



Working Paper

The Recovery & Resilience Facility

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# The Recovery & Resilience Facility

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**Abstract:** This chapter provides a detailed overview of the EU's Recovery and Resilience Facility, which is the central component of the Next Generation EU plan. The facility is governed by Regulation 2021/241, and this chapter focuses on its legal basis, the six pillars, and the principles of financial additionality and "do no significant harm." It also explains the grant and loan processes, the link between the Recovery and Resilience Facility and economic governance, and the criteria for grant and loan allocation. In addition, it examines the implementation, review, and monitoring of Recovery and Resilience Plans by the Commission and the Council. It examines transparency and the Recovery and Resilience Dialogue, reporting requirements, and financial protection rules, highlighting the importance of collaboration and oversight in the EU's financial recovery efforts.

**Keywords:** Recovery and Resilience Facility, Next Generation EU, Recovery and Resilience Dialogue, RRF, Recovery and Resilience Plans

## 1. Introduction

The Recovery and Resilience Facility (RRF) is the central part of the Next Generation EU (NGEU) programme. The RRF provides for €723.8 billion to be paid in loans and grants to support reforms and investments by European Union (EU) Member States (MSs). The goal is to tackle the COVID-19 pandemic's economic and social impact and make EU economies and societies more sustainable, resilient, and better prepared for the green and digital transitions.

Each EU MS has been required to prepare a Recovery and Resilience Plan (RRP) with a coherent package of reforms and public investment projects. These plans are expected to effectively address challenges identified in the European Semester, particularly the country-specific recommendations (CSR), and include measures to advance the green and digital transitions. The funds allocated under the RRF are tied to achieving milestones and targets, and payments are made twice a year as these are reached. The RRF also supports the new REPowerEU, the recent EU plan that promotes clean energy.

This chapter provides a detailed analysis of the functioning of the RRF based on the main regulations and implementing measures. It also considers the actions taken by the European institutions, particularly the European Commission. The chapter is organised as follows: after an introduction into Regulation EU 2021/241 (section 2), it delves into the legal basis (section 3), further elucidating the six pillars central to its structure, that is, green transition, digital transformation, sustainable and inclusive growth, cohesion, health, and policies for the next generation (section 4). An analysis of the horizontal principles follows, emphasising financial additionality and the "do no significant harm" principle (section 5). The discussion progresses to practical considerations, addressing the management and distribution of grants and loans (section 6) and the pivotal link between RRF and sound economic governance (section 7). The process and criteria for the allocation of grants are examined next (section 8), alongside the procedure to approve loans (section 9). The chapter also refers to the follow-up on the RRF implementation, including the Scoreboard, before delving into the RRP, considering their eligibility and the Commission's assessment (section 11). It then addresses the role of the EU institutions in evaluating the RRP, including the Commission proposal, the Council implementing decision, the operational agreements and the amendments of the RRP (section 12). The chapter also examines the rules on the protection of the financial interests of the EU and the oversight of the EU Court of Auditors and OLAF (section 13). Section 14 delves into the legal obligations linking the MS and the possibility of suspension and termination of the agreements. The final sections address accountability and transparency, including the Recovery and Resilience Dialogue (section 15), MS reporting, and the European Commission's monitoring (section 16). The chapter concludes (section 17) by highlighting the main features and criticism of the RRF and the possibility that its model will be reiterated in the future.

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<sup>1\*</sup> This paper is forthcoming in Federico Fabbrini & Christy Petit (eds), *Research Handbook on Post-Pandemic EU Economic Governance and NGEU Law* (Elgar 2024).

## 2. Regulation EU 2021/241 and RePowerEU

The RRF is established by Regulation (EU) 2021/241 of the European Parliament and of the Council ("RRF Regulation").<sup>2</sup> This regulation lays out the objectives, financing, and rules for providing funding to EU MSs to support their reform and investment agendas.<sup>3</sup> It outlines the RRF's implementation modalities, including the preparation, submission, assessment, and approval of the RRFs. The RRF is a 'direct management' instrument: a direct relationship is thus established between the Commission and the central government of the MS.<sup>4</sup>

The RRF Regulation articulates a legislative framework requiring EU MSs to formulate and implement economic policies congruent with the Union's objectives, particularly emphasising economic, social, and territorial cohesion. It is enshrined within the ambit of the European Semester framework, which serves as a pivotal instrument for identifying and monitoring national reform priorities. These reforms and investments are mandated to foster quality employment, uphold social justice, and adhere to environmental obligations.

Since establishing the RRF in 2021, the EU has faced significant challenges due to Russia's war against Ukraine, exacerbating the effects of the COVID-19 crisis on the Union's society, economy, and cohesion. The crisis has underscored the critical importance of the EU's energy security and independence for a successful, sustainable, and inclusive recovery from the pandemic, contributing significantly to the resilience of the EU's economy. As the RRF is well-positioned to address these emerging challenges, particularly in reducing dependence on fossil fuels, especially from Russia, and aligning with the Union's role in a just and inclusive transition, the RRF Regulation was modified to include the financing of alternative energy sources through the REPowerEU Plan.<sup>56</sup>

## 3. The legal basis

The legal basis of Regulation RRF is Article 175 of the Treaty on the Functioning of the European Union (TFEU). The RRF regulation, however, is connected to the EU Recovery Instrument (EURI), which has been approved by the Council on the basis of Article 122 TFEU. Article 174 and Article 175 TFEU focus on economic, social, and territorial cohesion, a policy that aims to reduce the differences between the development levels of regions and to catch up with the less favoured regions. As stated in the text of the RRF regulation, the EU should not only focus on measures that strengthen "competitiveness, growth potential and the sustainability of public finances" but should also introduce "reforms based on solidarity, inclusiveness, social justice and fair distribution of wealth [...] in order to create quality jobs and sustainable growth, ensure equality and access to opportunities and social protection, protect vulnerable groups and raise the standard of living of all Union citizens".<sup>7</sup>

The idea of using Article 175 TFEU as a legal basis has the advantage of leveraging a logic of positive intervention since the funds are intended for all MS, without distinction, but at the same time allow them to be allocated to the regions within the states that need them most and that, due to their critical economic situation, have suffered most from the consequences of the pandemic. This is a logic that counterbalances the one based on market forces, which has led to a differentiation in the level of economic development of the MS and which EMU has increased following the complete liberalisation of the free movement of capital. This differentiation between states was predicted by the Delors Report, which proposed

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<sup>2</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, 18.2.2021, 17–75.

