2022 Discharge to the Commission

WRITTEN QUESTIONS TO COMMISSIONERS
VALDIS DOMBROVKIS AND PAOLO GENTILONI
Hearing on 7 November 2023

Questions concerning regularity and legality

1. On the RRF, unlike last year, the ECA issued a qualified opinion in its Annual Report. Around 5% of the milestones and targets were affected by regularity issues (15/281). Unfortunately the errors affected some horizontal criteria/principles, to which all RRF expenditure should abide: financing of national recurring expenditure and avoiding double funding. This is very problematic and it goes against some core principles of the RRF. What would be the estimated financial impact of these errors?

Would you say that, because of the delay in the implementation of the RRF, the risk of such errors might increase in the next years when MSs are likely to submit more payment claims? Shouldn’t these errors trigger the recovery of funds by the Commission?

Commission’s answer:
First, the Commission would like to reiterate that it considers that all milestones and targets assessed by the Commission in 2022 were correctly assessed as satisfactorily fulfilled. Out of 311 milestones and targets for which payments were made for non-repayable support in 2022, the European Court of Auditors (ECA) audited 281 and identified regularity issues with 15 – hence ECA’s figure of 5% of the milestones and targets being affected by regularity issues. This implies that for 95% of milestones and targets, the Commission and the Court of Auditors have a common understanding. For the other 15 milestones and targets for which the ECA identifies issues, the Commission does not agree with the ECA’s findings. These findings are based either on the ECA having a different interpretation of some legal requirements of the Regulation establishing the Recovery and Resilience Facility (RRF) or, where the disagreement concerns individual cases, the ECA questions either the interpretation of the requirements set by the Council which the Commission and Member States applied when assessing the milestone or target, or makes a different qualitative judgement. Our detailed explanation of these disagreements with the ECA is set out in the Commission replies to chapter 11 of the ECA’s 2022 annual report and in the answers below to questions 14 to 18.
As for the estimated financial impact of these errors, the Commission notes that the ECA does not provide an error rate but considers the ‘minimum financial impact’ of its findings to be close to (but below) its materiality threshold of two percent. The Commission welcomes that, in estimating the financial impact, the ECA applies the Commission’s methodology for determining payment suspensions, however the Commission understands that the ECA does not apply the methodology the same way the Commission would apply it. The Commission retains its view that all 2022 milestones and targets were correctly assessed as satisfactorily fulfilled. But even if one would consider, as ECA does, that these 15 milestones and targets have not been satisfactorily fulfilled, according to the Commission’s own estimates, the financial impact of these alleged errors would be very low and well below the materiality level. On this basis the Commission considers it would still confirm the Authorising Officer by Delegation’s conclusion in DG ECFIN’s Annual Activity Report that the 2022 RRF payments of non-repayable support were subject to a low level of risk.

2. Can the Commission illustrate the Member States and Commission’s allocation of responsibilities in ensuring compliance with national and EU rules under the RRF, as well as in the protection of the Union’s financial interests?

**Commission’s answer:**

The RRF Regulation provides clearly in Article 22(1) that “[...] the Member States, as beneficiaries or borrowers of funds under the Facility, shall take all the appropriate measures to protect the financial interests of the Union and to ensure that the use of funds in relation to measures supported by the Facility complies with the applicable Union and national law [...]“

In other words, it is primarily the responsibility of the Member States to ensure the protection of the financial interests of the Union, including for compliance with national and EU rules. This also is the only possible setup in the context of the RRF where payments are not made based on the actual costs incurred for implementation, but on the basis of the satisfactory fulfilment of pre-agreed targets and milestones, which represent measures of progress towards the achievement of investments and reforms. The Commission however implements several checks to ensure Member States comply with this obligation, notably ex-ante assessments of the national control systems, the introduction of control milestones to address specific weaknesses where appropriate, and audits of the national control systems to confirm their actual and effective functioning, which include also checks that the Member States systems generally provide for, and check, compliance with EU and national rules, including specific elements of the public procurement procedure and state aid rule. In case of a serious breach of obligations by the Member State, the Commission can recover up to 100% of funds.

