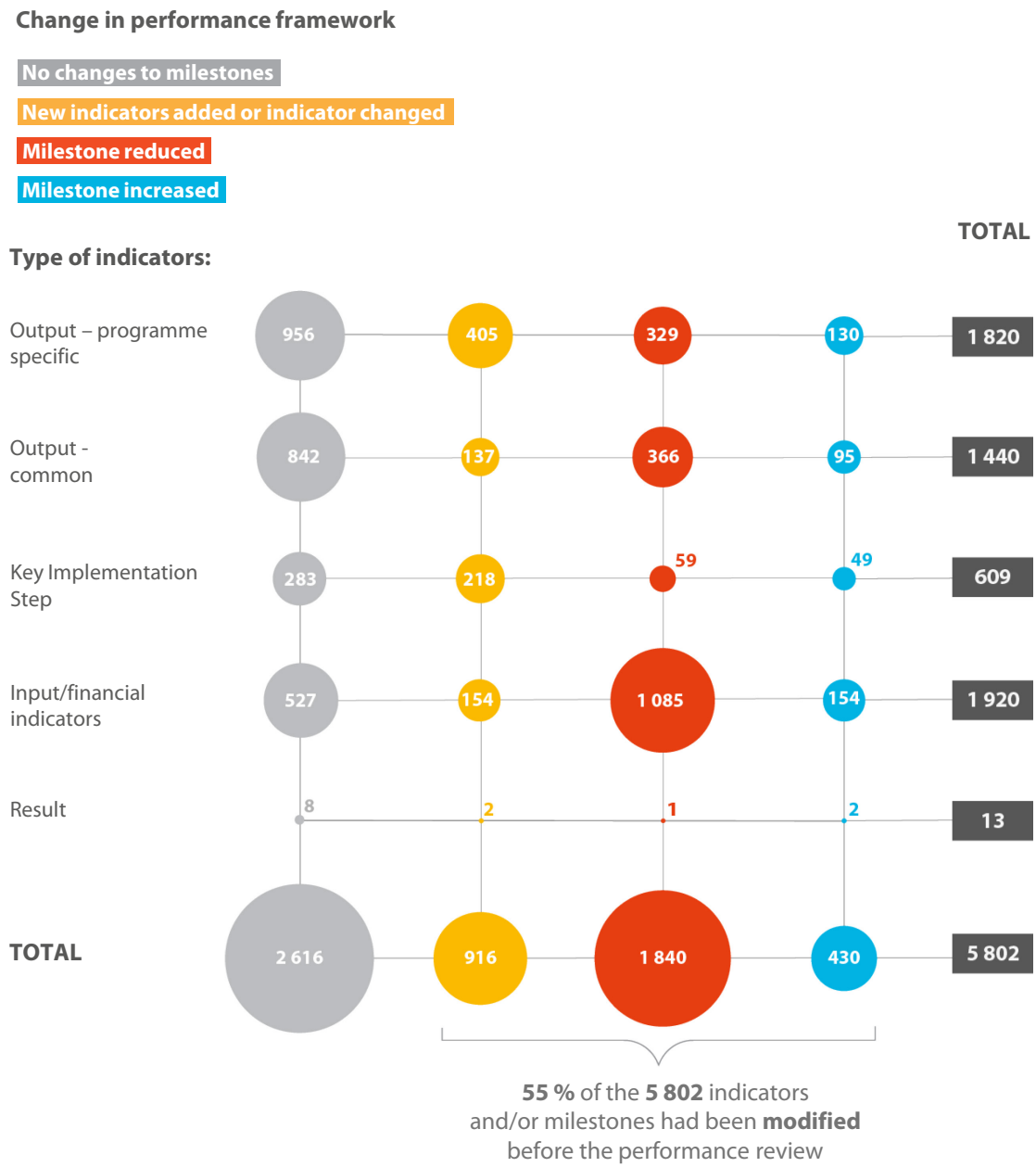
than half (55 %) of the 5 802 indicators and/or milestones had been modified between OP adoption and the performance review (see ***Figure 4***). In particular, Member States:

— increased the value of milestones for around 7 % of all indicators in the performance framework, mainly for financial (input) and programme-specific output indicators;

— reduced the value of milestones for around one third of all indicators in the performance framework, mainly for financial (input) indicators; and

— introduced 916 new indicators with corresponding milestones, partly replacing the initial indicators agreed when adopting the OPs.

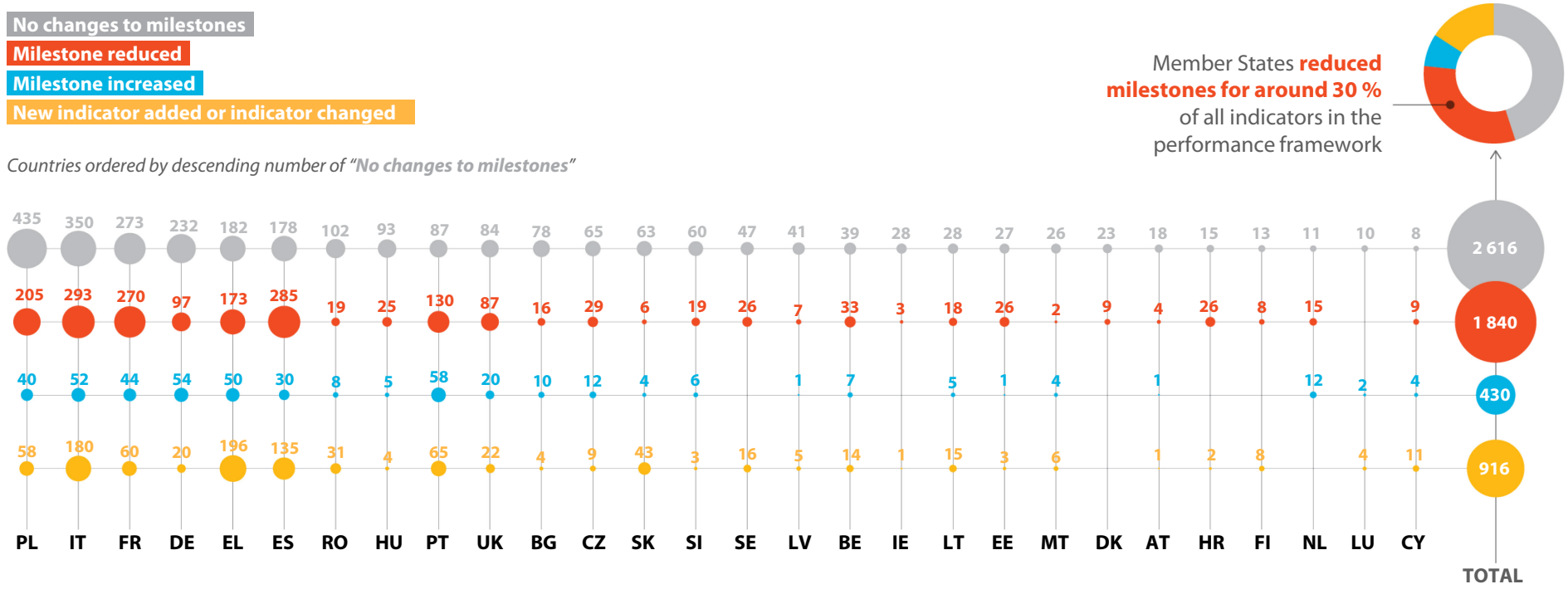
Figure 4 – Changes to milestones and indicators prior to the 2019 performance review



Source: ECA based on Commission data in Launchpad/Infoview (initial version of the adopted OPs vs. version applied in the performance review).

55 Member States reduced values of milestones for around 30 % of all indicators in the performance framework. ***Figure 5*** provides a breakdown by Member State of the types of changes made to the indicators and/or their milestones.

Figure 5 – Changes to milestones and indicators prior to the 2019 performance review – by Member State



Source: ECA based on Commission data in Launchpad/Infoview.

Most Member States justified their adjustments on the basis that initial assumptions had been incorrect

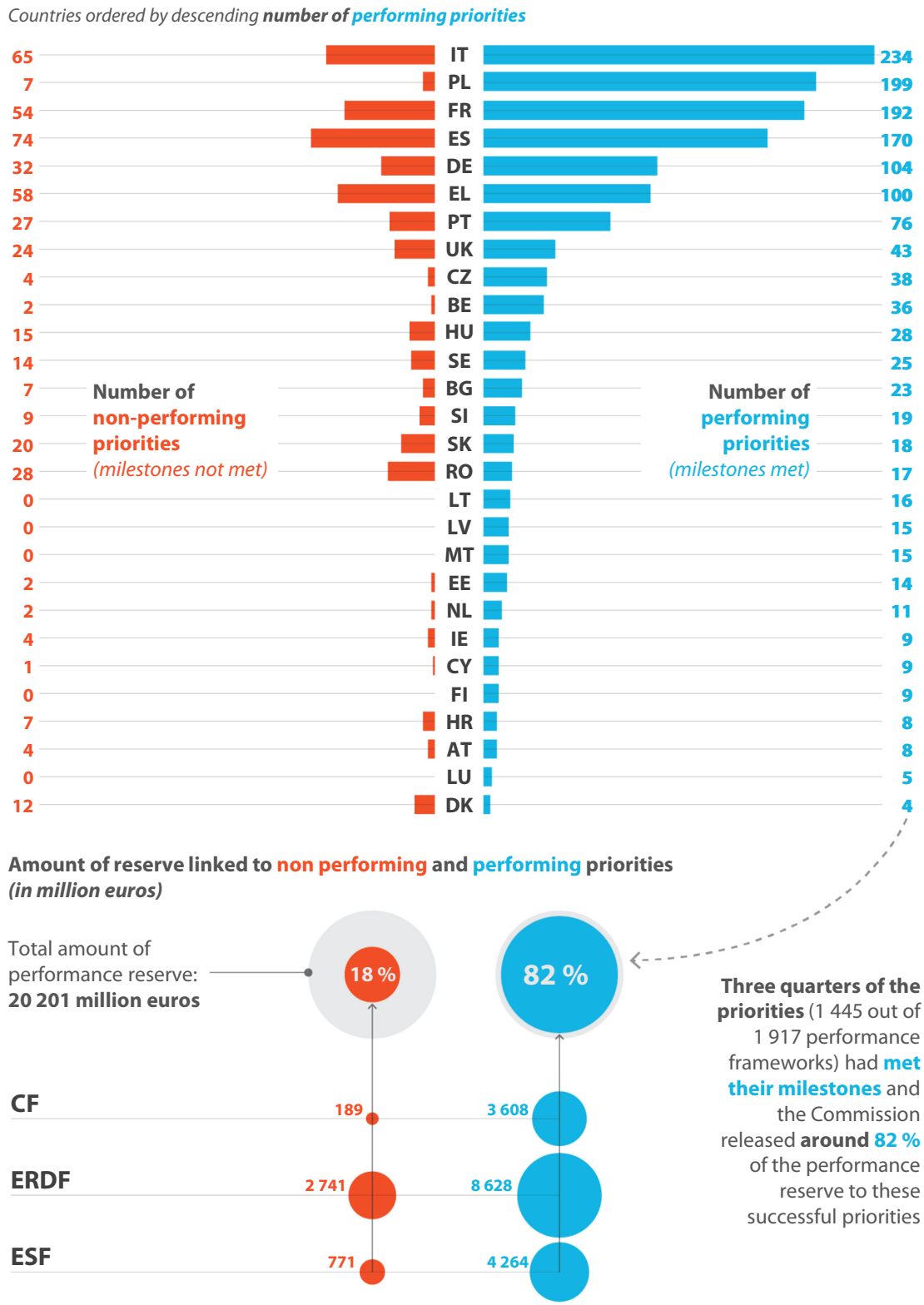
56 In 2018, one year before the performance review, the Commission registered 148 change requests from 24 Member States concerning indicators/milestones in the performance framework for ESF OPs. For 16 of these Member States, the reasons used to justify these requests included incorrect initial assumptions having been made when setting milestones. We did not receive similar data on amendments for ERDF/CF OPs.