<sup>3</sup> See F. Fabbrini, *EU Fiscal Capacity* (OUP 2022), ch. 4 and F. Fabbrini, *Next Generation EU*. Il Mulino, Bologna, 2022.

<sup>4</sup> Art. 8 RRF Regulation. See art. 322 TFEU, the Financial Regulation and the Regulation (EU, Euratom) 2020/2092 of the European Parliament and the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

<sup>5</sup> Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, 1–27.

<sup>6</sup> For more details on REPowerEU, see in this book the chapter by R. Famà.

<sup>7</sup> 4th Preamble RRF Regulation.

that the EU institutions should play a leading and encouraging role in structural adjustments to enable those States lagging behind to catch up with those ahead.<sup>8</sup>

#### 4. The six pillars

The RRF aims to enhance the resilience of the EU and its MSs by supporting measures across six key pillars of European policy relevance as established by Article 3 of the RRF Regulation.<sup>9</sup> First, 1) it prioritises the green transition, emphasising sustainable environmental practices and the shift towards a green economy. This is complemented by 2) the digital transformation pillar, which aims to advance the Union's digitalisation, enhancing connectivity and technological progress.<sup>10</sup>

Integral to this strategy is 3) the promotion of smart, sustainable, and inclusive growth. This aspect encompasses a range of objectives, including economic cohesion, job creation, productivity, competitiveness, and the nurturing of research and innovation. It focuses on bolstering the internal market, particularly supporting small and medium enterprises (SMEs) vitality.

The RRF also emphasises 4) social and territorial cohesion, striving to promote equality and integration across diverse regions and social groups within the EU. Additionally, it addresses 5) health and economic, social, and institutional resilience, aiming to improve the Union's preparedness and responsiveness to crises, focusing on strengthening health systems and institutional frameworks.

Lastly, the RRF dedicates attention to 6) policies for the next generation. This pillar is centred around the youth, encompassing education and skill development measures, thereby ensuring the well-being and future opportunities for children and young people.

The recovery strategy of the EU is multifaceted, focusing on green transition and digital transformation post-COVID-19, responding to general and specific objectives.<sup>11</sup> The RRF regulation also emphasises the disproportionate impact of the COVID-19 crisis on women, particularly those in healthcare and single parents, predominantly women. It stresses the importance of incorporating gender equality and equal opportunities in RRFs. Highlighting women's dual role in unpaid care and employment, the text advocates for investment in care infrastructure to empower women economically, enhance societal resilience, and prevent poverty and social exclusion. This approach is also seen as beneficial for boosting job creation and positively impacting the Gross Domestic Product (GDP) by increasing women's participation in the paid workforce.

#### 5. The horizontal principles: financial additionality and “do no significant harm” (DNSH)

The RRF Regulation includes two fundamental principles, known as horizontal principles, that MSs must follow. The first principle is called “additionality” and is similar to the one applied in EU's structural and investment funds policy.<sup>12</sup> This principle requires that funds disbursed within RRF do not replace existing national budgetary expenses, except in specific justified cases. These funds can also complement other funds provided by other EU programmes and instruments. While RRF funds can finance reform and investment projects, they should not pay for the same expenses covered by other funds.

The second principle is the “do no significant harm” one, which means “not supporting or carrying out economic activities that do significant harm to any environmental objective, where relevant, within the meaning of Article 17 of Regulation (EU) 2020/852”.<sup>13</sup> Such principle is enshrined also by Article 18(d) RRF Regulation among the elements required for the approval of RRFs. Article 17 of Regulation 2020/852 clarifies what criteria should be considered by the MS when evaluating if an economic activity produces

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<sup>8</sup> J. Delors, Report on economic and monetary union in the European Community. Presented April 17, 1989 (commonly called the Delors Plan or Report) By Committee for the Study of Economic and Monetary Union. [EU Commission - Working Document].

<sup>9</sup> Art. 3 RRF Regulation.

<sup>10</sup> On the green and digital transition, see in this book the chapter by E. Celeste & G. Dominioni.

<sup>11</sup> Art. 4 RRF Regulation.

<sup>12</sup> Art. 5 and 9 RRF Regulation.

<sup>13</sup> Art. 2 and 5 RRF Regulation.

significant harm to the environment.<sup>14</sup> In particular, it should be considered if the activity can have a negative impact on climate change mitigation and adaptation, on the sustainable use and protection of water and marine resources, on the circular economy as for waste prevention and recycling, on prevention of pollution, and the protection of biodiversity and ecosystems.<sup>15</sup> To facilitate the implementation of this principle by the national authorities in preparing the plans, the European Commission has published a technical guidance.<sup>16</sup> This Notice is designed to explain the concept of 'do no significant harm' (DNSH) within the framework of the RRF. It details the application of DNSH in this context and outlines how MSs can substantiate that the measures proposed in their RRP adhere to DNSH principles.