Please refer to section 3.2 (page 77ff) of DG ECFIN’s Annual Activity Report 2022 for a clear and concise summary of the RRF control setup:
Questions concerning the Facility’s performance

3. Since a significant part of the loan component has not been accessed, and it does not seem that it will be, would you say that the overall amounts foreseen by the RRF are greater than the needs? On what did the Commission base its proposal if a significant part of the loans component will not be accessed? Furthermore, since the RRF has been partially repurposed to also address the impact of the Ukraine war, would you say that the RRF could have attained its primary objectives (post-pandemic recovery) with a smaller amount of funds (including the grants)?

Commission’s answer:

First, the Commission would like to recall that the objectives of the RRF, in contrast for example to the Coronavirus Response Investment Initiative (CRII), go beyond just supporting crisis recovery measures to also build resilience against future shocks. Fostering the green transition has been a key purpose of the Facility since its creation and the REPowerEU objectives are largely aligned with those of the original RRF Regulation. Article 4(1) of the RRF Regulation refers to the general objectives of the RRF, which are well aligned with the goals of REPowerEU.

Concerning the estimated financing needs underlying the RRF proposal, the Commission Staff Working Document SWD/2020/98 final: “Identifying Europe's recovery needs”, which concludes: “Meeting all the above needs will in part fall on the public sector, which already faces ample sovereign gross financing needs in the coming period. These amount to around €5.4trn in 2020 and 2021 taken together, of which €1.7trn is due to the additional crisis impact. Ensuring that this funding is available can help to prevent public investment being cut further, as happened in previous crises.”

The RRF and more generally NextGenerationEU (NGEU) are a contribution to address this need, in light also of national action.

The proportion of grant versus loan support proposed by the Commission as set out in the Commission proposal for the RRF Regulation (COM/2020/408 final) was EUR 334,95 billion in non-reimbursable financial support and EUR 267,955 billion in loan support. The final amounts of grant and loan support to be raised under NGEU and allocated under the RRF were set by European leaders (EUCO 10/20) and subsequently enshrined in Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis.

The Member States have requested loan support amounting to EUR 292,63 billion (see Note to the Council and European Parliament of 1 September 2023: “Final Overview of Member States’ Loan Requests under the RRF”), staying thus slightly above the original
Committee on Budgetary Control

Commission proposal but below the final amount. This is close to 76% of the maximum total available amount of RRF loans (EUR 385.8 billion in current prices).

The RRF has already had a wide-reaching impact, from immediate effects on the financial markets and notably on the spread of government bonds, to an unprecedented wave of reforms and investments across the EU. The amendments introduced to the RRF Regulation by Regulation (EU) 2023/435 on REPowerEU chapters added additional financing and priorities, demonstrating the flexibility of the instrument, and continued relevant of its policy objectives. The implementation of the RRF is still ongoing.

4. How would you respond to the claim that the Commission applied and still applies double standards in relation to how the plans and the milestones are evaluated from MS to MS? This claim is referring to how precise milestones and targets are in the case of some MSs and how vague and permissive they are in the case of others.

*Commission’s answer:*

Across the 27 Recovery and Resilience Plans (RRPs) more than 6000 unique milestones and targets have been adopted in relation to more than 2000 unique investments and reforms in each Member State. The RRPs address common EU priorities (notably as reflected in articles 3 and 4 of the RRF Regulation) and their translation into country-specific challenges (reflected as well in the country-specific recommendations adopted under the European Semester). As a result, the plans vary widely in size, focus, and the country-specific design of each measure. As per the RRF Regulation, the reforms and investments and associated milestones and targets are first proposed by the Member States. It is therefore fully expected that milestones and targets differ – they reflect both the unique underlying measures and their specific timeline, administrative setup and broader national context, as well as the national administrative processes.