57 Our own analysis, however, yields a similar finding. We reviewed the changes relating to 120 indicators and milestones included in the 14 ERDF/CF and ESF OPs examined (see ***Annex I***). We found that 66 had either been reduced, newly introduced or modified. Member States justified half of these changes on the basis that incorrect assumptions had been made when setting initial milestones. The CPR did not set a deadline for amending the performance framework prior to the performance review and the Commission accepted such requests from Member State requests until the end of 2018, six months after its own recommended deadline (see paragraph ***53***). For one Romanian OP, it even approved five new output indicators in June 2019.

Adjustments to the milestones resulted in releasing the performance reserve for a significantly larger number of priorities

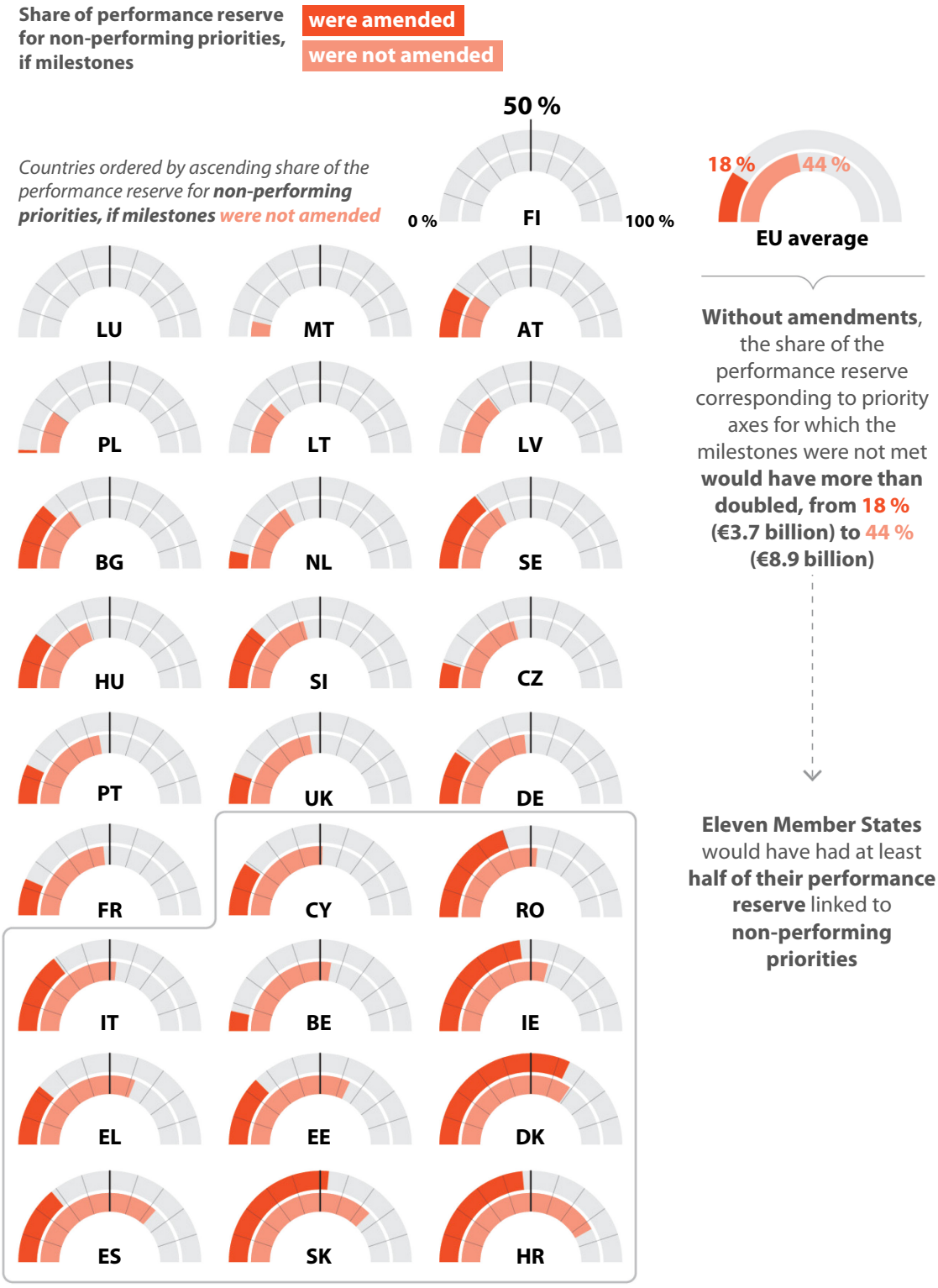
58 As a result of these adjustments to the performance framework, Member States reported more success in meeting milestones for the allocation of the performance reserve. Overall, the Commission's performance review concluded that three quarters of the priority axes had met their milestones and, as a consequence, around 82 % of the performance reserve was released to these successful priorities (see ***Figure 6***).

Figure 6 – Outcome of the 2019 performance review - by Member State and fund



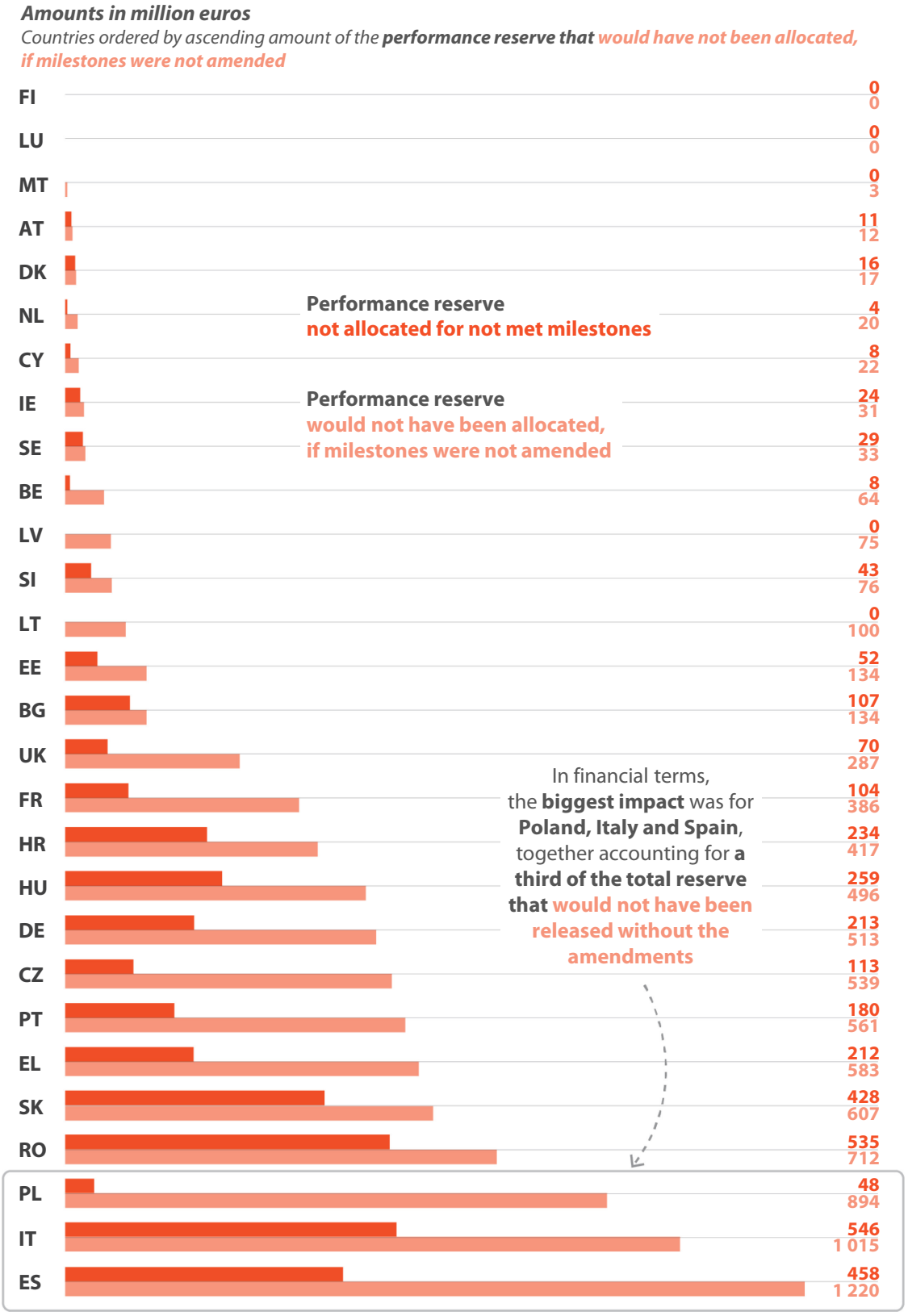
Source: ECA based on Commission data in Launchpad/Infoview.

Figure 7 – Comparison of the outcome of the performance review in terms of performing priorities with/without amendments by Member State



Source: ECA based on Commission data in Launchpad/Infoview.

Figure 8 – Comparison of the outcome of the performance review in terms of funding released from the reserve with/without amendments by Member State



Source: ECA based on Commission data in Launchpad/Infoview.