## 6. Grants and Loans and type of management

The RRF encompasses two main financial provisions: a) Non-repayable Financial Support: up to EUR 312.5 billion, based on 2018 prices, is dedicated to non-repayable financial support.<sup>17</sup> b) Loan Support: an additional allocation of up to EUR 360 billion, based on 2018 prices, is available for loans to MS.<sup>18</sup>

Non-repayable support covers expenses crucial for the RRF's effective management and achievement of goals. This includes costs for preparatory work, monitoring, control, audit, evaluation activities, studies, expert meetings, stakeholder consultations, information and communication actions aligned with the Union's political priorities, and IT-related expenses for information processing and exchange.

The RRF is managed directly by the European Commission, but MSs can request to transfer funds from shared management to the RRF, as per the Common Provisions Regulations for 2021-27.<sup>19</sup> In such cases, the Commission will implement these funds following RRF rules for grants.

MSs may also include in their RRP's estimated costs for additional technical support as per Article 7 of Regulation (EU) 2021/240,<sup>20</sup> and financial contributions as specified in the InvestEU Regulation.<sup>21</sup> However, these costs should not exceed 4% of the RRP's total financial allocation.

## 7. The link between RRF and sound economic governance

The RRF incorporates a mechanism to ensure its integration with sound economic governance practices, permitting the suspension of support under specified conditions. The Commission submits a proposal to the Council to suspend all or part of commitments or payments if the Council, acting under Article 126(8) or (11) TFEU, decides that a MS has not taken effective measures to correct the excessive deficit, unless it has determined the existence of a severe economic downturn for the Union as a whole (SGP). Other cases are as follows: (a) If the Council issues two consecutive recommendations in the same excessive imbalance procedure, due to a MS providing an inadequate corrective action plan;<sup>22</sup> (b) the Council makes two successive decisions in the same excessive imbalance procedure, determining a MS's failure to comply based on not taking the advised corrective action;<sup>23</sup> (c) when the Commission determines that a MS has not implemented measures as required for financial assistance of MS' balances of payments, leading to a decision not to authorise the disbursement of financial assistance to that MS;<sup>24</sup> (d) if the Council concludes

<sup>14</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

<sup>15</sup> See Art. 17 of Regulation (EU) 2020/852, cit.

<sup>16</sup> Commission Notice, Technical guidance on the application of 'do no significant harm' under the Recovery and Resilience Facility Regulation (C/2023/111).

<sup>17</sup> See point (ii) of Art. 2(2)(a) of Regulation (EU) 2020/2094. This is subject to conditions in Art. 3(4) and (7) of the same regulation and is classified as external assigned revenue under Art. 21(5) of the Financial Regulation.

<sup>18</sup> This is in accordance with point (b) of Art. 2(2) of Regulation (EU) 2020/2094 and is provided following Art. 14 and 15 of this Regulation, subject to the terms of Art. 3(5) of Regulation (EU) 2020/2094.

<sup>19</sup> Art. 7(1) RRF Regulation.

<sup>20</sup> Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument, 1–16.

<sup>21</sup> Art. 7(2) RRF Regulation.

<sup>22</sup> Procedure provided under Art. 8(3) of Regulation (EU) No 1176/2011.

<sup>23</sup> Procedure provided under Art. 10(4) of Regulation (EU) No 1176/2011.

<sup>24</sup> See Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments, 1–3.

that a MS is not adhering to the macroeconomic adjustment program, or to the measures demanded in a Council decision pursuant to Article 136(1) TFEU for euro-area MS.<sup>25</sup>

The preference is for suspending commitments first, with payments suspended only in cases of immediate necessity or significant non-compliance. The Commission's proposal to suspend commitments is automatically approved unless the Council, through an implementing act, rejects it by a qualified majority within one month (so-called 'reverse qualified majority voting'). Suspensions of commitments become effective from January 1 of the year following the decision, while suspensions of payments affect requests submitted post-decision.

The suspension must be proportional and fair, respecting each MS's unique economic and social circumstances, such as unemployment and poverty levels. The impact on the affected MS's economy is also a critical consideration. The suspension limit is set at a maximum of 25% of the commitments or 0.25% of nominal GDP, whichever is lower, in the first instance of non-compliance. For ongoing non-compliance, this limit may be exceeded.

The Council can lift the suspension on the Commission's proposal when a MS rectifies the issues that led to the suspension. The European Parliament is kept informed by the Commission about the implementation of this Article. The Parliament can request discussions with the Commission and is entitled to explanations for any proposals made.

## 8. The criteria and process for the allocation of grants

The RRF funds are distributed based on the severity of the COVID-19 crisis's impact on each state. The allocation formula includes a cap on non-repayable financial support (grants).<sup>26</sup> Seventy per cent of the funds are assigned to each MS based on population size, inverse GDP per capita, and relative unemployment rate, while the remaining 30% is determined by the change in real GDP in 2020 and the aggregated change for 2020-2021. These funds are primarily aimed at MSs most affected in 2020-21 but are not exclusively for offsetting COVID-19 impacts. The funds also address challenges stemming from previous cuts in health, pensions, and social services, thereby potentially reducing economic disparities between MS, particularly the North/South divide seen during the euro area crisis. An annex to the regulation indicates the amount of grants that each MS can receive.<sup>27</sup>

Every MS is eligible to request funding up to its maximum financial contribution to implement its RRP.<sup>28</sup> The Commission has earmarked 70% of the financial support, totaling EUR 312.5 billion (current prices), to be allocated by December 31, 2022. The remaining 30% has been allocated between January 1, 2023, and December 31, 2023.