The Commission has provided detailed guidance to the Member States on the design of milestones and targets. It has also analysed and discussed improvements with the Member States, and has also examined all milestones and targets as part of its assessment of the RRP. However, the Commission cannot impose specific standardised milestones and targets on the Member States for the reasons explained in the previous paragraph. In its proposals for Council Implementing Decisions, the Commission has nonetheless made an effort to standardise drafting and legal provisions, while respecting the unique legal framework of the respective Member State. Where necessary the Commission has included also standardised provisions to ensure the Do-No-Significant-Harm principle is respected.

In February 2023 the Commission published its framework for the assessment of the satisfactory fulfilment of milestones and targets. Each preliminary assessment of a payment request is publicly available, including the requirements, the evidence provided and the analysis as to whether it is satisfactorily fulfilled. This framework is applied equally for all Member States and payment requests. The Commission has also accepted the ECA’s recommendation to, “verify [for any reforms and investments subject to plan
revisions] that reviewed plans clearly define all milestones and targets and that all key elements of a measure are covered by milestones and targets."

5. Would you say that the RRF is on track to reach its objectives and Member States to reach milestones and targets until 2026? Compared to the indicative calendar for submitting payment requests, many MSs are delayed in doing so. What is the cause for these delays and what will their impact be on the overall achievement of the NRRPs objectives?

**Commission’s answer:**

Delays can be caused by a range of difficult-to-predict or unexpected circumstances and are common in large-scale investment and reform endeavours. Notably, the Russian invasion of Ukraine and associated energy crisis led to unexpected price shocks, shortages of certain materials, and high inflation, all of which impact implementation. In that context and to be able to benefit from REPowerEU additional funding, many Member States are in the process of revising their plans. While implementation is generally continuing, this process has delayed the submission of payment requests by Member States. As the revised plans are gradually being approved by the Commission and the Council, this step should pave the way for an acceleration of the payment requests and Commission’s disbursements in the coming months.

The Commission therefore considers that the RRF is still broadly on track to achieving its objectives and in fact has already had a strong impact across the EU.

Please also refer to pages 10-14 of the RRF Annual Report 2023 for data on implementation and a discussion of delays.

[https://commission.europa.eu/system/files/2023-09/COM_2023_545_1_EN_0.pdf](https://commission.europa.eu/system/files/2023-09/COM_2023_545_1_EN_0.pdf)

6. How is the RRF helping to address the weakness in the Member States exposed by the pandemic? What current or future challenges will be better addressed by the Union thanks to the contribution of the RRF?

**Commission’s answer:**

The RRF has been invaluable to address long-standing challenges in the Member States, notably, but not only, through the requirement that the national RRPs must contribute to address all or a significant subset of challenges identified in the country specific recommendations (CSRs) issued by the Council in the context of the European Semester. The CSRs reflect crucial reform and investment needs which are widely recognised, are aligned with common EU priorities, and often long-standing, with some CSRs repeated over several years. The Commission’s assessment of this requirement is set out in the Staff Working Documents accompanying the Commission proposals for each specific Council Implementing Decision on a national RRP. Through the green and digital targets set by the co-legislators, the Member States have also committed to significant investments and reforms in these crucial policy areas.
The scope of the RRF is broad, ranging across six wide policy pillars of European relevance. The contribution to each of the policy areas is outlined in the Recovery and Resilience Scoreboard and in the RRF Annual Report 2023 (COM(2023) 545 final/2), published on 9 September 2023. Annex I of the Annual Report provides country fiches outlining the progress for each RRP at the time of publication.

7. By the end of 2022 some Member States had still not received any payments from the RRF. What is the overall situation now regarding those countries? What measures the Commission is taking to support them to start implementing their national plans? In case part of the funding available under the RRF remains unused at the end of the implementation period, what would be the consequences for the EU budget?

**Commission’s answer:**

The RRF Annual Report 2023 (COM(2023) 545 final/2), published on 19 September 2023, provides a state of play on all countries, which remains overall valid at the time of transmission of this reply. The Commission’s Recovery and Resilience Scoreboard is updated on a regular basis to provide the most recent data on implementation. The annual report also highlights some of the measures taken to support the Member States in their implementation of the RRPs.

