MS compartments in InvestEU Fund

with contributions European Regional Development Fund (ERDF), Cohesion Fund (CF), European Social Fund (ESF)+, European Agricultural Fund for Rural Development (EAFRD), European Maritime and Fisheries Fund (EMFF)

Questions and Answers document

Reasons for Member States to contribute shared management funds to Invest EU?

Member States may consider a number of incentives:

- **Reaching policy objectives**: InvestEU will help to achieve the policy objectives of the Common Agriculture Policy (CAP) contributing partnership agreement/programme or Strategic Plan, including within a specific region as ring-fenced by the Member State concerned.
- **Achieving significant leverage**: By setting up the EU budgetary guarantee a high volume of private finance is mobilised for the specific needs of the final recipients.
- **Smarter spending**: The efficient use of EU budgetary resources through only partial provisioning in line with an agreed provisioning rate.
- **Using ready-made products**: These products are currently being designed under the EU Compartment for each of the four InvestEU policy windows.
- **Less administrative burden**: Implementation under InvestEU will be based on an institutional and legal framework under the responsibility of the European Commission.
- **Pooling of risk and resources**: This applies in the case of regional allocations while, at the same time, safeguarding the amount leveraged.
- **No need for national co-financing**: There would be a contingent liability for Member States based on the risk. This contingent liability is not considered as debt in the context of an assessment under the rules of the Stability and Growth Pact unless and until the contingent liability is required to cover losses.
- **A single set of rules**: including simplified State aid rules.

Member States should consider these incentives in their respective national context and specific market set-up. Their decision to contribute to InvestEU should be based on a good understanding of the specific features of the InvestEU programme and the features of the shared management financial instruments which could be set up under the Common Provisions Regulation (CPR).

1. **Is a Member State's contribution to InvestEU similar to its contribution to EU centrally managed financial instruments in the current budget covering 2014-2020?**

No. Contributions to centrally managed EU financial instruments in 2014-2020, such as the SME Initiative, were constructed in a different way. The SME Initiative involves a cash contribution from the European Regional Development Fund (ERDF) or the European Agricultural Fund for Rural Development (EAFRD) under a programme managed under shared management by a Managing Authority and under the Common Provisions Regulation.

This legal set-up implied that the SME Initiative had to comply with two different sets of rules of the respective originating Fund:

- The Financial Regulation and sectoral rules of funds coming from EU level instruments (such as COSME and Horizon); and
- The Common Provisions Regulation which applies to the ERDF/EAFRD contributions.

Under InvestEU, there is no cash contribution from the EU budget to the implementing partners. Instead, InvestEU goes one step further. With its single set of rules, InvestEU would also apply to the funds contributed by Member States. A contribution from the shared management funds to InvestEU, however, will still aim to deliver operations, which are in line with the objectives defined by the Member State in the context of shared management. These operations will be delivered on a territory which is geographically defined by the Member State.

2. **How much can Member States contribute to the InvestEU Fund?**

Member States may allocate in the Partnership Agreement, an amount of up to 2% of the initial national allocation for the ERDF, the ESF+, the Cohesion Fund and the EMFAF respectively, as a contribution to the InvestEU Fund and the InvestEU Advisory Hub. Member States may further allocate an amount of up to 3% of the initial national allocation of each of those funds after 1 January 2023 through one or more programme amendments. The sum of MS contribution to InvestEU from the funds under shared management and transfer(s) to any other instrument under direct or indirect management as referred to Art. 21 in the Common Provision Regulation shall not exceed 5% of the initial national allocation of each fund.

For the EAFRD, according to [Article [75] of draft CAP Regulation], Member States may allocate an amount to be contributed to and delivered through the InvestEU budgetary guarantee and the InvestEU Advisory Hub. The amount to be contributed to InvestEU shall not exceed 5% of the total EAFRD allocation to the CAP Strategic Plan.