Furthermore, MSs have the option of receiving pre-financing.<sup>29</sup> Under Article 13 of the RRF Regulation, the Commission can advance up to 13% of the financial contribution and, where applicable, the same percentage of the loan. This pre-financing is designed to be disbursed within two months following the Commission's legal commitment, as feasible.

## 9. The procedure to approve loans

The loan approval process under the RRF Regulation differs significantly from grants. MSs can request loans for their RRP until August 31, 2023, as per articles 14-15 of the RRF Regulation. This request can be made either during the RRP submission or later, provided an updated RRP with new milestones and targets is included. In their requests, MSs must demonstrate the need for additional funds beyond their allocated financial contributions, justifying the costs and, if relevant, aligning with RePowerEU objectives.

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<sup>25</sup> See art. 7 of Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, 1–10.

<sup>26</sup> Art. 11 RRF Regulation.

<sup>27</sup> See Annex IV.

<sup>28</sup> See European Commission, Report from the Commission to the European Parliament and the Council on the implementation of the Recovery and Resilience Facility: Moving forward. 25.9.2023, COM(2023) 545 final/2, 10.

<sup>29</sup> Art. 13 RRF Regulation.

The available loan fund is 385 billion euros. However, there are limits to the amount of loan assistance. Firstly, it should not exceed the difference between the total revised costs of the RRP and the maximum financial contribution, which may include income from the emissions trading system under Directive 2003/87/EC and any funds reallocated from shared management programs. Secondly, the loan cannot surpass 6.8% of a MS's Gross National Income (GNI), except under exceptional circumstances. If additional resources are available, this limit may increase based on the MS's needs and other loan requests. Loan allocation principles include “fairness, solidarity, proportionality, and openness”.<sup>30</sup>

MSs must notify the Commission of their loan support intentions by March 31, 2023. This notification allows the Commission to prepare a balanced report for the European Parliament and the Council, outlining the requests and the allocation strategy. This notification does not preclude the right to request loan support until August 31, 2023, including requests exceeding 6.8% of their GNI, subject to meeting relevant criteria.

Before finalising a loan agreement, the Commission evaluates the justification and realism of the requested loan amount in relation to the proposed reforms and investments. This assessment includes checking adherence to RRP criteria for relevance, effectiveness, efficiency, and coherence. Upon a favourable assessment, the Commission proposes to the Council an evaluation of the MS's submitted or updated RRP. Following Council approval, the Commission formalises the loan agreement with the MS.

The loan agreement specifies the total loan amount, including any pre-financed amount, average maturity, pricing formula, availability period, maximum instalments, and repayment schedule. It also includes provisions for implementing the loan concerning the reforms and investment projects. Moreover, the loan agreement must adhere to EU financial assistance rules as per Article 220(5) of the Financial Regulation.<sup>31</sup>

## 10. Follow-up on the RRFs implementation: the Review Report and the Scoreboard

The RRF regulation mandates the European Commission to submit a report to the European Parliament and Council for reviewing the implementation of RRF by 31st July 2022.<sup>32</sup> The 2022-report evaluated RRFs against the RRF's objectives. It also included a quantitative analysis of climate and digital targets, assessing progress in key areas. The Commission utilised various data sources, including the Recovery and Resilience Scoreboard and bi-annual MSs reports. This report supplements the yearly reports the Commission should present annually based on Article 31 RRF.<sup>33</sup>

The Recovery and Resilience Scoreboard serves as a transparent tool to showcase the Facility's progress. It is also useful in creating the Commission's yearly reports on the RRF's implementation and the comprehensive review report presented to the European Parliament and the Council. Moreover, it forms the foundation for the dialogue between the European Parliament and the European Commission regarding recovery and resilience.

The Scoreboard comprises two types of data: Commission-collected data and data gathered by the Commission to monitor RRF implementation.<sup>34</sup> Predominantly, it comprises data reported by MSs about the achievement of milestones and targets, details on funding disbursements, and Commission-generated data such as expenditure per policy pillar and social spending, calculated following Commission Delegated Regulation 2021/2105.<sup>35</sup>

## 11. The Recovery and Resilience Plans (RRPs)

### a. Eligibility

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<sup>30</sup> Art. 13(6) RRF Regulation.

<sup>31</sup> For instance, the costs deriving from the borrowing of funds are to be borne by the beneficiary MS.

<sup>32</sup> Art. 16 RRF Regulation.

<sup>33</sup> Report from the Commission to the European Parliament and the Council, Review report on the implementation of the Recovery and Resilience Facility, COM/2022/383 final, July 2022.

<sup>34</sup> Art. 30 RRF Regulation.

<sup>35</sup> Commission Delegated Regulation (EU) 2021/2105 of 28 September 2021 supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility by defining a methodology for reporting social expenditure, C/2021/8801.

MSs developed a RRP to outline reforms and investments from February 1, 2020, onwards, with REPowerEU chapter measures eligible from February 1, 2022. The RRP should propose a well-organized array of measures for reforms and public investment projects, potentially including private sector stimulation initiatives.<sup>36</sup>

RRPs must adhere to the horizontal principles of the RRF Regulation, align with the specific challenges and priorities identified for each MS in the European Semester,<sup>37</sup> as well as with those outlined in the most recent Council recommendation on the economic policy of the euro area for MS that use the euro. They must also be consistent with the information included in the National Reform Programmes submitted by MS under the European Semester, and in their National Energy and Climate Plans.<sup>38</sup> They should also align with territorial Just Transition plans, prioritizing territories most affected by the transition towards the EU's 2030 energy and climate targets and a carbon-neutral economy by 2050. The plans should incorporate Youth Guarantee implementation plans and comply with the principles in the partnership agreements and operational programmes under Union funds.

