

## **Reply of the Commission to follow-up questions from the European Ombudsman - Strategic initiative 2021/6/SI**

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### **I. BACKGROUND**

In February 2022, the European Ombudsman launched a ‘strategic initiative’ on the transparency and accountability of the Recovery and Resilience Facility and asked for the European Commission’s views on several matters, namely: the transparency of the national recovery and resilience plans and their evaluation; the information, communication and publicity requirements of the RRF; and the mechanisms put in place to supervise the spending of the funds.

The Commission replied to the questions on 1 July 2022. On 5 October 2022, the European Ombudsman sent a follow-up letter, with the request to provide further clarifications on a number of matters.

In the meantime, the Ombudsman’s office has received several complaints on how the Commission dealt with public access to documents requests concerning national recovery and resilience plans. The Ombudsman is currently processing them. In its message of 5 October, it notes that it is encouraging that the Commission continues to look into ways to increase further the proactive publication of documents related to the RRF.

From the start, the Commission has adopted a policy of high standards of transparency and accountability in the implementation of the RRF, while respecting the limitations of the RRF Regulation and the very nature of the RRF as a performance-based funding programme. The level of transparency on the implementation of the Recovery and Resilience Plans (RPPs) and national communication strategies vary among Member States, since no binding standard is set in the RRF Regulation. Article 25 of the RRF Regulation imposes only requirements on the transparent flow of information on relevant documents between the Commission and the European Parliament and the Council such as the final RPPs officially submitted by the Member States, or their amendments and the proposals for Council implementing decisions.

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

In its letter of 5 October, the Ombudsman has asked the Commission to reply to a set of follow-up questions for clarification.

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

- Could the Commission explain what parts of the national plans are “reflected” in the Council Implementing Decisions?
- Would the Commission be ready to make public the machine translations of the national plans officially submitted to the Commission and shared with the European Parliament and the Council, with the appropriate disclaimers?
- Could the Commission indicate the nature of the documents to which it granted public access? In view of the significant number of documents disclosed upon request, has the Commission identified any categories of documents that it would consider disclosing proactively going forward?

## 2) Information, communication and publicity

- Could the Commission explain how it assessed the information, communication and publicity of national plans? To this end, the Commission may refer to the internal guidelines and checklists it produced ahead of its assessment.

## 3) Supervisory mechanisms

- Could the Commission explain exactly what control and audits mechanisms it will implement, and under what circumstances they will be used?
- Could the Commission clarify what circumstances could trigger a request for data on final recipients by the Commission?
- Could the Commission explain what information Member States would need to publish, and under what rules?

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

The Commission wants to thank the European Ombudsman for the letter of 5 October 2022 in relation to the transparency and accountability of the Recovery and Resilience Facility (RRF). The Commission remains fully committed to ensuring that EU citizens are able to access accurate, timely and relevant information on this instrument and the implementation of the national recovery and resilience plans (RRPs), while respecting the legal obligations and limits as set out in the RRF Regulation. 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

*Could the Commission explain what parts of the national plans are "reflected" in the Council Implementing Decisions?*

According to Article 18 of the RRF Regulation, a Member State wishing to receive financial support from the RRF shall submit to the Commission a Recovery and Resilience Plan, which, as required by Article 17(1) of that Regulation, shall set out the reform and investment agenda of the Member State concerned.

According to Article 20(2) of the RRF Regulation, when the Commission gives a positive assessment to a Recovery and Resilience Plan, the Commission proposal for a Council Implementing Decision shall set out the reforms and investments projects of the recovery and resilience plan to be implemented by the Member State, including the milestones and targets and the financial contributions. The same applies to loans (Article 20(3) of the RRF Regulation). In accordance with Article 20(1) of the RRF Regulation, the Commission's positive assessment of the plan is then approved by the Council by means of a Council Implementing Decision, which sets out the measures that the Member State should implement in order to receive financial support from the RRF (see Article 24 of the RRF Regulation).

The reforms and investments that a Member State undertakes to implement in order to benefit from financial support under the RRF, as well as a description and indicative timeline for their implementation, are reflected in the Annex to the Council Implementing Decision in the form of a description of the measure as well as, in table format, the relevant milestones and targets measuring the progress towards the achievement of the reforms and investment. The milestones and targets also include their description, quantitative or qualitative indicators, and indicative timeline for completion.

All the Commission's proposals for Council Implementing Decisions are made publicly available on the Commission's [RRF website<sup>1</sup>](#) and the [Register of Commission documents<sup>2</sup>](#) after the assessment. In addition, a more detailed description of the assessment is published in the form of Staff Working Documents. The Council Implementing Decisions, as approved by the Council, are also publicly available.

