

## **Reply of the Commission to a suggestion from the European Ombudsman - Strategic initiative SI/6/2021/PL**

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### **I. BACKGROUND**

On 24 February 2022, the European Ombudsman launched a strategic initiative on how the European Commission ensures transparency and accountability in the implementation of the Recovery and Resilience Facility (RRF).

The level of transparency on the implementation of the Recovery and Resilience Plans (RPPs) varies among Member States, as no binding standard is set in the RRF Regulation. Article 25 of the RRF Regulation imposes requirements on the transparent flow of information on relevant documents between the Commission and the European Parliament and the Council such as the RPPs, or their amendments, as submitted by the Member States, and the proposals for Council implementing decisions.

The Commission has adopted from the start a policy of maximum transparency related to the implementation of the RRF Regulation by creating a dedicated website compiling all relevant documents and figures on the RRF. In addition, the Commission made available in December 2021 the Recovery and Resilience Scoreboard that provides real time information on the implementation of the RPPs.

### **II. EUROPEAN OMBUDSMAN'S INQUIRY**

The European Ombudsman observes difficulties for the public to obtain relevant information on national plans and highlights an insufficient transparency surrounding the negotiation and approval of RPPs as well on audits and supervisory mechanisms. The Ombudsman has asked the Commission to reply to a set of questions concerning the transparency and accountability mechanism it has put in place in the context of the RRF.

#### **1) Transparency of the national recovery and resilience plans and their evaluation**

- What mechanisms has the Commission put in place to ensure transparency in the negotiations of the national plans?
- Looking forward, what transparency measures will the Commission take to allow for public scrutiny of the evaluation of the Member States' milestones and reforms?
- As regards access to documents, the Ombudsman is currently looking into the Commission's failure to reply to date to a confirmatory application for public access to documents relating to the evaluation of Germany's plan. Has the Commission taken measures to facilitate the handling of future similar requests?

#### **2) Information, communication and publicity**

- Could the Commission clarify what information Member States must make available, and how, to comply with the "Information, communication and publicity" requirements of the Regulation?
- Is the Commission planning on making the information on national plans and projects more accessible to the public, for instance by means of a dedicated

website listing all the respective national links?

- What other actions, if any, is the Commission considering for the dissemination of information about the Facility?
- As part of its communication strategy, does the Commission intend to make available information on the audits that are carried out, once these have been completed and acted upon?

3) Supervisory mechanisms

- In order to reassure the public that the Facility will be used appropriately, what mechanisms are there in place to supervise the proper functioning of the audit and control mechanisms of the Member States?
- Under what circumstances will the Commission request from Member States a detailed account of the final recipients of the funds?

### **III. THE COMMISSION'S REPLY TO THE SUGGESTION FROM THE OMBUDSMAN**

The Commission fully recognises the importance of high standards of transparency and accountability in the implementation of the RRF. The Commission has already made extensive material about the RRF publicly available and remains fully committed to ensure EU citizens are able to find and access information on this unprecedented instrument and the implementation of the national RRFs.

The RRF Regulation itself does not provide detailed requirements on transparency or publication of documents. The Commission has worked with all Member States to encourage their publication of the RRFs by Member States and all Member States have done so. The Commission has published the documents under its remit. At each relevant step of the process, the Commission has published press releases accompanied by further evidence.

In line with Article 30 of the RRF Regulation, the Commission has set up a public online platform, the Recovery and Resilience Scoreboard, which represents the performance reporting tool of the Facility. The Scoreboard transparently displays available information on the RRF overall and individual RRFs, such as the fulfilment of milestones and targets, disbursements to the Member States, and detailed tagging data on each of the RRFs. This ensures that EU citizens can follow the progress for each RRF on the Commission website in an easily accessible way.

Moreover, the first annual report on the implementation of the RRF, published on 1 March, takes stock of the progress made in the implementation of the Facility and the contribution of the RRFs to the climate and digital targets and expenditure under the six pillars of Article 3 of the RRF Regulation.

The Commission wants to thank the European Ombudsman for the advice provided on how to improve the accessibility of information concerning the implementation of the RRF. In respect to the specific questions, please find the Commission's answers below.