The RRP must address the economic and social impacts of COVID-19 and contribute to the six pillars referred to in Article 3 of the RRF Regulation. Article 18 of the RRF Regulation requires the RRP to contain:

- How the plan addresses country-specific recommendations, including fiscal aspects, and recommendations under Article 6 of Regulation (EU) No 1176/2011;
- Explanation of how the plan improves growth potential, job creation, economic, social, and institutional resilience, and mitigates COVID-19 impacts while considering the European Pillar of Social Rights;
- Measures to ensure environmental protection, with at least 37% of funding allocated to green transition;
- Actions aiding digital transition, with at least 20% of funding dedicated to this;
- Security self-assessment for digital investments;
- Statement on cross-border or multi-country projects;
- Milestones, targets, schedule for implementing reforms and investments by August 31, 2026;
- Investment project details, durations, total cost estimates, and justifications;
- Information on existing or planned Union financing and supplementary measures;
- Justification for the plan's coherence with Article 17 of the RRF Regulation;
- Gender equality and equal opportunity measures;
- Monitoring and implementation arrangements, including milestones, targets, and indicators;
- Summary of the consultation process and feedback incorporation;
- Measures to prevent corruption, fraud, conflicts of interest, and double funding;
- If applicable, a request for loan support and additional milestones.

MSs can request the Commission to organise good practices exchanges among the MSs and can make use of the Technical Support Instrument for implementing insights. This collaboration strengthens the EU's response, especially post-COVID-19.

#### b. The Commission's assessment: the 11 criteria

The European Commission is tasked with thoroughly evaluating each MS's RRP, or its update.<sup>39</sup> This assessment process, which must be completed within two months of the official plan submission, is critical

<sup>36</sup> On the National Recovery & Resilience Plans, see in this book the chapter by J. Zeitlin, D. Bokhorst and E. Eihmanis.

<sup>37</sup> Some MS are exempt from the procedures of the European Semester (Art. 12 of Regulation (EU) No 472/2013), or are subject to the procedures provided by Regulation (EC) No 332/2002. In such cases, RRF Regulation applies only for the "challenges and priorities identified by the measures set out in those Regulations". Art. 17(5) RRF Regulation.

<sup>38</sup> See Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance.) 1–77.

<sup>39</sup> See Art. 18 RRF Regulation.



for proposing a decision to the Council by the Commission.<sup>40</sup> The Commission and the MS can agree to extend the assessment period by a reasonable amount of time. During this assessment, the Commission works closely with the MS involved, ensuring a collaborative approach. This collaboration may involve the Commission requesting additional information or clarification, to which the MS is obliged to respond, potentially including necessary revisions to the plan even after its initial submission.

The Commission assesses each plan following the 11 criteria set out in Article 19(3) of the RRF Regulation, based on the principles of relevance, effectiveness, efficiency, and coherence.

In terms of *Relevance*, the Commission assesses if the RRP: a) provides a comprehensive and balanced response to the MS's economic and social conditions, contributing effectively to all six pillars outlined in Article 3; b) addresses specific challenges identified in country-specific recommendations, including fiscal aspects and other recommendations under Article 6 of Regulation (EU) No 1176/2011; c) enhances the growth potential and job creation capacity of the MS, while also improving its overall resilience, contributing to the implementation of the European Pillar of Social Rights; d) complies with the 'do no significant harm' principle to environment;<sup>41</sup> da) includes reforms and investments that effectively contribute to energy security, supply diversification, increased renewables and energy efficiency, enhanced storage, and reduced fossil fuel dependence before 2030;<sup>42</sup> db) includes reforms and investments that are expected to have cross-border or multi-country dimensions or effects in the REPowerEU chapter;<sup>43</sup> e) contains measures that contribute to the green transition, which should account for at least 37% of the total allocation;<sup>44</sup> f) includes measures that effectively contribute to the digital transition or address the challenges associated with it, and whether they account for a minimum of 20% of the total allocation for the RRP, using the methodology for digital tagging set out in Annex VII.

In terms of *Effectiveness*, the Commission assesses: g) The plan's potential for a lasting and sustainable impact on the MS, and h) the effectiveness of the procedures, set-up, timetables, milestones, targets, and indicators in monitoring and executing the RRP.

In terms of *Efficiency*, the Commission evaluates: i) reasonableness and plausibility of the estimated total costs of the RRP, and j) the proposed arrangements enable to prevent, detect, and correct corruption, fraud, and conflicts of interest in the use of funds, including strategies to prevent double funding. Assurance that costs are plausible and reasonable is especially relevant, considering that actual costs are not checked ex-post, due to the performance-based nature of the RRF.

Finally, in terms of *Coherence* the Commission considers: k) whether the plan's measures for implementing reforms and public investment projects represent a cohesive and integrated approach to achieving the intended objectives.

In cases where a MS requests a loan, the Commission evaluates this request against the above 11 criteria, and, in addition, evaluates if the justifications for the loan's support and the sums requested are "reasonable and plausible" to justify the supplementary investments and reforms.<sup>45</sup>

Should the Commission's assessment be negative, a detailed, justified explanation will be provided within the 2-month deadline. Additionally, to enrich the assessment process, the Commission may seek assistance from external experts.

## 12. Commission proposal, Council implementing decision, operational agreements and amendments of the RRP

The Council, based on a Commission proposal, approves a MS's RRP assessment or update through an implementing decision.<sup>46</sup> This process includes reviewing the MS's reform and investment projects, financial contributions, milestones, and targets. If loan support is requested, additional reforms, investments, and milestones are also assessed.<sup>47</sup>

<sup>40</sup> The procedure for adopting a Council decision is described in Art. 20 RRF Regulation.