As of October 2023, only Poland, Hungary, Sweden and the Netherlands have not received either pre-financing or a regular payment under the RRF. All four countries have recently submitted revisions to their plans, of which those for the Netherlands and Sweden have already been positively assessed by the Commission and the revision for the Netherlands also already been adopted by Council. The assessment of the revisions for Poland and Hungary is ongoing. The Commission is in continuous dialogues with the four Member States. The date of payment request submission is fully determined by the Member States with the limit of maximum two payment requests per year – which may however group several consecutive instalments foreseen in the Council Implementing Decision. However, the Commission anticipates that all or most of the four Member States will submit their requests still in the course of 2023, which will then be subject to the Commission’s assessment.

The Commission recalls that the Member States are fully responsible for the implementation of their plans and have dedicated coordinating bodies in place. The Commission is in continuous exchange with the Member States to discuss the progress of implementation and offers support and advice for implementation, including through the Technical Support Instrument. The RRF Regulation also provides specific possibilities to revise the plans, notably to adapt to the updated financial contribution, to request additional loan support (up to end 2023), to include REPowerEU chapters in the plans, and to make revisions in case one or more milestones and targets are no longer achievable due to objective circumstances. The Commission discusses these revisions closely with the Member States also towards the efficient and timely implementation of the RRP measures.
Any funds available under the RRF that will not be disbursed to the Member States by the Commission will also not be borrowed by the Commission.

8. With the level of implementation reached in 2022, is the Commission in a position to make an early assessment of the enabling or leverage effect that the RRF, and in particular the reforms, is having on other European spending programmes and funds?

**Commission’s answer:**
The package of deliverables under the RRF’s performance-based approach allows for the frontloading of important reforms to accelerate and enhance the roll-out of crucial investment, both under the RRF itself, but also under other European spending programmes and funds.

For example, cohesion policy funds finance energy efficiency renovations of private buildings under the 2021-2027 programming period in Spain. Under its RRP, Spain introduced a reform establishing a system of renovation offices, which serve as one-stop-shops providing information and assistance to private homeowners for their energy efficiency renovations. Spain also introduced in its RRP a reform of the Science Law, which has a positive impact on the implementation of programmes under the European Regional Development Fund (ERDF). It includes measures to enhance procedures for granting aid, and allows the public administrations to use the results of evaluations already carried out by other public bodies when the aid has the same purpose, which facilitates the implementation of the Seals of Excellence awarded by Horizon Europe. Several ERDF regional programmes include funding for this Seal of Excellence.

Another example is the Greek RRP, which includes an important railway reform which is expected to make the Greek railway sector more efficient and modern through the reorganisation of the companies currently in charge of railways operations and investments. This reform is expected to further enable the rail investments to be supported by cohesion policy funding, as well as by the Connecting Europe Facility.

9. Can the Commission provide data on the degree of implementation of country-specific recommendations that have been implemented through the RRF, as well as of the impact of the RRF on EU GDP in 2022 and forecasts beyond?

**Commission’s answer:**
Progress has been recorded for the implementation of the CSRs, with at least some progress having been made for 68% of 2019-2020 CSRs. Progress in the implementation of the recommendations adopted in 2022 has also been substantial, with at least some progress in almost 52% of the recommendations addressed to Member States by July 2022. This shows clearly the incentives provided by the RRF since its proposal in May 2020, and its performance-based approach and emphasis on reforms is expected to continue reinforcing CSR implementation in the years to come.
Analysis by Commission economic analysts points to a substantial positive impact of investment under NGEU on the EU GDP. Real GDP in the EU-27 is estimated to be more than 1.2% higher in 2026 compared to a no-policy change baseline. The positive supply effects of the additional investment persist, and by 2035, output is still about 0.6 percentage points higher. Updated analysis is likely to be published in the coming months.