59 Our analysis also showed that, without the adjustment to indicators and/or milestones prior to the performance review, the share of the performance reserve corresponding to priority axes for which the milestones were not met would have more than doubled, from 18 % (€3.7 billion) to 44 % (€8.9 billion), meaning that only 56 % of the reserve could have been released. Eleven Member States would have had at least half of their performance reserve linked to non-performing priorities without the amendments (see ***Figure 7***). In financial terms, the biggest impact was for Poland, Spain and Italy. These three Member States together accounted for a third of the total reserve that would not have been released without the amendments. There were only two Member States (Luxembourg and Finland) where amendments had no impact (see ***Figure 8***).

60 Another consequence of the amendments to indicators/milestones, which the Commission assessed as duly justified, was that the number of priorities 'seriously failing' to meet milestones (288) was less than half what it would have been originally (605, or around one third of all priorities with a performance reserve). For Croatia, Ireland and Denmark, the Commission would have needed to consider suspending payments for more than half of the funding allocated under these priorities.

The Commission did not determine the reliability of all performance data used for the performance review

Reported performance data not fully validated

61 A meaningful performance review is critically dependent on the reporting of reliable performance data. For this reason, the national authorities had to provide assurance on the reliability of Member States' performance data:

— managing authorities had to attest, in their management declarations, to the reliability of performance data reported in the annual implementation report; and

— audit authorities provided additional assurance based on their audit work in the annual control report including the audit opinion.

62 In the Commission's assurance system for Cohesion policy, managing authorities report on performance data in their annual implementation reports for the calendar

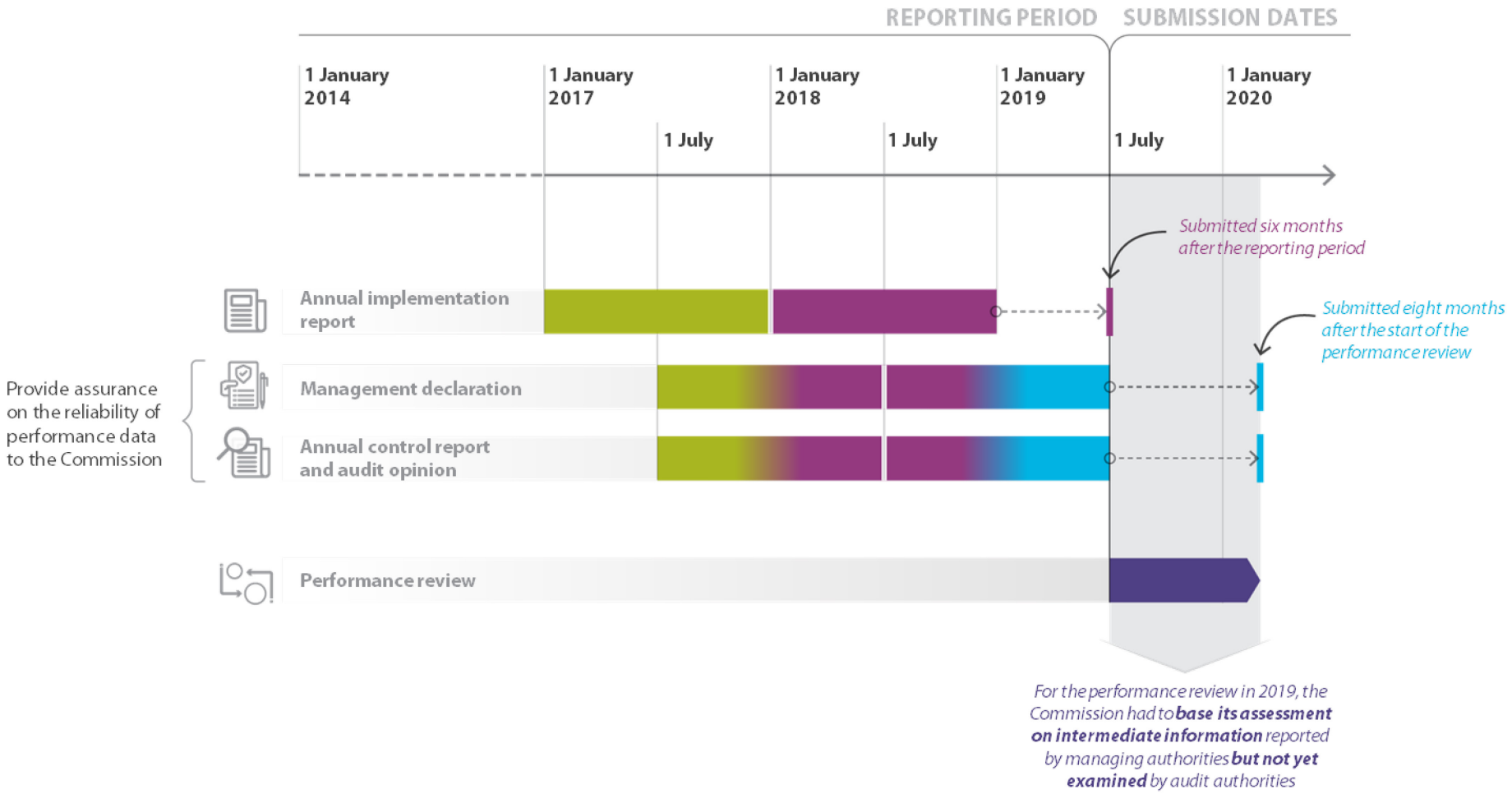
year[50] (from 1 January to 31 December). However, their management declarations[51] and the audit authorities' annual control reports (including their audit opinions) instead cover the accounting year[52] (from 1 July to 30 June). As a result, the performance data for the second half of 2018 was covered by the 2018-2019 management declaration and annual control report submitted by audit authorities in February 2020. For the performance review in 2019, the Commission had to base its assessment on intermediate information reported by managing authorities but not yet examined by audit authorities (see ***Figure 9***).

[50] Regulation (EU) 1303/2013, Articles 2(30) and 50(1).

[51] Regulation (EU) 1303/2013, Article 125(4)(e); Commission Implementing Regulation (EU) 2015/207, Annex VI.

[52] Regulation (EU) 1303/2013, Articles 2(29) and 138(b) and (c).

Figure 9 – Reporting and validation of performance data by managing and audit authorities



Source: ECA.

Scope of checks on performance data by managing authorities varied

63 Our analysis showed that managing authorities' checks on the reliability of performance data varied significantly. In the 14 OPs we examined, managing authorities mostly checked performance data reported in the annual implementation report against underlying records from beneficiaries. However, the scope of these checks differed significantly (see ***Box 5***) and they were not done consistently for all indicators. Overall, we found evidence of such checks for 116 (90 %) of the 129 indicator values we reviewed.

Box 5

Checks on performance data reliability by managing authorities

For the 'Competitiveness Fund of Funds' managed by the European Investment Fund (EIF) for the Romanian 'Competitiveness' OP, the managing authority did not check annual monitoring data provided by the EIF before submitting it to the Commission in the 2018 annual implementation report.

For the Italian 'Enterprises and Competitiveness' OP and the 'ESF Federal Germany' OP, the managing authorities mainly relied on automatic checks by the IT systems when aggregating data for the annual implementation report.

For the Polish 'Smart Growth' OP, similar checks were complemented by a managing authority verification of the quality of the data submitted in the 2018 annual implementation report.

For the Romanian 'Competitiveness' and 'Regional' OPs, the achievement of output indicators was checked upon project completion through on-the-spot visits.

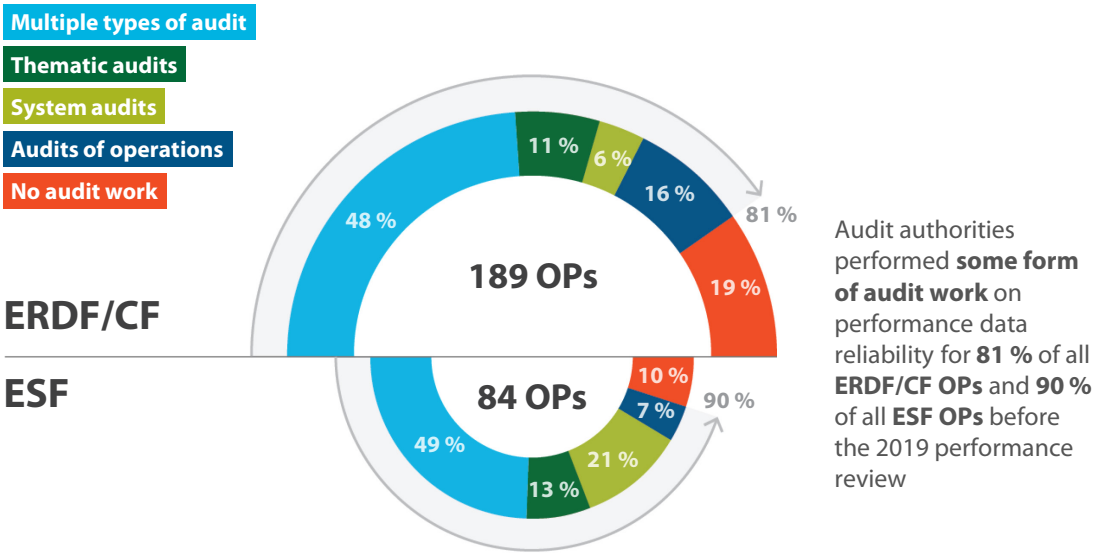
Audit work on performance data was at the discretion of audit authorities

64 In October 2018, the Commission asked audit authorities to report in their 2017-2018 annual control reports on the readiness of monitoring systems to deliver reliable data for the 2019 performance review. The Commission had discussed possible approaches to auditing performance data in meetings and workshops with audit authorities over the years. In its guidance on audit strategy, the Commission also suggested that audit authorities cover performance data reliability in their audits of operations, thematic audits or system audits.

65 However, until 2018, the type, scope and timing of audits of performance data were largely at the discretion of each audit authority. A Commission delegated regulation requiring audit authorities to systematically cover performance data reliability in their audits of operations entered into force only in May 2019[53]. This was too late to have any effect on the 2019 performance review.

66 Overall, according to the Commission, audit authorities performed some form of audit work on performance data reliability for 81 % of all ERDF/CF OPs and 90 % of all ESF OPs before the 2019 performance review. They did this either through audits of operations, thematic audits or system audits. Overall, audit authorities mostly carried out system and thematic audits, followed by audits of operations (see *Figure 10*).