<sup>41</sup> The Commission can provide technical guidance to the MS.

<sup>42</sup> REPowerEU's, Art. 21c RRF Regulation.

<sup>43</sup> See Art. 21c for reforms and investments.

<sup>44</sup> The methodology for climate tracking is to be found in Annex VI.

<sup>45</sup> See Art. 15(1), which makes reference to Art. 19(3), of the RRF Regulation.

<sup>46</sup> See the procedure enshrined in Art. 20 RRF Regulation.

<sup>47</sup> On the EU governance and the role of the Commission and the Council, see in this book the chapter by M. Patrin.

Financial contributions are determined by the total estimated costs of the RRP and the plan's quality, adhering to criteria in Article 19(3) of the RRF Regulation. If the plan meets the criteria and estimated costs exceed or equal the maximum financial contribution, the MS receives the maximum amount. If costs are less, the contribution equals the estimated costs. Plans not meeting the criteria receive no contribution – but in practice, all MSs RRP have been approved.

A key aspect of the proposal is the comprehensive description of the reforms and investment projects, including a breakdown of the estimated total costs associated with the MS's RRP. All final milestones and targets related to investment projects and reforms should be completed by August 31, 2026.

Operational arrangements between the MSs and the Commission define the monitoring and implementation schedule, milestone and target indicators, data access, and additional loan-related milestones and targets. These agreements, necessary for the first payment request, have been signed with 25 MS (all, except Hungary and The Netherlands) as of December 2023. The arrangements, which can vary in signing time due to internal legal provisions, are bilateral agreements between the Economy Commissioner and a government representative of the MS. These detailed arrangements, including any supplementary monitoring mechanisms post-RRP implementation, are published on the Commission's website for each State.

If a MS cannot meet its RRP's milestones and targets due to unforeseen circumstances, it may request the Commission to amend or replace the Council's implementing decisions.<sup>48</sup> The MS can submit either a revised plan or a new one and may seek technical support for this process.

Should the Commission find the amendment request valid, it will review the new or revised plan and propose a new implementing decision to the Council, typically within two months of the request. Both the Commission and the MS can agree to extend this deadline if needed. The Council generally adopts the new decision within four weeks of the Commission's proposal.

If the Commission deems the amendment request unjustified, it will reject it within the specified period, following a one-month window for the MS to present additional arguments after the Commission's preliminary findings.

### 13. The rules on the Protection of the financial interests of the Union and the commitment of the financial contribution

MSs receiving RRF funding must implement strict measures to protect the EU's financial interests.<sup>49</sup> This includes adhering to national and EU legal frameworks to prevent fraud, corruption, and conflicts of interest. Effective internal control systems are essential, incorporating mechanisms to recover misallocated or misused funds, which can be integrated into existing fiscal management structures.<sup>50</sup>

Both the loan agreement and the agreement regarding the financial contribution contain obligations for MS: a) Regular verifications to ensure proper allocation and use of financial support, adhering to regulations, especially concerning fraud, corruption, and conflict of interest prevention, detection, and correction; b) Measures to prevent and counteract fraud, corruption, and conflicts of interest, including legal action for recovering misallocated funds and executing measures in the RRP; c) Accompanying payment requests with a management declaration confirming correct fund use and a summary of audits conducted; d) Compiling and providing access to standardised data on fund recipients, contractors, beneficial owners, and a list of measures under the RRP, including public funding allocations and disbursements. This data is limited to discharge, audit, and control proceedings regarding fund use.

MSs are also required to allow key EU institutions (the Commission, OLAF, the Court of Auditors, and where applicable, the EPPO) to exercise audit and control rights as per Article 129(1) of the Financial Regulation and maintain records following Article 132 of the Financial Regulation.<sup>51</sup>

The agreements grant the Commission authority to reduce support, reclaim dues, or request expedited loan repayment in cases of unresolved fraud, corruption, conflicts of interest, or severe contractual breaches. The Commission must follow the principle of proportionality when deciding on recovery, reduction, or accelerated repayment, considering the severity of the infringement and allowing the concerned MS to submit observations before any action is taken.

<sup>48</sup> As specified in Art. 20(1) and (3) of RRF Regulation.

<sup>49</sup> On the rule of law conditionality, see in this book the chapter by N. Kierst.

<sup>50</sup> Art. 22 RRF Regulation.

<sup>51</sup> On the oversight by the European Court of Auditors and OLAF, see in this book the chapter by P. Dermine & P. Thinus.

#### 14. Legal obligations, suspension and termination of the agreements

Once the Council has approved an implementing decision,<sup>52</sup> the Commission finalises a contract with the respective MS, creating a specific legal obligation as per the Financial Regulation.<sup>53</sup> The legal obligation for each MS is capped at the total of its financial contribution outlined in Article 11(1) (a) of RRF Regulation for 2021 and 2022, its updated financial contribution according to Article 11(2) for 2023 RRF Regulation, and the calculated amount under Article 21a(2) RRF Regulation.

Budget commitments may be formulated on the basis of comprehensive global commitments and, where necessary, can be divided into annual instalments spread across several years.

The RRF Regulation establishes a detailed framework for the payment, suspension, and termination of financial contributions and loans, governed by procedural arrangements and conditionalities under the European Commission and the Council. Payments must be made by December 31, 2026, subject to budget and funding availability.

MSs submit payment requests to the Commission upon meeting milestones and targets in their approved RRP up to twice a year. The Commission conducts a preliminary assessment within two months, verifying the achievement of milestones and targets and considering operational arrangements and expert advice. Positive assessments lead to consultation with the Economic and Financial Committee and subsequent Commission authorisation for disbursement.