In addition, the reforms adopted as part of RRPs will have an important long-run effect on GDP. Illustrative scenarios by Commission economic analysts point to the substantial benefits that ambitious reforms could have in the areas in which Member States are lagging behind. Please see:

Pfeiffer, P., Varga, J., & In ’t Veld, J. (2023). Quantifying spillovers of coordinated investment stimulus in the EU. Macroeconomic Dynamics, 27(7), 1843-1865. doi:10.1017/S1365100522000487


10. Which bodies assist or cooperate with the Commission in the assessment of the Member States’ payment requests, and what is the Council's role during and after the Commission's assessment?

**Commission’s answer:**

The Commission assesses the payment requests solely with internal expertise. The Commission draws on expertise from the lead Directorate-Generals (DGs), namely DG ECFIN and SG-RECOVER, which consult other relevant policy DGs informally and formally to provide any information or analysis required.

As required by the RRF Regulation, the Commission provides its preliminary assessments to the Council's Economic and Financial Committee. These preliminary assessments are also provided to the Parliament and published. The Economic and Financial Committee provides, within one month, an opinion, which the Commission has to take into account. The Commission on this basis prepares a Commission Implementing Decision on the payment, which is subject to the examination procedure under comitology, i.e. a committee of Member State experts is consulted before the Commission can adopt the decision.
11. What is the reason that almost three months lapsed between the approval of the RRP for Finland on 29 October 2021, and the disbursement of the pre-financing (EUR 271 million) on 21 January 2022? For example, for Estonia (EUR 126 million), disbursement took just over one and a half months in 2021, and for Portugal (EUR 2.2 billion) it took under a month in 2021. What specifically is causing the delays? What steps is your service taking to speed up disbursements?

**Commission’s answer:**

The pre-financing is made within a few days of the signature of the financing and, where relevant, loan agreements. These agreements can only be signed once the Council adopts the Council Implementing Decision but are prepared in anticipation of this adoption.

The agreements need to be signed by the Commission, which has a standardised procedure for this process, and the Member States. Differences in time between the Council adoption and the payment of the pre-financing depend therefore principally on the speed of signature within the Member States of the financing agreement, and where relevant loan agreement, each of which have different approval and signature procedures.

12. What is the reason why Romania received its pre-financing for grants on 12 December 2021, while its pre-financing for loans was only received on 13 January 2022? Is it correct to assume that this has to do with the financing and loan agreements? Can you please provide the financing and, when applicable, loan agreements for Finland, Estonia, Portugal and Romania?

**Commission’s answer:**

The signature of the financing and loan agreements are separate procedures and the pre-financing for either grants or loans may therefore be paid separately if there is a significant delay in the signature of either agreement.

The requested documents are provided alongside the replies to these questions to the Parliament for internal use.

**Questions concerning audit findings**

13. ECA found that regularity issues (ECA Annual Report 2022) affected 15 of the 281 milestones and targets. The milestones and targets affected were either not satisfactorily fulfilled or did not comply with eligibility conditions. Could you provide us with a detailed explanation for the reasons why you accepted the milestones when the Member States did not fulfil the criteria? Which Member States are affected by these problems and could you precisely elaborate on the kind of the problems that ECA presented in its findings? How do you improve the methodology to guarantee that milestones and targets are fulfilled?
Committee on Budgetary Control

Commission’s answer:

As set out in our reply to question 1, the ECA believes that 5% of the grant milestones and targets were affected by regularity issues. By corollary, for 95% of milestones and targets, the Commission and the ECA share a common understanding.

The Commission replies to chapter 11 (RRF) of the ECA’s 2022 Annual Report are available on page 449 of this report. As stated in the replies, having carefully examined these cases, the Commission maintains that it considers the original assessment of ‘satisfactory fulfilment’ to be correct and notes that the ECA’s conclusions that some milestones and targets were ‘not satisfactorily fulfilled’ are principally based on differences in interpretation of the legal requirements, or differences in the qualitative judgement.

Page 367 of the ECA’s 2022 Annual Report provides a table listing the findings per Member State.

Our detailed explanation of our disagreements with the ECA are set out in the answers to questions 14 to 18 below. The issue on ‘eligibility’ which the ECA considers to have found is addressed in the reply to question 17.