3. **Is there a time limit for a Member State to decide on its contribution to InvestEU?**

A Member State contributes to InvestEU from the ERDF, ESF+, EMFAF, and the Cohesion Fund either in the beginning of the programming period via its partnership agreement or as of 1 January 2023 via programme amendment. A contribution can be organised under the condition that there is enough time for the Commission to arrange a guarantee agreement with an implementing partner so that financing and investment operations are granted within the investment period ending on 31 December 2027.

An early contribution via a Partnership Agreement/CAP strategic plan is very strongly encouraged as it implies less administrative work, leaves more time for implementation of operations on the ground, secures more funding for InvestEU, and leaves a possibility that in case of non-performance, the Member State's contribution could be transferred back to the originating fund. If the Member State chooses to contribute to the InvestEU Fund at the beginning of the programming period i.e. at the time of drafting the Partnership Agreement (for ERDF, ESF+, EMFAF, and the Cohesion Fund) or drafting the CAP Strategic Plan, the relevant information, including the proposed amount, must be included in the Partnership Agreement/CAP Strategic Plan (the amount in the CAP Strategic Plan does not imply commitment). The respective amount will not be committed in any of the shared management programmes or the CAP Strategic Plan. At this stage, the MS will be able to allocate only up to 2% of the ERDF, ESF+, the EMFAF, the Cohesion Fund allocation.

If a Member State decides to contribute to the InvestEU Fund later on, i.e. during the programming period when all the programmes and CAP strategic plan are already adopted, then there would be a need to amend the shared management programme(s) (for ERDF, ESF+, the EMFAF, the Cohesion Fund) or the CAP strategic plan (for EAFRD). As a result,the amount of Funds would be 'free' to be contributed to the InvestEU Fund. The results of the implementation itself may also arrive late. At this stage, the MS will be able to allocate only up to 3% of the ERDF, ESF+, the EMFAF, the Cohesion Fund allocation. It may not be possible to transfer the Member State contribution back to the originating fund.

4. **Is there a deadline to sign the contribution agreement with the Commission?**

If a Member State contributes to InvestEU early in a programming period, via a Partnership Agreement/ CAP Strategic Plan, The InvestEU Regulation requires the

contribution agreement to be signed within four months following the decision adopting the Partnership Agreement or the CAP Strategic Plan.

If a Member State contributes to InvestEU later on, such a case would require a modification of the existing programme or CAP Strategic Plan. Then the adoption of the decision amending the programme or CAP Strategic Plan (and thus de-committing the relevant amount) would need to be simultaneous with the signature of the contribution agreement (triggering a new commitment).

5. Why is there a deadline of nine months for the Commission to sign the guarantee agreement if an extension is possible?

Using InvestEU for a Member State compartment has the added benefit of smooth implementation as it is based on established architecture and governance. Up to nine months for signature of a guarantee agreement with an implementing partner, and a further 12 months for signature of contracts with final recipients, or financial intermediaries, brings us close to two years – which is the standard spending deadline under the Common provisions regulation.

Furthermore, from the time the contribution agreement is signed, the most relevant elements needed for the guarantee agreement should already be known; i.e.: the financial product(s) chosen, the specificities of the market where InvestEU will operate and the range of potential eligible implementing partners.

6. What happens if the guarantee agreement is not signed within the agreed deadlines or if it is signed for a smaller amount than the one agreed in the contribution agreement?

In both situations, the amount agreed in the contribution agreement to provision EU guarantees under a Member State compartment that has not been committed in guarantee agreement(s) between the Commission and the implementing partner(s) will need to be reprogrammed under CPR or CAP Strategic Plan rules. The respective contribution agreement will be either terminated or amended to reflect the lower amount. The freed amount will be brought back to the Member State through an amendment of a programme or CAP Strategic Plan. Reprogramming under shared management implies a modification of a shared management programme or CAP Strategic plan. It may only work within certain time limits (last amendment of the programme with the possibility to re-budget the ERDF, the Cohesion Fund, the EMFF and

ESF+ by 2027).