The Commission may partially or wholly suspend payments if milestones and targets are unmet.<sup>54</sup> MS have a month to respond to such assessments. If compliance issues persist for six months, the Commission may proportionally reduce financial contributions or loans, after allowing MS two months to present observations. Suspensions are lifted once MS fulfill necessary milestones and targets.

In case of no progress within 18 months of the Council's decision, the Commission can terminate agreements and recover funds, including pre-financing, after giving the MS a two-month response period.

Exceptional circumstances may delay disbursement decisions by up to three months, providing flexibility while maintaining a time-bound framework. These deadlines ensure time-bound compliance and efficiency, reflecting the EU's commitment to effective governance and the administration of its financial instruments.

#### 15. Transparency and the Recovery and Resilience Dialogue

The Commission has been assigned the responsibility of transmitting the RRP officially submitted by all MSs, along with the corresponding Council implementing decision proposals to both the European Parliament and the Council.<sup>55</sup> In cases where confidentiality is required, appropriate measures should be taken.

The European Commission provides the European Parliament's relevant committee with a briefing on its initial findings regarding the MS' progress towards achieving milestones and targets in the RRP.<sup>56</sup> Additionally, the European Parliament's competent committee has the authority to request updates from the Commission about the evaluation process of the RRP, which will be incorporated into the ongoing recovery and resilience dialogue.

The REPowerEU Regulation has established new rules to ensure transparency in the use of RRF funds. According to the new Article 25a of the RRF Regulation, MSs are now required to publish information about the final recipients of the funds.<sup>57</sup> MSs must create a publicly available and user-friendly portal to publish data on the 100 final recipients who receive the highest amount of funding for implementing measures under the RRF.

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<sup>52</sup> See Art. 20(1) RRF Regulation.

<sup>53</sup> Art. 23 RRF Regulation.

<sup>54</sup> On the milestones, targets and the relation to cohesion policy, see in this book the chapter by N. Moran.

<sup>55</sup> Art. 25 RRF Regulation.

<sup>56</sup> Art. 3 RRF Regulation.

On the issue of accountability and the role of the European Parliament, see in this book the chapter by A. MacIver.

<sup>57</sup> Art. 25a RRF Regulation. Final recipients are the entities who receive the funds from the RRF and are not contractors or subcontractors. They can be natural persons, citizens, regional or local authorities, or SMEs.

The Commission gathers and centralises the data from all MSs' public portals. Including this data on the Scoreboard facilitates the European Parliament's commissions in engaging in informed dialogue and oversight regarding the distribution and impact of the RRF funds. Article 26 of the RRF Regulation acknowledges to the European Parliament a relevant role within the Dialogue for Recovery and Resilience. The European Parliament's committee can call for a Commission meeting every two months to discuss matters such as the state of recovery, resilience, and adjustment capacity in the Union, the RRFs and their evaluation, the content of the review report presented by the Commission, the advancement status of milestones and targets, payment procedures, and any other relevant information or documentation provided by the Commission. The progress in implementing reforms and investments in the REPowerEU chapters can also be discussed.

The matters discussed in front of the parliamentary commission can be subject to resolutions expressing the views of the European Parliament. The content of such resolutions and any issue arising from the Recovery and Resilience Dialogue should be taken into account by the Commission.

## 16. Reporting by the MS, common indicators, organisational coordination and monitoring by the European Commission

The MSs who presented a RRF are required to submit biannual reports within the framework of the European Semester detailing the advancements in implementation.<sup>58</sup> This includes information on the operational arrangements<sup>59</sup> and data related to the common indicators.<sup>60</sup> These progress reports are incorporated into the MSs' National Reform Programmes (NRP). The NRP are thus employed as a key instrument for reporting on the progresses made towards fulfilling the objectives of the RRFs.

The Commission is responsible for monitoring the execution of the Facility and assessing the attainment of the goals established in Article 4 RRF Regulation.<sup>61</sup> It has the power to manage a performance reporting system to collect data, with proportionate reporting requirements set for recipients of EU funding. The Commission also provides for retrospective reports on RRF expenditures for each pillar specified in Article 3, based on the expenditure estimates in approved RRFs.

The Commission can adopt delegated acts to establish common indicators for reporting and evaluating the RRF's progress towards its objectives and to devise a methodology for reporting social expenditures, including those on children and youth.<sup>62</sup> The power of delegation acknowledged to the European Commission by the Council and the Parliament is regulated by some principles established by Article 33 RRF Regulation. Before adopting a delegated act, the Commission will consult experts designated by each MS.<sup>63</sup> A delegated act will be enforceable only if no objection is expressed by the European Parliament or the Council within a period of one month of notification of that act. However, that period can be extended by one month at the initiative of the European Parliament or the Council.

In December 2023 the Scoreboard highlights the Share of RRF funds contributing to each policy pillar achievement of the Plan: 51,3% of the Green Transition, 28,35% of digital transformation, 47,20% of Smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs, 44,54% of social and territorial cohesion, 17,50% for Health, and 11,30% for Policies for Next Generation.<sup>64</sup>

<sup>58</sup> Art. 27 RRF Regulation.

<sup>59</sup> See Art. 20(6) RRF Regulation.

<sup>60</sup> See 29(4) RRF Regulation.

<sup>61</sup> Art. 29 RRF Regulation.

<sup>62</sup> Commission Delegated Regulation (EU) 2021/2105 of 28 September 2021 supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility by defining a methodology for reporting social expenditure, C/2021/8801, 1.12.2021, 79–82, and Commission Delegated Regulation (EU) 2021/2106 of 28 September 2021 on supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility by setting out the common indicators and the detailed elements of the recovery and resilience scoreboard.