14. In the AR 2022, ECA lists two examples of milestones that have not been satisfactorily fulfilled. One is Greek milestone 42 - ‘Charging points for electric vehicles-Entry into force of legal framework’. This included passing twelve ministerial decisions necessary for the organisation of the electric vehicle market. ECA found that three ministerial decisions (penalties for market players, requirements for charging points in traditional settlements and training of electric vehicle technicians) had not entered into force when the RRF payment was made. Has your service looked into why three decisions had not entered into force, what reason was given? Why was it approved even though the milestone was not fulfilled? Is the milestone fulfilled now?

Commission’s answer:

Please see below the Commission reply to this case, as published in the 2022 ECA Annual Report:

“The Commission has transparently published its assessment in each case, justifying its interpretation in line with the applicable framework, receiving both the positive opinion of the Economic and Finance Committee and the comitology committee of Member State experts on its approach and interpretation of each case. The Commission highlights that in each case the divergences between the Commission and the ECA assessment are specific to the case.

The Commission takes note of cases where the ECA provides its own, different, legal interpretation of the milestone or target and, on this basis establishes that one element, which the ECA considers a requirement, is not fulfilled. The first example in box 11.1 – Paragraph 11.23 (Greek Milestone 42), exemplifies such a case: the ECA and the Commission have a different understanding of which of the Ministerial Decisions
Committee on Budgetary Control

provisioned in law 4710/2020 are required for “organizing the electric vehicles’ market”. Out of eighteen secondary acts mentioned in the primary law, the Commission and the ECA agree that six are not relevant and do not need to be fulfilled. A further nine are for both institutions relevant and indeed enacted. Finally, the institutions disagree on the remaining three secondary acts: the Commission considers they are not required, while the ECA considers they are required but were not in force at the time of the payment, and thus concludes the milestone is not fulfilled. The Commission had transparently flagged in its assessment that such acts were not in place but were not necessary to organise the market, as existing legal provisions were in place covering all three elements, where the Member States gave a positive opinion on this position. Despite this, ECA however considers that the milestone was not satisfactorily fulfilled. This includes, for example, the way that charging points will be installed in traditional settlements (such as archaeological and cultural heritage sites). The Commission considers that the electric vehicle market in Greece can be organised without such element and that on this basis the milestone was correctly considered as satisfactorily fulfilled.”

As stated in its reply, the Commission disagrees with the ECA finding and considers the milestone satisfactorily fulfilled. The Commission also notes that its assessment was confirmed by the Economic and Financial Committee and the comitology committee of Member State experts examining the Commission’s Implementing Decision prior to its adoption. The ECA takes a different interpretation, considering these three minor elements with no significant market impact as necessary.

15. A further example of a milestone not fulfilled that ECA auditors found was Romanian milestone 142 ‘Task-force to implement and monitor Digital Transformation reforms and investments established and operational’. ECA found that on the payment request date (31 May 2022), employment contracts had only been signed for four of the 17 members of the task force. In addition, at the time of the Commission’s payment on 24 October 2022, only 11 members were employed. In addition, the job description required professional experience or/and educational background in the field of digital technologies and project management, but ECA found that in these requirements had not been met in four cases.

Has your service asked why this happened and what reasons were given? Why was it approved, even though the milestone had not been fulfilled? Is the milestone fulfilled now? How it is controlled, how will you guarantee that only qualified staff are hired? Why were unqualified employees hired?

Commission’s answer:

Please see below the Commission reply to this case, as published in the ECA’s 2022 Annual Report:

“The second example in box 11.1 - Paragraph 11.23 (Romanian milestone 142) provides another case, for which the ECA has a different legal interpretation to the requirements to that of the Commission and Member States. The ECA considers that a task force was
Committee on Budgetary Control

not operational as at the time of the payment only eleven out of seventeen people were hired and the job description of four people did not require professional experience or educational background in a field that the ECA considers is a requirement. The Commission does not share this approach, where the milestone requires the task force to be operational, and does not consider that full staffing is required to achieve this goal.”