## 1) Transparency of the national recovery and resilience plans and their evaluation

The Commission agrees that transparency is needed to ensure democratic legitimacy and oversight and ensure national ownership of the RRFs and does its utmost to ensure this within the framework of the RRF Regulation. Each RRF is established at national level in line with national laws and obligations. In all cases, Member States have implemented some level of stakeholder consultations, and Member States have generally also discussed the RRFs with their national parliament prior to the submission to the Commission. The Commission has provided the full plans as submitted to both Parliament and Council on equal terms in accordance with Article 25 of the RRF Regulation. As the plans are national documents and the RRF Regulation does not provide a clause on their publication, the choice on how to publish the RRFs is up to the Member States. However, from the moment the plans are reflected in the Council Implementing Decisions, their implementation and the fulfilment of milestones and targets become a Union budget implementation matter, and Member States have very specific obligations towards the Commission. The Commission publishes the legal texts approving the plan and accompanying press material. The Council Implementing Decisions are published by the Council covering the Commission's analysis of the RRFs and the accompanying Staff Working Documents. In an effort to enhance accessibility to relevant information, the Commission compiles the links to Member States' websites on its dedicated RRF website. In addition, the Commission makes available additional information regarding the RRFs on its website. It includes presentations on horizontal topics and documents provided to Parliament and Council, which provide a broad perspective on the variety of areas the RRF touches upon. As part of this set, the Commission also published an "assessment matrix" on all national plans received with a summary of the Commission assessment once the Commission's proposal for a Council Implementing Decision is adopted.

Moreover, the Commission is making publicly available the eleven Operational Arrangements agreed with Member States, covering detailed aspects of the implementation in the years ahead. The detailed monitoring arrangements included in the Operational Arrangements provide an important insight into how the assessment of milestones and target fulfilment will be assured. The Operational Arrangements include details on the frequency and format of exchange of information, precise modalities for access to data, a list of monitoring steps, an indicative timeline of payment requests or further specification of milestones and targets including verification mechanisms. In addition, the Commission has decided to publish the preliminary assessments on the fulfilment of milestones and targets for all payment requests at the same time as they are shared with the European Parliament and the Economic and Financial Committee. This demonstrates the high value that the Commission places in ensuring maximum transparency in the handling of payment requests.

The Commission continues looking into ways to further increase the proactive publication of documents related to the RRF, and the Ombudsman's suggestions will be taken into consideration in that context.

The Commission handles access to documents requests received in the context of the RRF in line with the principles and processes laid down in the EU Regulation No 1049/2001 on public access to European Parliament, Council and Commission documents and will continue to do so in the future. The Commission has received 110 requests for access to documents on the RRF so far. For these requests, the Commission has disclosed already around 1600 documents related to different RRFs. Additional resources have been made

available/redeployed both in RECOVER and ECFIN, the two services working on the RRF implementation, to improve efficiency in the handling of access to documents requests.

Each request for access to documents is assessed individually on the basis of the requirements of the legislation on Access to Documents. The Commission only refuses disclosure of documents if this is justified in line with the limited number of exceptions laid down in that legislation. In case of documents originating from one Member State, the latter may request the Commission not to disclose its document based on reasons relying on the exceptions listed in Article 4(1) to (3) of Regulation No 1049/2001.

## 2) Information, communication and publicity

National plans are prepared and implemented by Member States. Therefore, their publication and their disclosure policy for EU citizens falls under their responsibility. The RRF Regulation does not provide detailed requirements as regards information, communication or publicity by the Member States, nor to publish additional information on the use of recovery funds, which in any case enter the national budget and are used in line with budgetary procedures and reporting requirements. As part of the financing agreement signed with the Commission, each Member State commits, according to Art. 10(2) of this agreement, to ensure the visibility of the Union funding and to communicate on the RRF's contribution to Europe's recovery.