<sup>63</sup> The consultation should be in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

<sup>64</sup> Every measure under consideration contributes to two out of the six policy pillars, resulting in the cumulative contribution to all pillars represented in this chart equating to 200% of the RRF funds distributed to MS. It is important to note that the displayed percentages reflecting contributions to the green transition and digital transformation pillars differ from those representing contributions to climate and digital objectives. This discrepancy arises because the latter percentages are derived using a distinct methodology, as elaborately described in Annexes VI and VII of the RRF Regulation. See [https://ec.europa.eu/economy\\_finance/recovery-and-resilience-scoreboard/index.html?lang=en](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html?lang=en)

The Commission is responsible for presenting a detailed report to the European Parliament and the Council every year on the implementation of the Facility.<sup>65</sup> This annual report provides a comprehensive overview of the progress made within the MSs' s under the Facility. It covers important aspects such as the implementation of key milestones and targets, the current status of financial payments and any suspensions that may have occurred. The report goes beyond simply tracking progress; it examines various aspects of the RRF's impact and performance. The Annual report 2023 highlights that already 27 annual reports have been approved and 25 have been updated or are currently being updated.<sup>66</sup>

Finally, the Commission is required to produce an independent evaluation report on the implementation of the RRF by 20 February 2024.<sup>67</sup> This report will be presented to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Another independent ex post evaluation report is due by 31 December 2028.

The focus of the evaluation report is to determine whether the RRF's objectives have been met, how resources have been utilised, and the European added value it has generated.

## 17. Conclusions

Regulation EU 2021/241 establishes the RRF which lays the groundwork for economic policy coordination among EU MSs. It mandates them to conduct policies that contribute to the Union's objectives, with a focus on economic, social, and territorial cohesion. The regulation introduces six pillars of policy areas for recovery, encompassing green transition, digital transformation, sustainable growth, social and territorial cohesion, health, economic resilience, and policies targeting the next generation. There is a strong emphasis on green technologies and digital transformation as drivers for boosting the Union's competitiveness and resilience.

Financing under the Facility is results-based, linking financial support to the achievement of specific milestones and targets, with a stress on transparency and accountability. Compliance with EU climate and environmental goals is mandatory, ensuring that all measures supported by the Facility adhere to the 'do no significant harm' principle. The Regulation sets a target for digital expenditure, while also addressing the need for gender equality and equal opportunities, particularly considering the disproportionate impact of COVID-19 on women.

A mechanism linking the RRF with sound economic governance is established, allowing for the suspension of support under specific circumstances. MSs are required to submit detailed plans aligned with EU priorities, including green and digital transitions, with regional and local authorities playing a significant role in implementation. The process for determining financial contributions and providing loans to support MS plans is detailed, allowing for amendments to plans based on changing circumstances.

A great emphasis is placed on transparency and the role of the European Parliament, which is involved in the various phases of management of the RRFs, from the assessment evaluation of the European Commission to the review report to the status of fulfilment of milestones and targets of the RRFs. So far, the European Parliament has used this power proactively, organising meetings with European Commissioners in front of the relevant committees.

The RRF, as the European Commission maintains, is "an innovative, performance-based instrument, where payments are made to MSs, as beneficiaries, upon delivering reforms and investments pre-agreed in national recovery and resilience plans. The funds are therefore disbursed solely on the basis of the progress in the achievement of the reforms and investments that MSs committed to."<sup>68</sup> The RRF is a significant qualitative development in the economic and financial governance of the EU. It brings in a new governance design that is "demand-driven and performance-based". It brings several innovations compared to the existing EU economic governance and establishes a better connection between investments and reforms. As a result, it acts as an enabler of economic transitions in EU MSs and is widely regarded as a game-changer in terms of its impact. However, the use of performance-based financing is not new and has been heavily criticised for its efficiency and effectiveness in other domestic and international settings. Also,

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<sup>65</sup> Art. 31 RRF Regulation.

<sup>66</sup> Report from the Commission to the European Parliament and the Council on the implementation of the Recovery and Resilience Facility: Moving forward, COM(2023) 545 final of 19.09.2023.

<sup>67</sup> Art. 32 RRF Regulation.

<sup>68</sup> Communication from the Commission to the European Parliament and the Council, Recovery and Resilience Facility: Two years on A unique instrument at the heart of the EU's green and digital transformation, COM/2023/99 final, 1.

performance-based financing with predetermined milestones and targets may lead to difficulties in managing unforeseen implementation problems and changes in external conditions.<sup>69</sup>

The success of the NGEU will depend on whether its methodology will be maintained in the future so as to create a kind of EU fiscal power capable of rebalancing the asymmetry between monetary and economic policy. In short, it depends on the sustainability of the willingness to attribute to the EU some competences in the social field and to provide for payment through EU-wide taxes, as envisaged by the NGEU (plastic taxes, carbon border adjustment tax, digital tax and EU financial transaction tax).<sup>70</sup>

In addition, the success and replication of the NGEU will be conditioned by the effectiveness that national investment programmes financed through EU loans and grants will have in the future. Considering that such projects are mainly managed at local or regional level, NGEU constitutes a real change of perspective as it links the destiny of future innovations in governance taken at EU level - amount of loans and grants, new EU-wide taxes and, maybe, a real fiscal capacity - to the management capability of local, regional and state administrations.

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<sup>69</sup> J. Zeitlin, D. Bokhorst, and E. Eihmanis, *Governing the RRF. Drafting, Implementing, and Monitoring National Recovery and Resilience Plans as an Interactive Multilevel Process*, Recovery Watch, June 2023, 6.

<sup>70</sup> On the ETS & CBAM, see in this book the chapter by M. Kendrick; on the global minimum tax, see in this book the chapter by C. Garbarino.