Figure 10 – Audit authorities' checks on performance data



Note: OPs considered exclude technical assistance OPs, SME initiative OPs, ETC OPs and OPs with no expenditure declared in the accounts.

Source: ECA based on Commission data.

67 Our own analysis for the four Member States examined in this audit shows that the audit authorities for 12 of the 14 OPs reported to the Commission on their audit work on performance data reliability before the performance review. However, we also found that their checks covered only 6 of the 57 operations reviewed for this audit.

---

[53] Commission Delegated Regulation (EU) 2019/886 of 12 February 2019 as regards the provisions on financial instruments, simplified cost options, audit trail, scope and content of audits of operations and methodology for the selection of the sample of operations and Annex III, Article 1, point (11)(a).

The Commission determined the reliability of performance data for more than seven out of ten OPs

68 In 2019, before carrying out the performance review, the Commission assessed the completeness, consistency and plausibility of performance data provided by Member States in their 2018 annual implementation reports. The Commission also carried out ad-hoc thematic audits in 14 Member States on the 31 programmes which it considered most risky. These identified weaknesses in the reliability of the performance data and the values reported for indicators in the performance framework for eight programmes in Belgium, Germany, Hungary, Italy, Romania and Slovakia.

69 Overall, based on the work of audit authorities and its own additional work, the Commission determined the reliability of performance data for 71 % of ERDF/CF OPs[54] and 81 % of ESF OPs before the performance review.

70 The Commission could suspend interim payments if it became aware of serious deficiencies in the quality and reliability of the monitoring system or of the data on indicators[55]. Overall, the Commission assessed 15 OPs in this context, launching pre-suspension procedures for six OPs in Belgium, Germany, Hungary, Lithuania, Romania and Slovenia prior to the performance review in 2019. In the end, however, the Commission lifted all pre-suspensions and did not suspend any payments. According to the Commission, the Member States concerned provided additional information or addressed the deficiencies.

Most, but not all performance data matched the underlying evidence

71 In order to form an independent view on performance data quality, we examined the values reported for all 120 indicators in the performance frameworks of 20 priority axes for the 14 OPs covered by our audit. We also examined 57 projects with 129 indicators within these 20 priority axes (see ***Annex I***).

72 Overall, our analysis showed that most, but not all, performance data reported to the Commission matched the underlying evidence:

— First, we compared data reported to the Commission in the 2018 annual implementation reports with project data held by the managing authorities. Our

[54] European Commission, 2019 Annual activity report DG REGIO, p. 39.

[55] Regulation (EU) 1303/2013, Article 142(1)(d).

analysis showed that the values for 110 of the 120 indicators in the performance frameworks (92 %) fully matched;

— Second, we checked whether the data held by the managing authorities reconciled with the underlying evidence from beneficiaries. Overall, we were able to reconcile the values for 115 of the 129 indicators (89 %), relating to 46 of the 57 projects (81 %) in our sample.

73 All four Member States had at least one OP for which we were able to reconcile all performance data at project level (see ***Figure 11***).

Figure 11 – Performance data quality: share of examined indicator values at project level which matched the underlying data

European Social Funds (ESF) | European Regional Development Fund (ERDF) | Cohesion Fund (CF)

Poland

Operational Programmes		% of examined project values reconciled
2014PL16M2OP006	Regional - Malopolskie Voivodeship	83 %
2014PL05M9OP001	National - Knowledge Education Growth	71 %
2014PL16M1OP001	National - Infrastructure and Environment	100 %
2014PL16RFOP001	National - Smart Growth	100 %

Romania

Operational Programmes		% of examined project values reconciled
2014RO05M9OP001	National - Human Capital	100 %
2014RO16RFOP001	National - Competitiveness	88 %
2014RO116RFOP002	National - Regional Programme	82 %

Germany

Operational Programmes		% of examined project values reconciled
2014DE05SFOP002	National - ESF Federal Germany	71 %
2014DE16RFOP012	Regional - Saxony	100 %

Italy

Operational Programmes		% of examined project values reconciled
2014IT05SFOP002	National - Active Employment Policies	83 %
2014IT05SFOP001	National - Social inclusion	100 %
2014IT05M2OP001	National - Education	83 %
2014IT16RFOP003	National - Enterprises and Competitiveness	100 %
2014IT16RFOP016	Regional - Sicilia	100 %

Source: ECA.

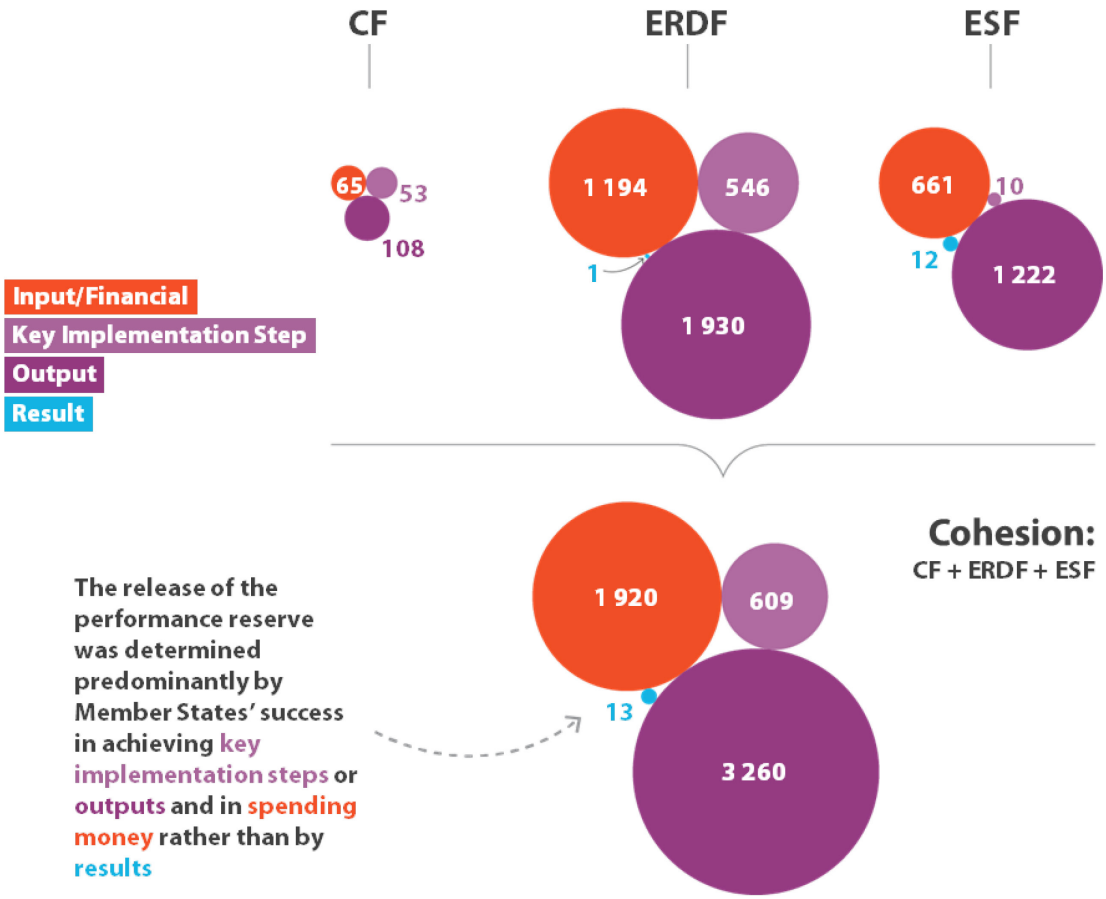
Performance review had only limited impact on the allocation of EU funding

Success in achieving key implementation steps or outputs, and in spending money, determined the release of the performance reserve

74 Our analysis showed that the release of the performance reserve was determined predominantly by Member States' progress in implementation, as reflected by achieving key implementation steps or outputs and their success in spending money (around one third of all indicators were financial indicators, as shown in ***Figure 12***). For example, performance reserves of €195 million and €52 million were released to the Polish 'Smart Growth' and the Italian 'Enterprises and Competitiveness' OPs, respectively, because these OPs' priorities had achieved their milestones for the number of enterprises receiving grants or of companies supported, the number of operations initiated and the expenditure declared to the Commission.

75 Only 13 of the 5 802 indicators (or fewer than 1 %) measured programme performance in terms of results (see ***Figure 12***). One of the reasons contributing to the low number of result indicators was that the timeframe for delivering milestones for the performance review was relatively short (maximum of four years) and thus insufficient for investments, where results take longer to materialise.

Figure 12 – Indicators used in the 2019 performance review per fund



Source: ECA based on Commission data in Launchpad/Infoview.

76 The Commission's performance review identified 288 priority axes in 121 OPs which 'seriously failed' to meet milestones for financial (input) and output indicators. In these cases, the Commission had the power to suspend payments. However, we found that the Commission had not imposed any payment suspensions. According to the Commission, the main reasons were that 80 % of programmes had sufficiently addressed their implementation weaknesses and around a third of priorities had been re-programmed or were in the process of being re-programmed. When confronted with the risk of suspension for serious under-performance, Member States had proposed – and the Commission accepted – OP amendments modifying milestones (see paragraph ***58***).