In an effort to promote transparency and accessibility of information on the national plans, the Commission compiles the links to the Member States' websites<sup>1</sup>. Some Member States disclose on these websites information on how funds are being spent and measures implemented, or disclose final recipients of RRF funds in specific transparency portals. Some Member States provide interactive tools for EU citizens to contact national authorities for questions in the context of the national RRFs. While the Commission encourages detailed communication and highlights good practices, it has no legal base to oblige all Member States to follow a common approach.

Each Member State is however preparing its own communication campaign on the RRF and many Member States have already implemented events or media campaigns. The Commission is working with the Member States on media campaigns and provides advice and guidance to them through dedicated meetings on communication under the banner of the broader 'Inform EU' network.

Progress concerning the implementation of the RRF is visible on the Recovery and Resilience Scoreboard in real time, including on the submission and outcome of payment requests, i.e. the fulfilment of milestones and targets and subsequent disbursements. The Scoreboard will also soon provide data on the 14 common indicators, showing progress of the Facility as a whole towards common objectives. Continuous updates will be implemented on the Scoreboard regarding the fulfilment of milestones and targets and related disbursements as the Commission receives and assesses more payment requests.

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<sup>1</sup> [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#national-recovery-and-resilience-plans](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#national-recovery-and-resilience-plans)

Regarding audits, the Commission will carry out ex-post audits to verify the completion of milestones and targets and foresees system audits on national monitoring and control systems. Information on audits and audit conclusions are presented in the annual activity report and provide a statistical overview of the recommendations and corrective measures imposed by the Commission. In line with standard audit practice, the Commission however does not publish the audit reports, nor can they be provided to third parties, without prejudice to their potential disclosure under the terms and conditions set out in Regulation (EC) No1049/2001 on access to documents.

### 3) Supervisory mechanisms

The RRF requires a control framework that is tailored and proportionate to its unique nature as a performance-based EU spending programme. For the RRF the national control systems of the Member States will serve as the main instrument to safeguard the financial interests of the Union.

The RRF Regulation puts a firm obligation on Member States to ensure sound financial management. Member States must have effective and efficient internal control systems in place to prevent, detect and correct serious irregularities including the effective prevention, detection and correction of conflict of interests, corruption and fraud, and double funding. This includes suitable audit measures. Member States need to explain the relevant arrangements in their RRP. Member States are encouraged to also perform audits on the data reported for milestones and targets. The Commission will assess the fulfilment of milestones and targets (to establish the legality and regularity of the payment) and will implement ex-post audits on milestones and targets. The Commission will also conduct system audits on monitoring and control systems. In case the Commission finds serious irregularities in the implementation of specific measures funded by the RRF, it would be first for the Member State authorities to correct these issues and recover any affected funds. If Member States fail to do so, the Commission can recover funds. In case the Commission finds in the course of its own audits a serious breach of obligations by the national authorities of the obligations laid out in the financing and loan agreements signed between the Commission and the Member State, the Commission can also recover funds.

For some Member States, where at the time of approval of the RRP the audit and control system were overall adequate but had minor weaknesses that could be corrected prior to the first payment request, specific milestones requiring reinforcement of their audit and control systems were agreed. Satisfactory fulfilment of such milestones is necessary for the disbursement of funds under the RRF. Spain, France, Greece and Italy, for which the Commission preliminary assessment of a first payment request is available, have milestones related to the national audit and control systems and the Commission's preliminary assessment makes clear how these were fulfilled. Each payment request also has to be accompanied by a management declaration that the funds were used for their intended purpose, that information provided is correct, and that the control systems are in place and funds were used in accordance with applicable rules.

Data on final recipients must be collected by Member States for control and audit purposes in line with RRF Regulation Art. 22(2), point (d). Member States may be requested to provide access to this data to the Commission for purposes of control and audit, as well as by OLAF, EPPO (for the Member States that are part of the EPPO) and the European Court of Auditors for them to exert their rights. The Commission recalls the transparency obligations set by the RRF Regulation but notes that such obligations do not require publishing data on final recipients. However, it notes that Member States may

decide to publish information on final recipients and that publication of certain information may be compulsory pursuant to certain EU rules, for instance related to anti-money laundering purposes.

*For the Commission  
The President  
Ursula VON DER LEYEN*