7. **Can contributions to InvestEU be withdrawn and brought back to the programme /CAP Strategic Plan under shared management?**

   This could happen if there are problems with implementation of financing and investment operations which were granted EU guarantees. If the guarantee agreement is not duly implemented by the implementing partner, the Commission has the right to take action in line with the provisions of the guarantee agreement, including terminating the agreement. The implementing partner should be able to ensure that through its financing and investment operations, financing to final recipients (directly or indirectly via financial intermediaries) takes place within four years after the signature of the guarantee agreement. The fact that the EU guarantee will be outstanding for longer (e.g. loan maturity could be 15 years) is not relevant here. What counts is the fact that, in the given time (four years as proposed in the Regulation), the EU guarantee is activated in full and duly implemented.

   If the implementing partner fails to implement financing and investment operations in line with the guarantee agreement within four years following the signature of the guarantee agreement, then the unused amount of the EU guarantee will have to be decommitted by amending the guarantee agreement. The unused amount could be used for another financing and investment operation in the Member State concerned or, at the request of a Member State, could be reprogrammed back to the relevant programme under shared management following a modification of a contribution agreement. The reprogramming under shared management implies a modification of a shared management programme or CAP Strategic plan and may only work within certain time limits (see above).

8. **Who bears the responsibility for the implementation of a Member State compartment in the InvestEU Fund?**

   The resources contributed by a Member State to the Commission through a contribution agreement are no longer considered resources under shared management under the responsibility of the respective managing authority of the Member State. The responsibility belongs to the Commission, who will manage these resources through indirect management with selected implementing partners. The Commission will also be ultimately responsible for implementing the Member State contribution using the EU Guarantee. The implementing partner, with whom the Commission will sign a guarantee agreement, ensures implementation of financing and investment operations in line with

the InvestEU regulation and in line with the rules of the guarantee agreement. Member States would ensure any contingent liability arising from the guarantee contract through a back-to-back guarantee.

9. Does the Member State have to carry out verifications and audit of financing and investment operations, similar to those required under CPR?

No, the CPR rules would no longer apply. All the financing and investment operations under the InvestEU Fund, including those supported by the Member State compartment would fall under a single framework – the InvestEU Regulation - and the relevant rules of the Financial Regulation. The InvestEU operations will still be audited by the Commission. Audits by the European Court of Auditors are also possible.

10. Does the Member State have to report on implementation of a Member State compartment to the Commission?

No. The reporting arrangements set out in the contribution agreement cover reporting from the Commission to the Member State, both in relation to the operational reporting as well as financial reporting on the outstanding guarantees and provisioning. The implementing partner also reports to the Member State.

11. Are there any regulatory deadlines for implementing the Member State compartment - like n+2?

The N+2 rule does not apply to the InvestEU Programme. However, the InvestEU Regulation sets out deadlines that also apply to Member State compartments. The Investment period i.e. the period when the Commission may sign an agreement to guarantee investment and financing operations by the implementing partner ends on 31 December 2027. Implementing partners have one additional year to conclude contracts with final recipients or, to sign them with financial intermediaries in the case of indirect funding through them. Any other deadlines will be included in contractual agreements.

12. What happens with any gains attributable to a Member State compartment and any released guarantees?

Gains attributable to a Member State compartment may include:

- Interest gained within a Member State compartment provisioning and held in the common provisioning fund
- Guarantee fees paid by the implementing partner
- Released guarantee (for which there were no calls)
- Recovered amounts

All these resources generated, or attributable to the amounts contributed by a Member State will be accounted annually and added to the ‘account’ of the Member State concerned within the common provisioning fund (per Member State and per specific contribution agreement).

If there are any surpluses after the constitution phase at the end of each year (i.e. the amounts in the provisioning fund exceed the applicable provisioning rate), the respective amount in surplus would be made available to the Member State in order to be used for the same objectives in the form of financial instruments or budgetary guarantees[1].