The release of the performance reserve was offset by the financial impact of other budget shifts

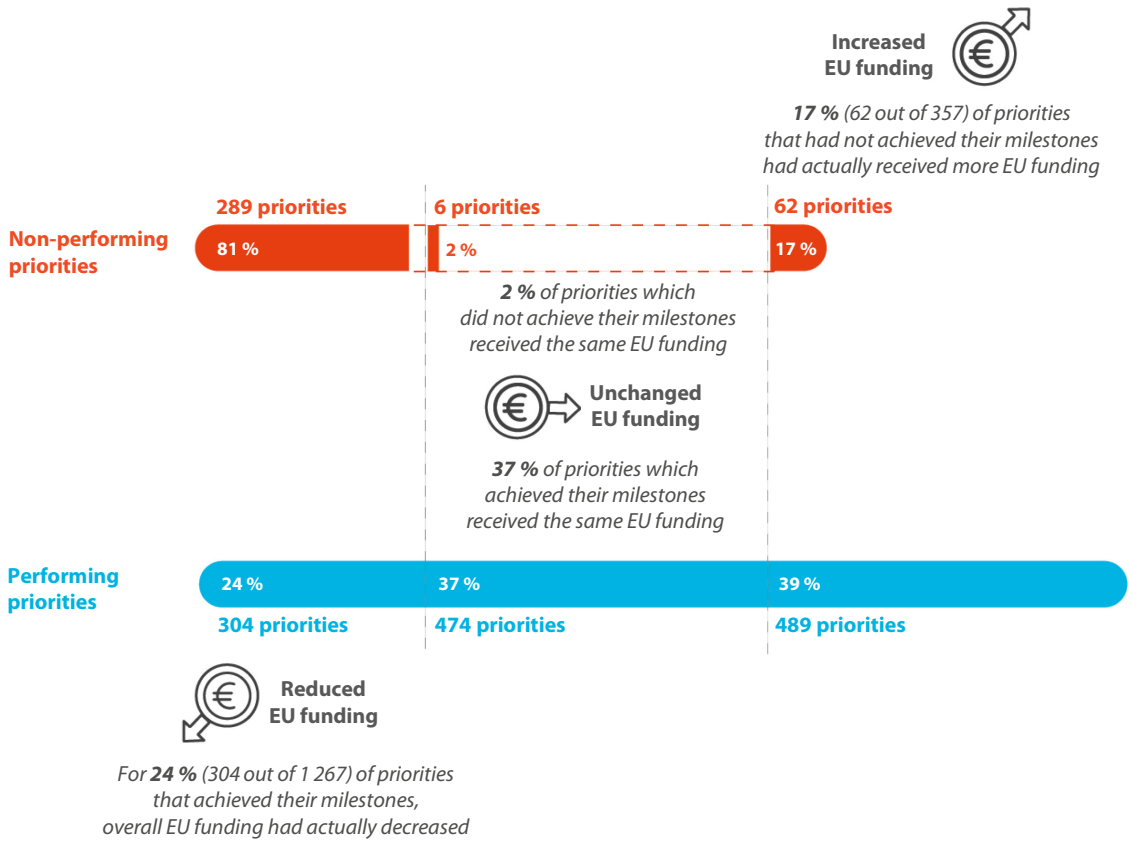
77 We examined all 1 624 priorities, corresponding to 267 of the 300 OPs, for which the performance review had been completed by December 2020 to assess how the

allocation of funds had changed overall since the first version of the approved OPs. We looked at the total EU allocation, i.e. the main allocation and the performance reserve.

78 Where priorities have not achieved their milestones, the corresponding performance reserve is re-allocated to those priorities which have. These re-allocations were mostly accompanied by other OP modifications.

79 We also examined whether overall data on changes in budget allocations between the start of the 2014-2020 period and the performance review could be traced back to Member States' success in meeting milestones and targets. Our analysis showed that the overall allocation of EU funding did not automatically increase or decrease depending on whether priorities achieved their milestones in the performance review. In particular, we found that 17 % (62 out of 357) of priorities that had not achieved their milestones had actually received more EU funding. Likewise, for 24 % (304 out of 1 267) of priorities that achieved their milestones, overall EU funding had actually decreased (see *Figure 13*).

Figure 13 – Changes in the allocation of EU funding at priority axis level following the performance review and OP re-programming (as of April 2020)



Source: ECA based on Commission data from Launchpad/Infoview.

80 This illustrates that there was only a weak link between programme priorities meeting their targets by 2018 and being reallocated resources (between the start of the period and 2018). Several factors may have contributed to this situation, including the limited performance reserve amounts (accounting for only 6% of overall allocations), and changes made to the budget allocations following the adoption of the OPs for other reasons, such as the automatic increase of funding due to the technical adjustments (as happened in 2017) or the introduction of new priorities.

Outlook for the 2021-2027 period: more flexible allocation of funds, but mandatory performance reserve discontinued

Mandatory performance reserve discontinued

81 In 2025, each programme will be subject to a mid-term review to determine the allocation of half of the funding for the last two years. The mid-term review will be based on, inter alia, progress in achieving milestones, taking into account major difficulties encountered in the implementation of the programme[56]. However, the performance review and the mandatory performance reserve have been discontinued. So far, the Commission has not yet presented further details on how the mid-term review and a subsequent re-programming exercise will be carried out.

More flexible allocation of funds throughout the 2021-2027 period and the introduction of the RRF as an alternative source for financing investments

82 The context for the mid-term review for the 2021-2027 period will differ in comparison to previous periods. Member States will have greater flexibility to re-programme and re-allocate funds at any point during the programme cycle. In particular, Member States have the possibility, within certain ceilings, to transfer funds between priorities under the same Fund, programme or in the same category of region, without prior approval by the Commission. The 2021-2027 CPR also provides the possibility to transfer up to 5 % of the allocation of each Fund to any other instrument under direct or indirect management[57].

83 Moreover, in the coming years, the Cohesion policy funds will be implemented simultaneously with the RRF. In 2021, Member States focused on the preparation and negotiation of their national recovery and resilience plans under the RRF. There are already indications that the launch of the 2021-2027 programmes will be even more

---

[56] Regulation (EU) 2021/1060, Article 18(1)(f).

[57] Regulation (EU) 2021/1060, Articles 24(5) and 26(1).

delayed than seven years ago. Furthermore, as there is no national co-financing under the RRF, many investment projects that would have been implemented through the Cohesion policy funds under normal circumstances may now be financed by the RRF. As a result, Member States are likely to absorb less of their initially programmed financial allocations than anticipated. This, in turn, makes it likely that fewer outputs and results will be delivered by the time of the mid-term review.

Performance-based funding models

Use of performance-based funding models broadened in the 2014-2020 period

Two new funding models: 'joint action plans' and 'financing not linked to costs'

84 The 2014-2020 period introduced two new funding models. These based ERDF/CF and ESF funding on verified performance, as measured by indicators with milestones for outputs and/or results, or the fulfilment of conditions, rather than the eligible costs actually incurred, as was traditionally the case.

85 The first of these funding models was the 'joint action plan' (JAP)[58], which has been available since the start of the 2014-2020 period. Payments to JAPs take the form of lump sums or standard scales of unit costs linked to milestones and targets (see ***Box 6***).

[58] Regulation (EU) 1303/2013, Article 104.

Box 6

Joint action plan

A JAP is a form of financing that is based on outputs and/or results linked to specific OP objectives. JAPs could comprise a project or a group of projects in any investment area (except infrastructure) receiving support from one or more OPs and one or more of the Cohesion policy funds.

The use of JAPs was restricted to larger operations with a minimum public expenditure threshold of €10 million, or 20 % of the public support from the contributing OP(s). Operations supported under the Youth Employment Initiative or the first JAP submitted by a Member State[59] were exempt from this restriction. In 2018, this minimum threshold was reduced to €5 million.

86 A revision of the Financial Regulation in 2018 introduced the second instrument, the 'financing not linked to costs' (FNLTC) model[60]. This is a fundamentally new method of EU funding, based on the fulfilment of conditions or on results achieved. For the ESI Funds specifically, funding is linked to progress in implementation or the achievement of programme objectives[61]. FNLTC could be used from 2019 onwards for ERDF/CF investments in the areas of energy efficiency and energy from renewable sources[62] (see ***Box 7***).

---

[59] Regulation (EU) 1303/2013, Article 104(2).

[60] Regulation (EU, Euratom) 2018/1046, Article 125(1)(a).

[61] Regulation (EU) 1303/2013, Article 67(1)(e).

[62] Commission Delegated Regulation (EU) 2019/694 of 15 February 2019 supplementing Regulation (EU) 1303/2013 of the European Parliament and of the Council with regard to the form of financing which is not linked to costs of the relevant operations.

Box 7

Financing not linked to costs

In 2019, the Commission adopted a delegated regulation[63] governing the use of the FNLTC model for ERDF/CF investments in the areas of energy efficiency and energy from renewable sources. Funding is provided per kWh of energy savings or tonne of CO_2 emission reductions.

This illustrates that financing is based on non-financial parameters rather than expenditure incurred. The regulation leaves it up to the national/regional authorities to determine the amount of funding per unit of energy saved.

87 Both models offer simplified management and control arrangements, with financial management, control and audit aimed at verifying that performance targets or the conditions for payment have been fulfilled[64]. Their use is optional, but JAPs are subject to approval by the Commission, while Member States intending to use FNLTC only had to inform the Commission.

Simplified cost options: the traditional method of linking funding to performance

88 In addition, the CPR provides for three types of simplified cost options (SCOs) for reimbursing expenditure calculated using pre-defined methods or off-the-shelf rates[65] rather than actual costs incurred:

— standard scales of unit costs;

— lump sums;

— flat-rate financing.

89 SCOs were first introduced in the ESF Regulation for the 2007-2013 period and their scope has been continuously extended since then, most recently in 2018 with the extension of mandatory SCO use for small operations funded by the ERDF, having

[63] Commission Delegated Regulation (EU) 2019/694.

[64] Regulation (EU) 1303/2013, Articles 67(1) and 109(2); Commission Delegated Regulation (EU) 2019/694, Annex.

[65] Regulation (EU) 1303/2013, Articles 67(1)(b)-(d), 67(5), 67(5)(a), 68, 68a and 68b.

previously been introduced for ESF-financed operations[66]. Since 2015, the Commission has adopted EU-level and Member State-specific rates under the ESF Regulation[67].

90 Standard scales of unit costs and lump sums are conducive to performance insofar as they link payments to outputs, but not necessarily to results. Flat-rate financing, however, is entirely input-based. Nevertheless, according to the Commission, SCOs can help shift the focus of managing authorities and beneficiaries from inputs to achieving outputs (and results)[68].

91 We have consistently supported the introduction of a more performance-based financing in Cohesion policy in previous years. We have recommended:

— since 2012, using SCOs to reduce the administrative burden and the risk of errors[69]; and

— as far back as 2017, introducing a performance-based funding model, which links payments to fulfilling conditions or achieving results established beforehand[70].

Uncertainty on how to use the new performance-based funding models hampered their uptake by Member States

Little interest in using the new performance-based funding models

92 In the 2014-2020 period, Member States showed little interest in using the two new performance-based funding models. By January 2018, only Poland had submitted a JAP proposal. However, in July 2019, following exchanges with the Commission, the Polish authorities decided to withdraw their proposal. In April 2018, the Commission

---

[66] Regulation (EU) 1303/2013, Article 67(2)(a).

[67] Commission Delegated Regulation (EU) 2015/2195 of 9 July 2015 on supplementing Regulation (EU) 1304/2013 of the European Parliament and of the Council on the European Social Fund, regarding the definition of standard scales of unit costs and lump sums for reimbursement of expenditure by the Commission to Member States.

[68] European Commission, Guidance on Simplified Cost Options – European Structural and Investment (ESI) Funds, EGESIF_14-0017, September 2014, p. 8.

[69] ECA annual report 2011, paragraph 6.30; ECA annual report 2012, paragraph 6.42; ECA annual report 2014, paragraph 6.79.