*Would the Commission be ready to make public the machine translations of the national plans officially submitted to the Commission and shared with the European Parliament and the Council, with the appropriate disclaimers?*

The Commission received the national plans officially submitted by the Member States in accordance with Article 18 of the RRF Regulation. Including the supporting documents, some plans consist of up to several thousand documents of various nature and sensitivity. As these are documents prepared by the Member States, and the RRF Regulation does not require their publication, their publication falls under Member States' responsibility and discretion.

After the reception of the plans officially submitted by the national authorities, the Commission shared these documents with the European Parliament and the Council, in accordance with Article 25 of the RRF Regulation, and in addition provided courtesy (unedited) machine translations in English to both institutions. As the process of machine translation carried out by the Commission did not change the nature of the national plans officially submitted and prepared by the Member States, their publication remains the responsibility of the Member States.

Should a request to access the machine translation of one or more national plans be submitted pursuant to Regulation (EC) No 1049/2001, the Commission would assess it in light of the rules laid down therein, the relevant case-law of the Union courts, and in consultation with Member States.

Moreover, please note that the Commission facilitates the access to the national plans by providing the links to Member States' websites on its dedicated RRF website. All the Member States have published a version of their national plan on a national website.

*Could the Commission please indicate the nature of the documents to which it granted public access?*

So far, the Commission has received 128 initial access to documents requests on the RRF. The number of documents disclosed partially or in full has now reached more than 2000 documents (including documents released at initial and confirmatory level).

The scope of the requests for access to documents on the RRF received by the Commission varies significantly, covering both public and internal Commission documents as well as documentation produced by the Member States/third parties. Types of documents disclosed so far include, by way of example: draft versions of the Commission proposals for Council Implementing Decisions (and Annexes) and of the Staff Working Documents (and Annexes), Economic Impact Assessment documents produced by the Commission services during the assessment of the RRFs; Commission Decisions approving the operational arrangements; correspondence from/with Member States; minutes of meetings with Member States' authorities; documents submitted by the

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

<sup>2</sup> <https://ec.europa.eu/transparency/documents-register/>

Member States during the preparation of the national plans; minutes of meetings and correspondence with third parties that are not Member States.

It is to be noted that the abovementioned documents were disclosed either in full, or partially, with redactions based on the justifications laid down in Regulation (EC) No 1049/2001. Also, disclosure always followed a case-by-case assessment by the Commission services in the context of the access to documents request received and, for documents originating from Member States, national authorities were always consulted in accordance with Article 4(4) and 4(5) of that Regulation. As a result, disclosure of a specific document in the context of one access to documents request does not automatically mean that the same type of document (related to a different national RRP) could be disclosed in the same way in the context of another request.

*In view of the significant number of documents disclosed upon request, has the Commission identified any categories of documents that it would consider disclosing proactively going forward?*

The Commission is already proactively publishing on its RRF website and in the Recovery and Resilience Scoreboard<sup>3</sup> many key documents related to the RRF implementation. As explained in our reply of 1 July 2022, these include the Commission proposals for Council Implementing Decisions and Annexes, the Staff Working Documents, the Operational Arrangements agreed with Member States, the preliminary assessments of the payment requests, together with additional information and presentations on horizontal topics.

The Commission is continuing its reflection on further documents that may be proactively published. The relevance and usefulness of a document should be taken into account when reflecting on its possible proactive publication, and as stated in our letter of 1 July 2022, the Ombudsman's suggestions will also be taken into consideration in that context.

As an example of this reflection, the Commission will start publishing the Commission Implementing Decisions authorising the disbursements of the financial contributions, after payment requests are positively assessed.

In any case, it should be noted that proactive publication is more difficult for documents originating from the Member States or third parties, as responsibility for publishing these documents does not lie with the Commission.

## 2) Information, communication and publicity

*Could the Commission explain how it assessed the information, communication and publicity of national plans? To this end, the Commission may refer to the internal guidelines and checklists it produced ahead of its assessment.*

The RRF Regulation, in Article 19(3) and Annex V, lays down eleven assessment criteria against which to assess RRP. As no assessment criterion covers information, communication or publicity aspects of RRP, these elements were not decisive elements for the Commission when assessing RRP.

While not being a criterion for the assessment of the RRP, information, communication and publicity aspects are important aspects related to the RRF implementation.

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<sup>3</sup> [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)

Article 34 of the RRF Regulation lays down the relevant information, communication and publicity obligations and requires, in paragraph 2, that “the recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding, including, where applicable, by displaying the emblem of the Union and an appropriate funding statement that reads ‘funded by the European Union – NextGenerationEU’, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public”.