Depending on the value of the Member State contribution, its timing and the type of financing and investment operations, the surpluses may significantly vary in time and between Member States and sectors. In order to provide enough flexibility, the Member State would agree on the necessary arrangements and timing for transferring of surpluses in the contribution agreement[2].

13. Is there a deadline to reuse paid back resources?

There is no regulatory deadline for the reuse of gains, guarantees released or recovered. The arrangements for repayments to the Member States (to be agreed in the contribution agreement) depends very much on the timing of investments, type of support and product's characteristic (e.g. maturity of loan).

14. Is there a need for national co-financing for funds contributed to the InvestEU fund?

Member States contribute only EU Funds, i.e. ERDF, ESF+,the EMFAF, the Cohesion Fund and EAFRD to the EU guarantee. No national co-financing is needed. However, since the provisioning covers only part of the financial liability, there is a need to ensure contingent liability. The contingent liability results from the provisioning rate applied to the EU guarantee under the Member State compartment (e.g. if the Member State

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[1] c.f. Article 10(7) CPR and Article 75(7) of CAP Regulation

[2] To be used in accordance with Article 10(7) CPR

contributes €100m European Regional Development Fund (ERDF) to the EU guarantee under InvestEU and the provisioning rate is agreed at 40%, the MS would need to ensure a contingent liability of €150m. The overall financial liability under this part of EU guarantee is therefore €250m).

15. How does the contingent liability of a Member State work in practise?

The contingent liability is provided by a Member State in the form of counter-guarantee to the Commission. This counter-guarantee will need to be activated only in very specific cases, such as when there is not enough provisioning to honour the calls.

This scenario is theoretical, as the provisioning rate will have to properly reflect the risk of the underlying operations. Moreover, a significant decrease in provisioning (90% of initial provisioning consumed) will trigger the need for a Member State to provide additional provisioning.

16. Who finances the contingent liability guarantee? The Member State under their national budget, national, regional sources or shared management funds?

The Member State concerned has to provide a contingent liability from national resources, not through shared management resources.

While the contingent liability should be ultimately covered by the national resources, it is up to the Member State to organise the source of these allocations: centrally managed or regional resources from public or private sources. If there is theoretically a need to make guarantee calls on the contingent liabilities, i.e. beyond the levels of provisioning, InvestEU covers the guarantee call and issues a recovery order to the Member State so that the guarantee call is reimbursed to the Commission. To ensure this is implemented, the contribution agreement has to be signed by the Member State institution able to take the responsibility of the contingent liability for the Member State (e.g. Ministry of Finance).

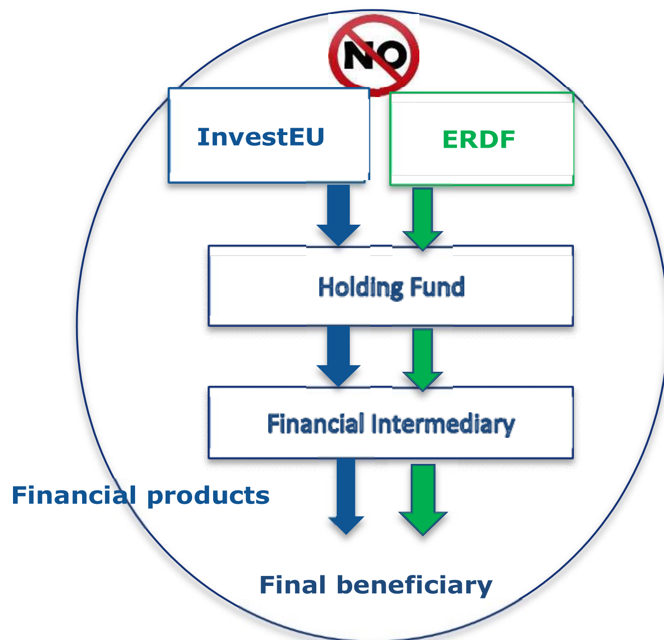
17. Can a Member State designate an implementing partner with whom the Commission will have to sign the guarantee agreement for a Member State compartment?