[70] ECA special report 2/2017, recommendation 6; ECA opinion 1/2017 concerning the proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, paragraphs 82 and 84.

launched a specific call to gather experience and stimulate interest in JAPs and selected two pilot projects: "Promoting sustainable and inclusive growth by activating the hidden talent of NEETs and Migrants" in the Netherlands and "Training2Work" in Portugal. Both projects are currently running under direct management by the Commission, with a combined EU contribution of around €1.1 million.

93 In the 2014-2020 period, only Austria piloted the FNLTC model for one ERDF project with an EU contribution of around €36 million (see ***Box 8***).

Box 8

Pilot project using FNLTC in Austria

"Payments not linked to costs", a project in Austria in the area of energy efficiency, was set up in 2019 and covers around 5.4 % of the "Investment in Growth and Jobs in Austria 2014-2020" ERDF OP. The project supports investments eligible under the Austrian "Environmental Subsidy Scheme".

The goal is to reduce CO_2 emissions by a total of 143 700 tonnes per year by 2023. EU-funding amounts to €35.9 million and was determined using a unit price of €250 per tonne of CO_2, which was based on a calculation method proposed by the Austrian authorities and agreed with the Commission.

Funding is disbursed in stages linked to the achievement of intermediate funding conditions, procedural steps (e.g. project selection) and CO_2 reductions achieved.

Feasibility and potential demand for JAPs and FNLTC not assessed upfront

94 According to the Commission, the main reasons Member States were reluctant to use JAPs were the overly complicated adoption procedure and difficulty determining output and result indicators, but also the fact that they considered SCOs more efficient[71]. In response to a Commission survey on FNLTC, Member State representatives noted that the reasons for not using FNLTC were the burdensome setup, the lack of clarity of their design and potential use, and uncertainty about applicable audit arrangements. Generally, Member State experts considered performance-based funding models to be burdensome, complicated and time-

[71] European Commission, Impact assessment accompanying the document 'Proposal for a Regulation of the European Parliament and the Council on the European Social Fund Plus', SWD(2018) 289, 30 May 2018, p. 22.

consuming, riskier for beneficiaries and less flexible[72]. Finally, the uptake of the FNLTC model was also hampered by the fact that it could be used only from 2019 onwards, by which time the 2014-2020 OPs had already been adopted and committed the bulk of their funds.

95 Our analysis also showed that the Commission had not assessed the feasibility of and potential demand for such a funding models through an ex-ante impact assessment. We also found limited evidence of widespread consultation within the Commission (for example, with the Directorate-General for Energy, which oversees the implementation of the Energy Efficiency Directive) or with Member States before the legislative proposal.

96 We identified three main obstacles to using these innovative funding models:

— the late introduction of the FNLTC during the 2014-2020 period;

— managing authorities finding it difficult to identify suitable operations; and

— Member States' concerns about their legal certainty in terms of subsequent checks and controls, particularly as regards the obligation to comply with state aid and procurement rules.

Member States' reluctance to use performance-based funding models in 2014-2020 also attributable to discrepancies in the applicable rules

97 We know from years of audit experience that managing authorities want legal and financial certainty, as they fear the Commission could suspend payments or even impose financial corrections if problems occur. This is also confirmed by the Commission's own impact assessments[73].

---

[72] Transnational Network of ERDF/CF SCO practitioners, 6th meeting, presentation of Result-based approaches, 2 July 2020; European Commission (t33 & SWECO), Use and intended use of simplified cost options in ESF, ERDF, CF and EAFRD, 27 March 2018, pp. 13 and 16.

[73] European Commission, Impact assessment accompanying the document 'Proposal for a Regulation of the European Parliament and the Council on the European Social Fund Plus', SWD(2018) 289, 30 May 2018, p. 21; European Commission, Impact assessment accompanying the document 'Proposal for a Regulation of the European Parliament and the Council on the European Regional Development Fund and on the Cohesion Fund, SWD(2018) 282, 29 May 2018, p. 64.

98 For SCOs, the Commission had issued guidance at the start of the 2014-2020 period[74]. In May 2021, the Commission revised these guidelines to clarify that management verifications and audits of operations involving SCOs must continue to check state aid rules, but not specific public procurement procedures[75].

99 Similar questions arose when the FNLTC model was introduced in 2018, as the applicable rules on financial control and audit were ambiguous. These discrepancies in the applicable rules have contributed to Member States' reluctance to use this new performance-based funding model during the 2014-2020 period. In February 2019, the Commission adopted a delegated regulation to provide clarification. Nevertheless, we consider that this did not address the underlying issue of how Member States' audit and control would ensure compliance with the basic internal market rules (see ***Box 9***).

[74] European Commission, Guidance on Simplified Cost Options, EGESIF_14-0017, September 2014.

[75] Commission notice guidelines on the use of Simplfied Cost Options within the European Structural and Investment Funds (ESI) – revised version (2021/C 200/01), 27 May 2021, pp. 15 and 41.

Box 9

Ambiguous legal provisions for financial control and audit for FNLTC in the 2014-2020 period

As regards the FNLTC model, the CPR and the 2019 delegated regulation stated that audits should be limited to verifying the fulfilment of conditions for reimbursement[76]. Regularity of expenditure is not one of these conditions.

At the same time, and in contradiction to the above, the CPR requires managing authorities to verify that all operations are implemented in compliance with applicable law, including EU and national public procurement and state aid rules[77].

The delegated regulation also requires a fair, equitable and verifiable method for calculating the funding amount. This calculation method is established by the authorities that would use the FNLTC, without being subject to Commission approval.[78]

Performance-based funding in 2014-2020 was disbursed almost exclusively through traditional SCOs

SCOs expected to cover around a third of ESF spending, but focus is not yet on results

100 SCOs have been the only performance-based funding model widely used in the 2014-2020 period. During the period, the Commission actively encouraged and promoted the use of SCOs to reduce the administrative burden on managing authorities and the risk of error. This has contributed to a significant uptake of SCOs compared to the previous period. Almost all ESF OPs use SCOs at least to some extent (mostly standard scales of unit costs) and some ERDF OPs have also started using SCOs (mostly input-based flat rates). The Commission estimates that SCOs will have covered 33 % of ESF and 4 % of ERDF/CF spending by the end of the 2014-2020 period[79].

---

[76] Regulation (EU) 1303/2013, Article 67(1); Commission Delegated Regulation (EU) 2019/694 of 15 February 2019, Recital 6 and Annex, point 4(f).

[77] Regulation (EU) 1303/2013, Article 125(4)(a); Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market.

[78] Commission Delegated Regulation (EU) 2019/694 of 15 February 2019, Article 3(2) and Annex, points 3(1) and 5.

[79] European Commission, Use and intended use of simplified cost options in ESF, ERDF, CF, EARD and EAFRD, 27 March 2018, pp. 42 and 53.

101 Overall, we estimate that around €22.5 billion, or 8.5 % of the grant-based 2014-2020 Cohesion spending will have been reimbursed using performance-based funding models, almost entirely SCOs.

Outlook for the 2021-2027 period: successful rollout of FNLTC requires further clarification

Use of FNLTC broadened for 2021-2027 Cohesion spending and made obligatory for the RRF

102 In the coming years, performance-based funding will become the dominant form of EU funding in terms of spending covered. This is mainly because FNLTC as defined in the Financial Regulation[80] will be the only financing model to provide grants to Member States under the RRF[81]. This is a remarkable shift in the EU's financial management.

103 For the 2021-2027 period, for Cohesion policy funds governed by the CPR, the use of the FNLTC model will become an option at two levels: i) for providing the EU's contribution to all (or parts) of a priority and ii) for projects carried out under such programmes or priorities, for the grants provided to the beneficiary[82]. This will make it easier for Member States to combine EU funding with national or regional funding schemes whose rules may otherwise be difficult to reconcile with EU eligibility rules. The FNLTC model will also become mandatory for certain actions designed to reinforce Member States' administrative capacity[83]. JAPs, however, have been discontinued.

---

[80] Regulation (EU, Euratom) 2018/1046, Article 125(1)(a).

[81] Regulation (EU) 2021/241, Recital (18), Articles 4(2) and 24(2); ECA opinion 6/2020 concerning the proposal for a regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility, paragraphs 47, 53-56.

[82] Regulation (EU) 2021/1060, Articles 53(1)(f) and 95(1).

[83] Regulation (EU) 2021/1060, Articles 37 and 95.

104 In the 2021-2027 period, the Commission is empowered to adopt a delegated act to supplement the provisions in the CPR[84]. This could be a helpful way to offer off-the-shelf models for FNLTC that clarify, for example, the investment areas, the types of activities, measures and operations and conditions to be fulfilled or outputs/results to be achieved when using this funding model.

Arrangements for checking compliance with internal market rules under the FNLTC model still not sufficiently clear

105 Compliance with public procurement and state aid rules is essential for the EU's internal market to function effectively. Member States will still have to ensure that all EU spending complies with public procurement and state aid rules[85]. Finally, it is the Commission's obligation to ensure that EU rules on public procurement and state aid are applied correctly and consistently by the Member States. This obligation covers all public spending and types of financial support. Therefore, we consider it important to clarify from the outset how managing and audit authorities should treat public procurement and state aid when using FNLTC models during the 2021-2027 period, not least to avoid a situation of legal uncertainty such as the one during the previous period.

106 The 2021-2027 CPR provides that management verifications and audits for the parts of a programme where the FNLTC model is used should verify that the conditions for reimbursement have been fulfilled or that results have been achieved. They should not, however, verify underlying costs, as the Commission provides an ex-ante agreement on such amounts[86]. This is without prejudice to Member States' obligation to ensure compliance with public procurement or state aid rules. Managing and audit authorities still have to provide assurance to the Commission that all expenditure included in the accounts is regular and compliant with all applicable rules[87].

---

[84] Regulation (EU) 2021/1060, Article 95(4).

[85] Regulation (EU) 1303/2013, Article 125(4)(a); Regulation (EU) 2021/1060, Article 74(1)(a).

[86] Regulation (EU) 2021/1060, Article 95(3) and Recital (34).

[87] Regulation (EU) 2021/1060, Articles 69(2) and 74(1)(a).

Conclusions and recommendations

Performance-based financing in Cohesion policy: worthy ambitions, but obstacles remained in the 2014-2020 period

107 During the 2014-2020 period, much has been done to strengthen the performance orientation of Cohesion policy and the introduction of the performance framework has contributed to a cultural change in the financial management of Cohesion policy. However, our audit showed that performance-based financing has not yet become a reality. In particular, while the three new instruments led to new approaches to implementation, they did not make a noticeable difference to the way EU funding was allocated and disbursed.