Against this background, all Member States were invited to provide in their recovery and resilience plans an outline of their intended national communication strategy aimed at ensuring public awareness of the Union funding to fulfil the communication requirements laid down in the RRF Regulation. The Commission’s expectations are outlined in section 6 of the guidance document issued by the Commission to support Member States in the preparation of their RRFs<sup>4</sup>. Member States were invited to include the following information in their outline communication strategy: objectives; target audiences, communication activities/channels; planned budget; selected key projects; coordination arrangements with the Commission; and monitoring and evaluation. The Commission verifies the fulfilment of these elements in partnership with Member States to ensure consistency in communication activities on the RRF. A description of the Member States’ communication strategies is also provided in the Staff Working Documents accompanying the Commission’s proposals for Council Implementing Decisions assessing the recovery and resilience plans. As mentioned under point 1, the Commission publishes Staff Working Documents, together with many key documents related to the RRF implementation, on its RRF website<sup>5</sup> and in the Recovery and Resilience Scoreboard<sup>6</sup>

Furthermore, as mentioned in our reply of July, as part of the financing agreement signed with the Commission, each Member State commits to having a strategy to raise awareness and ensure recognition of the RRF’s contribution to Europe’s recovery and, in particular, the twin green and digital transitions, throughout the implementation phase of the RRF.

### 3) Supervisory mechanisms

*Could the Commission explain exactly what control and audits mechanisms it will implement, and under what circumstances they will be used?*

The RRF is a performance-based instrument implemented through direct management and the beneficiaries of the RRF are the Member States. Each Member State puts forward a Recovery and Resilience Plan (RRP) which is assessed by the Commission and, in case of a positive Commission assessment, is presented to the Council for adoption. Pre-defined disbursement amounts are paid by the Commission when each Member State fulfils a set of milestones and targets set out in the Council Implementing Decision on the specific RRP. To determine the fulfilment, the Commission undertakes an in-depth assessment of the evidence and justification provided by the Member State.

In line with this performance-based approach, the Commission’s ex-post controls under the RRF focuses on verifying that milestones and targets were indeed fulfilled, in order to obtain assurance on the legality and regularity of payments.

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<sup>4</sup> [https://ec.europa.eu/info/sites/default/files/document\\_travail\\_service\\_part1\\_v2\\_en.pdf](https://ec.europa.eu/info/sites/default/files/document_travail_service_part1_v2_en.pdf) (part I and II).

<sup>5</sup> [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en)

<sup>6</sup> [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 payments by the Commission to the Member States are performance-based, i.e. based on milestones and targets. As per Article 22 of the RRF Regulation, and in line with the performance-based approach, the obligation to protect the financial interests of the Union lies with the Member State. Nonetheless, the Commission assures, both through an initial assessment of each RRP, as well as audits of the systems that Member States have put in place to protect the financial interests of the Union, that each Member State implements the necessary monitoring and control systems.

In line with the RRF Regulation, the Commission carries out ex-post audits to verify the satisfactory fulfilment of milestones and targets, on which hinges the legality and regularity of disbursements to Member States. The Commission also undertakes system audits to check the Member States' control and monitoring systems in place to ensure the protection of the financial interests of the EU. To carry out this audit work, the Commission has developed a risk-based audit strategy - over the lifetime of the RRF, both ex post and system audits will take place in every Member State.

*Could the Commission clarify what circumstances could trigger a request for data on final recipients by the Commission?*

Article 22 of the RRF Regulation provides for an obligation of Member States to collect, in relation to measures for the implementation of reforms and investment projects under the recovery and resilience plan, the names of the final recipients of funds, and where relevant of their contractors, sub-contractors and beneficial owners.

The RRF Regulation does not oblige Member States to proactively provide all such data to the Commission. Rather, the obligation is to collect and ensure access to such data "for the purposes of audit and control." Accordingly, such data will be requested only in the context of audit and control. In the case of the ex-ante assessment of payment requests such data is not required as the Member States are in any case obliged to collect and provide to the Commission all required evidence to demonstrate the fulfilment of milestones and targets.

The Commission anticipates therefore that this provision will mainly be used in the framework of ex post audits which may require access to data regarding the final recipients of the funds. It is not possible to provide an exhaustive list, but this may for instance be necessary for checks concerning whether a specific target, selected for the audit, has indeed been satisfactorily fulfilled. The audit testing is always done based on a sample. The limitation for control and audit purposes also implies that the Commission may not publish these data.

*Could the Commission explain what information Member States would need to publish, and under what rules?*

In its reply of 1 July, the Commission recalled the transparency obligations set by the RRF Regulation and noted that "such obligations do not require publishing data on final recipients. However, (...) Member States may decide to publish information on final recipients and (...) publication of certain information may be compulsory pursuant to certain EU rules, for instance related to anti-money laundering purposes". Publication of information by Member States is a national matter and depends on the legal framework of each Member State, read in conjunction with EU law. The case of the anti-money laundering legislation was provided as an example, for explanatory purposes only (cf. the

provisions on the publicity of information on beneficial owners laid down in Article 30 of Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing).

*For the Commission*  
*Ursula VON DER LEYEN*  
*The President*