The implementing partner, which is entrusted with the implementation of budgetary guarantees and which is a counterpart for EU guarantees, has to be selected by the

Commission. The selection process has to be transparent, justified by the nature of the action and cannot give rise to a conflict of interest[3]. Though a Member State does not formally select or designate an implementing partner, it can indicate in the contribution agreement any implementing partners.

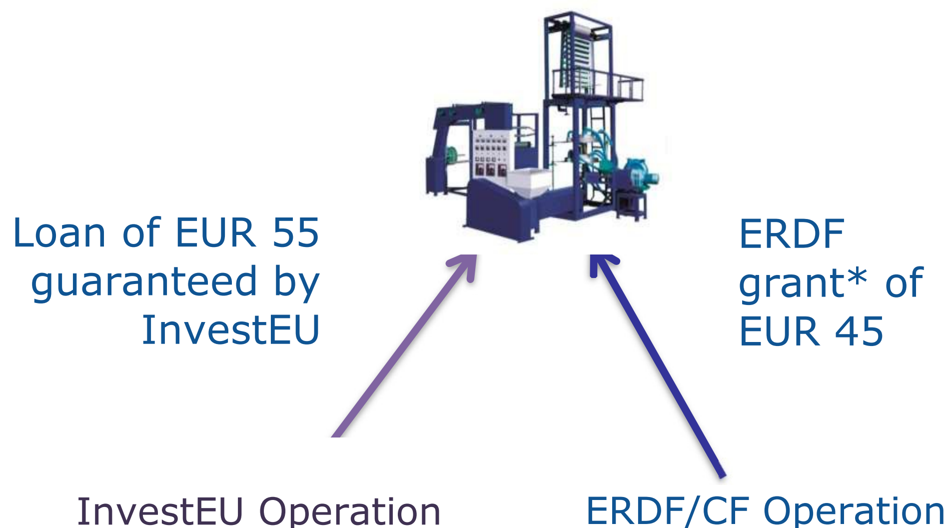
18. Can a Member State compartment under the InvestEU Fund be combined with Funds under shared management?

The purpose of setting up a Member State compartment under InvestEU is to address the challenge of different sets of rules applied when funds under shared management were contributed into (e.g. SME initiative) or combined with EU level instruments (e.g. ESIF EFSI combinations in financial instruments) in the budget covering 2014-2020. Instead of continuing with contributions or combinations of funds under different rules depending on the origin of the funds, InvestEU enables a single set of rules for different funds grouped under InvestEU. The Common Provisions Regulation therefore does not allow a combination of shared management funds with Invest EU support at the level of a fund under a financial instrument. The following scenario for example is legally not possible:



[3]In accordance with Article 154(1) of the Financial Regulation that are eligible (this would also require a pillar assessment) and that have expressed their interest in implementing a Member State compartment under the EU guarantee.

However, a final recipient can receive support simultaneously from an InvestEU stream (e.g. a loan) and support from a shared management stream (e.g. equity or grant). In this case, the streams from beginning to end (final recipient level) follow distinct rules and are not combined at any intermediate level. In order to implement such a combination, the shared management stream (for example an ERDF grant and national co-financing) should be in line with the underlying national programme under which the respective shared management funds are programmed. See picture below:



19. How would a joint contribution from more than one Member State work?

Two or more Member States can agree to sign a single contribution agreement with the Commission. There would be one Member State Compartment with pro rata shares for each contributing Member State. Joint contributions can help diversify the risk of operations and attract more resources from implementing partners and other investors.

Member States can also agree to pool risk. The contributed Funds will not be effectively pooled (each Member State still requires a certain amount of financing and investment operations in its territory providing for agreed leverage), however, there could be a pooling of risk– collective provisioning for participating Member States where all the losses are covered from a common compartment.