108 The process of implementing European Structural and Investment (ESI) Funds extends over many years, sometimes beyond the seven-year multiannual financial framework period, and there is a considerable time lag before EU investment delivers results, and sometimes even outputs. Another concern is the reliability and usefulness of performance information based on which financial resources should be allocated. One of the key lessons learnt from the well-intended initiatives of 2014-2020 is that linking resource allocation to performance is by no means a simple task.

Were the instruments well designed to incentivise performance and to shift the focus to achieving results?

109 Our audit confirmed that all three instruments had the potential to incentivise performance and to shift the focus to achieving results. The instruments were complementary, being applicable at different stages and to different aspects of programme implementation. However, they all provided a way of linking Cohesion funding to performance and results.

110 Ex-ante conditionalities (EACs) were one of the main innovations of the 2014-2020 period. They were designed to set the right conditions for effective spending from the start of the programmes, following the basic principle that it is better to address early, before the EU financing is disbursed, any issues that may limit the potential of Member States and regions to achieve the intended results (paragraphs *16*-*20*).

111 The mandatory setting-aside of part of the funding for well performing measures in the form of a ‘performance reserve’ was not, in itself, an innovative

aspect, as it had already been used in a different form in the 2000-2006 period. The innovative element was the assessment of performance within an agreed framework comprising a set of milestones for each priority axis and the allocation of the reserve to successful priorities. The performance reserve introduced a transparent and rules-based instrument to make the financing of Cohesion policy more performance-based, provided that the performance data reported by managing authorities was reliable and the framework was stable and properly enforced. The downside of this instrument was the limited amounts at stake, as it represented only 6 % of Member States' ESI Fund allocations (paragraphs ***39-41***).

112 The two new funding models, 'joint action plans' and 'financing not linked to costs', made it possible to base the funding of operations either on verified performance as measured by output or result indicators or the fulfilment of conditions. This was a clear step towards making Cohesion policy more performance-based, although their use was optional and limited to specific areas. In addition, simplified cost options were made available across all ESI Funds. Two of them (standard scales of unit costs and lump sums) explicitly link payments to outputs (paragraphs ***84-91***).

Were the Commission and Member States effective in using the instruments to make Cohesion funding more performance-based?

113 Our audit has found that the Commission and Member States were only partially effective in using the three instruments to make Cohesion funding more performance-based. Overall, our assessment is more positive for EACs than for the performance reserve, and least positive for performance-based funding models (except simplified cost options).

Ex-ante conditionalities

114 The assessment of EACs (and the completion of related action plans) was often based on broad criteria set out in the common provisions regulation, which left considerable room for interpretation, and often did not refer to specific quantifiable targets even where such targets could be derived from EU legislation. In 2014, the Commission issued additional guidance on how Member States and its own services should assess progress in achieving EACs. Nevertheless, our audit showed that the Commission faced difficulties ensuring a harmonised assessment of EACs across Member States until the end of the period (paragraph ***21-22***).

115 Around a third of thematic EACs remained unfulfilled at the programme adoption stage. This figure does not give any indication of the potential impact of unfulfilled EACs on Member States' ability to achieve results. Nevertheless, it

illustrates that the issue of unfulfilled EACs was not an isolated one, but rather concerned multiple aspects and many Member States. On a positive note, Member States completed 98 % of action plans by the reporting deadline by the end of August 2017 (paragraphs ***23***-***25***).

116 In the 2014-2020 period, the assessment of EACs was designed as a one-off exercise. This made it unclear whether the achievements reported in this process had been sustained throughout the entire 2014-2020 period. Moreover, the formal fulfilment of an EAC does not necessarily mean, in itself, that the situation on the ground has improved and that it has created the conditions for achieving results. Failure to fulfil EACs (or to complete action plans) rarely had financial consequences for Member States. At the same time, the introduction of EACs may have made an indirect contribution as without them the conditions for spending EU funds on the ground would have been even more challenging (paragraphs ***26***-***34***).

117 'Enabling conditions' (the successor to EACs) will apply throughout the 2021-2027 period. However, as was the case in the previous period, the Commission is not required to inform the European Parliament and the Council about Member States' compliance with enabling conditions. Finally, we note that the 2021-2027 enabling conditions are supplemented by a new 'rule of law' conditionality. However, for Cohesion policy funds, the Commission can propose measures only in cases where specific procedures under the common provisions regulation do not adequately ensure the sound financial management of the EU budget or protect the EU's financial interests (paragraphs ***35***-***38***).

Performance reserve

118 We previously reported on the difficulties Member States had in setting targets for common output and result indicators, which were subsequently used for allocating the performance reserve (paragraphs ***42***-***48***).

119 From 2014 onwards, the Commission adjusted and clarified the performance review conditions and criteria. Following these changes, Member States reported better performance than they could have under the initial legislation (paragraphs ***49***-***52***).

120 Member States amended many of the milestones before the performance review. Following these amendments to the performance framework, the Commission released around 82 % of the performance reserve in 2019 and 2020. Without these amendments, 56 % of the performance reserve would have been released, and around

one third of all priorities with a performance reserve would have been considered 'seriously failing' to meet milestones (paragraphs ***53***-***60***).

121 We also found that the Commission did not determine the reliability of all performance data used for the performance review. Managing authorities' verifications of the reliability of performance data varied. At the same time, audit authorities carried out audit work on the reliability of performance data for most, but not all, programmes before the 2019 performance review. Another limiting factor was the misalignment of timelines for Member States' annual implementation reports and their respective management declarations and annual control reports.The Commission could only partly compensate for these deficiencies through additional checks on the performance data reported by Member States. Finally, the Commission did not suspend any payments to programmes because of serious deficiencies in the quality and reliability of the performance monitoring system or of the data on indicators (paragraphs ***61***-***73***).

122 Our analysis showed that the release of the performance reserve was determined predominantly by Member States' progress in implementation, as reflected by achieving key implementation steps or outputs and their success in spending money (around one third of all indicators were financial indicators). Less than 1 % of indicators were for results. The Commission did not impose any payment suspensions for under-performance (paragraphs ***74***-***76***).

123 We also found only a weak link between programme priorities meeting their targets by 2018 and being reallocated resources (between the start of the period and 2018). Overall, the allocation of the performance reserve had only a limited impact on programme budgets (paragraphs ***77***-***80***).

124 The performance review and the performance reserve were discontinued for 2021-2027. There will be a mid-term review in 2025 for which the Commission has not yet clarified how performance will be considered. However, the context for this mid-term review will be different than in previous periods. One reason for this is that Cohesion policy funds will be implemented simultaneously with the Recovery and Resilience Facility (RRF). There are already indications that the launch of the 2021-2027 programmes will be even more delayed than seven years ago. Moreover, as there is no national co-financing under the RRF, many investment projects that would have been implemented through the Cohesion policy funds under normal circumstances may now be financed by the RRF. As a result, Member States are likely to absorb less of their initially programmed financial allocations than anticipated. This, in turn, makes it likely

that fewer outputs and results will be delivered through Cohesion spending by the time of the mid-term review (paragraphs ***81***-***83***).

Performance-based funding models

125 Member States showed little interest in using the two new performance-based funding models in the 2014-2020 period. Only Austria piloted the 'financing not linked to costs' (FNLTC) model for one project. Moreover, the Commission is piloting the 'joint action plan' model (discontinued for the 2021-2027 period) under its own responsibility for two projects. EU funding for these three pilot projects is around €37 million (paragraphs ***92***-***93***).

126 Our analysis showed that the Commission's ex-ante impact assessment for the 2014-2020 period had not addressed the feasibility of and potential demand for the new performance-based financing models. We identified three main obstacles to better uptake:

— the late introduction of the FNLTC model during the 2014-2020 period;

— managing authorities finding it difficult to identify suitable operations; and

— Member States' concerns about legal certainty, in terms of subsequent checks and controls, particularly as regards the obligation to comply with public procurement or state aid rules (paragraphs ***94***-***99***).

127 On a positive note, there has been a significant increase in the uptake of simplified cost options compared to the previous period, partly as a result of the Commission actively encouraging managing authorities to reduce the administrative burden and the risk of error. Almost all European Social Fund programmes use simplified cost options at least to some extent and some European Regional Development Fund programmes have also started using them. However, this concerns only a small part of the expenditure: we estimate that around 8.5 % of the 2014-2020 Cohesion spending will have been reimbursed using performance-based funding models, almost entirely simplified cost options (paragraphs ***100***-***101***).

128 The FNLTC model will become the dominant EU funding model in the coming years, mainly due to its mandatory use under the RRF. At the same time, it will be rolled out as an optional funding model across all areas of Cohesion policy and will be the only available model for certain actions to reinforce administrative capacity. In the 2021-2027 period, the FNLTC model can be used at two levels: i) for the EU's contribution to all (or parts) of a programme priority in the Member States and ii) for

projects carried out under such programmes or priorities, for the grants provided to the beneficiary. This will make it easier for Member States to combine the EU funding with national or regional funding schemes with rules that may otherwise be difficult to reconcile with EU eligibility rules. The Commission still needs to clarify specific eligibility requirements and off-the-shelf arrangements (such as setting out relevant investment areas, fields of activities, measures or operations and conditions to be fulfilled or outputs/results to be achieved) for the FNLTC model. There is also a need for further clarification as regards the arrangements for providing assurance to the Commission on compliance with internal market rules (public procurement and state aid) when the FNLTC model is applied (paragraphs ***102***-***106***).

Recommendation 1 – Make the best use of enabling conditions in the 2021-2027 period

The Commission should:

(a) systematically monitor Member States' fulfilment of enabling conditions throughout the programming period through its representative in the monitoring committee for Cohesion policy programmes; and

(b) report to the European Parliament and to the Council on Member States' fulfilment of enabling conditions and its own enforcement activities.

Timeframe: throughout the 2021-2027 period

Recommendation 2 – Prepare the ground early for an effective mid-term review for the 2021-2027 period

The Commission should:

(a) inform Member States at an early stage about the approach to be applied for the mid-term review, including in relation to the allocation of funding for the remainder of the period; and

(b) take any relevant findings of the 2024 evaluation of the Member States' use of the RRF into account for its 2025 mid-term reviews for the Cohesion policy fund investments in those Member States.

Timeframe: in 2025

Recommendation 3 – Clarify the rules underlying the 'financing not linked to costs' funding model

The Commission should:

(a) identify, in close cooperation with Member States, relevant investment areas where funding can be based on FNLTC and the conditions to be fulfilled or outputs/results to be achieved for the types of activities, measures and operations that can use FNLTC; and

(b) set out criteria for its assessment of Member States' reasoned requests for amendment of conditions to be fulfilled or outputs/results to be achieved.