20. Can a Member State contribute to and benefit from the InvestEU Advisory Hub?

Yes. In addition to contributions to the InvestEU Fund, Member States can also contribute

to the InvestEU Advisory Hub. The Advisory Initiatives implemented under the InvestEU Advisory Hub will be eligible for such contributions. The Member State contribution could be ring-fenced to deliver the Advisory initiative in a specific region/country or sector or could be tailored for the Member State's specific advisory needs.

21. Can the shared management funds contributed to InvestEU count towards the concentration requirements for policy objectives 1 and 2[4]?

No. Any financial contribution to the InvestEU Member State compartment is not subject to the rules of the Common provisions regulation.

How would climate targets count under the Member State Compartment?

The amounts allocated to the Member State compartment only contributes to the overall target of 25% of EU budget spending towards achieving climate objectives within the long-term EU budget. The share of the contribution of Member State compartments to climate objectives depends on the Member State's own strategy for InvestEU financing and/or investment operations. These would be set out in the Contribution Agreement.

22. Can financial products in sectors like energy efficiency and support for small and medium-sized businesses also be implemented under InvestEU?

Financial products implemented under shared management could theoretically be transferred to InvestEU. In the next budgetary period of 2021-2027, Member States could also continue to implement their financial instruments under CPR rules.

The contribution to the InvestEU's Member State compartment is optional and could be additional/complementary to the continuation of the financial instruments under the CPR. The Member State authorities should assess whether a contribution to InvestEU would be useful to achieve cohesion policy objectives.

23. Could Member States support large enterprises under the InvestEU's SME policy window?

No. The main focus of the InvestEU policy is SMEs, while small mid-cap companies (up to 499 employees) can also be supported.

[4] Ref. to policy objectives 1 and 2 as defined in Art. 4 of the Common Provision Regulation

Large enterprises could, in principle, be supported under the Research Innovation and Digitalisation Window, although the main focus of this window is much broader and covers private and public companies, universities, technology transfer offices, higher education centres, research centres, innovation and digitisation agencies, accelerators, incubators etc.

24. **Under the current COSME programme there is no guarantee fee paid for capped guarantees and a fee paid for uncapped guarantees. Will the same principle apply to InvestEU?**

    No. The EU guarantee should be remunerated in principle and the revenue generated can be used to reduce provisioning needs or returned to the Member State as a general rule. The guarantee fees may be reduced or cancelled or even payments to implementing partners can be paid in justified cases.

25. **Does the limit to InvestEU apply to the total financing under the shared management Funds or individual programmes?**

    The limit to contribute to InvestEU applies to the initial allocation of each fund for the respective Member State.

26. **Does the limit to contribute to InvestEU apply to Member States or regions?**

    The limit to contribute to InvestEU applies to Member States allocations. It does not apply to the allocation of a regional programme.

27. **When a region of a Member States decides to contribute to Invest EU, is this contribution ring- fenced for that region?**

    The decision to contribute to InvestEU is ultimately taken by a Member State. Regional ring- fencing is possible but it has to be stated in the Member States Partnership agreement/programmes and in the contribution agreement. MS contributions from the ERDF, the ESF+, the Cohesion Fund and the EMFAF shall support investments essentially in the category of contributing regions.

28. **Can a national promotional bank apply to become an implementing partner without successfully completing its pillar assessment first?**

Yes, the two processes can run in parallel. However, the Commission and a national promotional bank can sign a guarantee agreement only after the former has successfully completed its pillar assessment.

29. Can a contribution to InvestEU be used under any policy area regardless of the contributing EU fund?

A contribution to InvestEU should deliver the policy objectives of the contributing fund **(European Regional Development Fund (ERDF), Cohesion Fund (CF), European Social Fund (ESF)+, European Agricultural Fund for Rural Development (EAFRD), European Maritime Fisheries and Aquaculture Fund (EMFAF))**. The four policy windows cover a very broad range of possible areas of investment, so finding the right window should not pose difficulties. A contribution to InvestEU can, in any case, be allocated to products under more than one policy window.