Timeframe: by mid-2023

Recommendation 4 – Clarify the approach for providing assurance on EU funding through the 'financing not linked to costs' model

The Commission should clarify how managing and audit authorities in Member States should:

(a) examine the reliability of Member States' systems for monitoring and reporting on the conditions to be fulfilled or outputs/results to be achieved; and

(b) provide assurance on the effective application of the rules governing the internal market (public procurement and state aid).

Timeframe: by mid-2022

This Report was adopted by Chamber II, headed by Ms Iliana Ivanova, Member of the Court of Auditors, in Luxembourg on 30 September 2021.

For the Court of Auditors

Klaus-Heiner Lehne
President

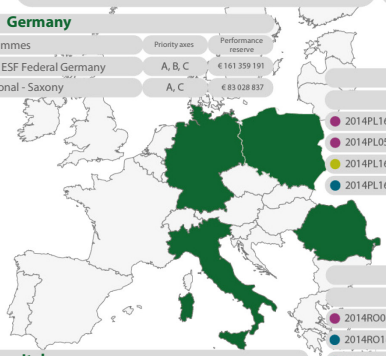
Annexes

Annex I – Operational Programmes covered by the audit

Our analysis covered 20 priority axes with 120 indicators in the performance framework. Within these 20 priority axes we examined a sample of 57 projects; these projects together contained 129 values relating to the 120 indicators at priority axis level.

Sample of projects examined for this audit

Operational Programmes	Performance reserve
European Social Funds (ESF)	€ 493 564 844
European Regional Development Fund (ERDF)	€ 720 469 390
Cohesion Fund (CF)	€ 172 455 107



Germany

Operational Programmes		Priority axes	Performance reserve
2014DE05SFOP002	National - ESF Federal Germany	A, B, C	€ 161 359 191
2014DE16RFOP012	Regional - Saxony	A, C	€ 83 028 837

Poland

Operational Programmes		Priority axes	Performance reserve	Action Plans for EACs
2014PL16M2OP006	Regional - Malopolskie Voivodeship	10	€ 14 914 352	No
2014PL05M9OP001	National - Knowledge Education Growth	1	€ 79 308 945	No
2014PL16M1OP001	National - Infrastructure and Environment	6 and 9	€ 172 455 107	Yes (EAC 9.1)
2014PL16RFOP001	National - Smart Growth	1	€ 195 045 492	Yes (EAC 1.1)

Romania

Operational Programmes		Priority axes	Performance reserve	Action Plans for EACs
2014RO05M9OP001	National - Human Capital	2 and 4	€ 79 882 274	Yes (EAC 9.3)
2014RO16RFOP001	National - Competitiveness	1	€ 48 759 477	Yes (EAC 1.2)
2014RO116RFOP002	National - Regional Programme	3 and 10	€ 117 089 905	Yes (EAC 10.3)

Italy

Operational Programmes		Priority axes	Performance reserve	Action Plans for EACs
2014IT05SFOP002	National - Active Employment Policies	1	€ 58 120 407	No
2014IT05SFOP001	National - Social inclusion	2	€ 36 805 045	Yes (EAC 9.1)
2014IT05M2OP001	National - Education	1	€ 63 174 630	No
2014IT16RFOP003	National - Enterprises and Competitiveness	1	€ 52 109 628	Yes (EAC 1.1)
2014IT16RFOP016	Regional - Sicilia	4	€ 51 980 944	Yes (EAC 4.1)

Source: ECA.

Annex II – Previous reports and opinions

Special reports

— Special report 24/2016 - More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy'

— Special report 2/2017 - The Commission's negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion: spending more targeted on Europe 2020 priorities, but increasingly complex arrangements to measure performance

— Special report 15/2017 - Ex-ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments

— Special report 21/2018 - Selection and monitoring for ERDF and ESF projects in the 2014–2020 period are still mainly outputs-oriented

— Special report 20/2020 - Combating child poverty – Better targeting of Commission support required

Reviews

— Review 5/2018 - Simplification in post-2020 delivery of Cohesion Policy

— Review 5/2019 - Outstanding commitments in the EU budget - A closer look' (Rapid case review)

— Review 8/2019 - Delivering performance in Cohesion (Briefing paper)

Annual reports

— Annual report concerning the financial year 2011, Official Journal 2012/C 344/1, chapter 6

— Annual report concerning the financial year 2012, Official Journal 2013/C 331/1, chapter 6

— Annual report concerning the financial year 2013, Official Journal 2014/C 398/1, chapter 10

— Annual report concerning the financial year 2014, Official Journal 2015/C 373/01, chapter 6

— Annual report on the implementation of the budget concerning the financial year 2017, Official Journal 2018/C 357/01, chapter 3

— Annual report on the implementation of the budget concerning the financial year 2018, Official Journal 2019/C 340/01, chapter 1

Opinions

— Opinion 1/2017 concerning the proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budgetof the Union

— Opinion 6/2018 concerning the proposal for a Regulation of the European Parliament and of the Council laying down common provisions

— Opinion 6/2020 concerning the proposal for a regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility

Acronyms and abbreviations

CF: Cohesion Fund

CPR: Common provision regulation

EAC: Ex-ante conditionality

EAFRD: European Agricultural Fund for Rural Development

EIF: European Investment Fund

ERDF: European Regional Development Fund

ESF: European Social Fund

ESI Funds: European Structural and Investment Funds

ETC: European territorial cooperation

FNLTC: Financing not linked to costs

JAP: Joint action plan

MFF: Multiannual financial framework

NEET: Not in Education, Employment, or Training

OECD: Organisation for Economic Co-operation and Development

OP: Operational programme

RRF: Recovery and Resilience Facility

SCOs: Simplified cost options

SME: Small and medium enterprise

Glossary

Annual control report: Document prepared by a Member State's audit authority and submitted to the Commission as part of that country's annual assurance package.

Annual implementation report: Document prepared by a Member State's managing authority, and submitted to the Commission, on its progress in implementing an operational programme over the previous financial year.

Audit authority: An independent national entity responsible for auditing the systems and operations of an EU spending programme.

Cohesion policy: The EU policy which aims to reduce economic and social disparities between regions and member states by promoting job creation, business competitiveness, economic growth, sustainable development, and cross-border and interregional cooperation.

Cohesion policy funds: The four EU funds supporting economic, social and territorial cohesion across the EU in the 2021-2027 period: the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the Just Transition Fund.

Common provisions regulation: Regulation setting out the rules that apply to all five of the European Structural and Investment Funds in the 2014-2020 period.

Europe 2020 strategy: The EU's ten-year strategy, launched in 2010, to boost growth and create jobs.

European Structural and Investment Funds: The five main EU funds which together support economic development across the EU in the 2014-2020 period: the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime and Fisheries Fund.

Impact: The wider long-term consequences of a completed project or programme, such as socio-economic benefits for the population as a whole.

Input: The financial, human, material, administrative or regulatory means used to implement a project or programme.

Intervention logic: The links between a proposal's objectives, the planned inputs and activities and the intended results and impact.

Key implementation step: Intermediate stage, complementing milestones, in progress towards the achievement of output targets.

Lump sum: Type of simplified cost option where payments are made in full, as opposed to in instalments, for example to reimburse eligible costs of an operation if pre-defined activities and/or outputs are completed.

Managing authority: The national, regional or local authority (public or private) designated by a Member State to manage an EU-funded programme.

Milestone: Intermediate target on the way to a specific objective, to be achieved by a predetermined date.

Operational programme: The basic framework for implementing EU-funded cohesion projects in a set period, reflecting the priorities and objectives laid down in partnership agreements between the Commission and individual Member States.

Output: Something produced or achieved by a project, such as delivery of a training course or construction of a road.

Performance framework: Milestones and targets defined for a set of indicators for each priority axis of an operational programme (except for technical assistance).

Performance reserve: An amount of the budget allocated to European Structural and Investment Fund spending which is retained until certain milestones are met.

Result: The immediate effect of a project or programme upon its completion, such as the improved employability of course participants or improved accessibility following the construction of a new road.

Simplified cost options: An approach for determining a grant amount using methods such as standard unit costs, flat-rate financing or lump sums rather than the actual costs incurred by the beneficiary. Designed to reduce the administrative burden.

Standard scales of unit costs: A simplified cost option used to calculate an operation's eligible expenditure by multiplying activities, inputs, outputs and results by the pre-established cost of delivering one unit.

Target: For the purposes of this report, an output or result to be accomplished, or the expenditure to be certified to the Commission, by 31 December 2023.

Thematic objective: The intended overall result of an investment priority, broken down into specific objectives for implementation purposes.

Replies of the Commission

https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59899

Timeline

https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59899

Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber II Investment for cohesion, growth and inclusion spending areas, headed by ECA Member Iliana Ivanova. The audit was led by ECA Member Ladislav Balko, supported by Branislav Urbanic, head of private office and Zuzana Frankova, private office attaché; Friedemann Zippel, principal manager; Bernard Witkos, head of task; Cristina Jianu, deputy head of task; Ana Popescu, Annekatrin Langer and Sabine Maur-Helmes, auditors. Michael Pyper provided linguistic support. Alexandra Mazilu provided graphic design support.

PDF	ISBN 978-92-847-6858-5	ISSN 1977-5679	doi:10.2865/456	QJ-AB-21-024-EN-N
HTML	ISBN 978-92-847-6831-8	ISSN 1977-5679	doi:10.2865/963687	QJ-AB-21-024-EN-Q

We assessed the use of instruments for a performance-based financing of Cohesion policy during the 2014-2020 period. We looked at the requirement to meet specific ex-ante conditionalities; the mandatory performance reserve; and performance-based funding models. Our audit confirmed that all three instruments led to new approaches to implementation. However, they did not make a noticeable difference in how EU funding was allocated and disbursed. We recommend that the Commission should make the best use of the enabling conditions in the 2021-2027 period; prepare the ground for an effective mid-term review in 2025 early on; clarify the rules underlying the 'financing not linked to costs' model; and clarify the approach for providing assurance on EU funding through the 'financing not linked to costs' model.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.

EUROPEAN COURT OF AUDITORS

Publications Office of the European Union

EUROPEAN COURT OF AUDITORS
12, rue Alcide De Gasperi
1615 Luxembourg
LUXEMBOURG

Tel. +352 4398-1

Enquiries: eca.europa.eu/en/Pages/ContactForm.aspx
Website: eca.europa.eu
Twitter: @EUAuditors