In other words, the disagreement concerns whether a task force can be ‘operational’, as is the requirement of the milestone, when only 11 out of 17 staff have been recruited at the time of assessment. The Commission considers that, for the task force to be ‘operational’, it is not required that full staffing must be achieved, and notes that the remaining recruitment procedures were ongoing at the time of the assessment.

Concerning the level of qualifications, the Commission has a different view of the underlying documentation. Romanian Ministerial Order 20437 for the establishment of the salary scale for the task force staff includes information on the qualifications required for each position. Additional to this, Ministerial Order 20374 issued on 15 April 2022, chapter IV. “Recruitment competition” includes specifications regarding qualifications required for the recruitment process.


16. The ECA AR 2022 states that ECA auditors found one case of a reversal of a target, namely the Italian target M1C1-54 ‘Completed recruitment of experts for the implementation of the Italian recovery and resilience plan’. In December 2021, with the first payment request, the Italian authorities reported that 1000 experts had been recruited. The Commission assessed the target as satisfactorily fulfilled and made the payment on 13 April 2022. The Commission then carried out an ex-post audit in May-June 2022 and found that the pool of experts had decreased to 935 as of June 2022. When ECA did an on the spot mission, the pool of experts had decreased even further to 920. What was reason the number of employees decreased? Is Italy making efforts to increase the number of employees? What specific measures are you taking to keep track of targets already achieved? Is the Commission regularly checking fulfilled milestones and targets to see if they are still upheld?

Commission’s answer:

The Commission has expressed its disagreement with this finding in its replies to chapter 11 of the ECA’s 2022 Annual Report:

“As Member States continue the implementation of their RRP, it is imperative that previously satisfactorily fulfilled milestones and targets are not reversed by the Member State. The Commission agrees with the ECA that it is important to provide clear guidance and it is developing internal guidance and procedures for the case where a Member State reverses a milestone or target for which a payment was already made.
“(e.g. by repealing a reform).” As Annex 2 to its RRF Annual Report 2023, the Commission has published the framework it will apply in determining the reversal of milestones and targets under the RRF.

This framework is embedded in the legal requirements of the RRF Regulation, which includes that the milestones and targets “have not been reversed by the Member State concerned” (Article 24(3)). Where a milestone or target is not reversed by the Member State concerned (e.g. a natural disaster destroys an investment that was created), the Commission does not consider that a “reversal” in the meaning of the RRF Regulation has occurred.

On the specific case referred to in the question – which appears in box 11.3 – Paragraph 11.33 of the ECA’s 2022 Annual Report (Italian Target M1C1-54) concerning a target for the number of “completed recruitment procedures” for experts, the ECA confirms the Commission’s assessment that the target was fulfilled as part of the first payment request. However, the ECA informed the Commission that it considers that the Council Implementing Decision “explicitly requires the experts to be deployed for a 3 years period” and, as the level of 1 000 was not fully maintained, concludes that the target had been reversed at the time of the second payment to Italy. The Commission considers that the specific target concerned recruitment procedures, not a permanent staffing level, and that even taking the ECA’s view that a staffing level is intended, the Member State cannot prevent some staff level fluctuations, for instance that individual experts change posts. As such, the Commission does not consider that the Member State has “reversed” this target due to the temporary reduction in employed staff. In particular, the Member State was readily taking action to replace the people that had left by recruiting new staff, as recognised by the ECA. Taking a general perspective, imposing a requirement that events outside the control of the Member State amount to a reversal, even if the Member State is taking ready action to address the situation, would go beyond the requirements of the legislation.

The Commission is in constant discussions and exchanges with the Member States. In case the existence of a reversal is established, the Commission can suspend or recover funds. The Commission has in addition accepted the ECA’s recommendation to revise its ex-post audit procedures so that they provide for checks to verify whether the audited targets previously assessed as fulfilled were not reversed after the payment.

17. ECA AR 2022 outlines an example of RRF funds financing a recurring national budgetary expenditure, namely in the Spanish ‘Target 384-Cooperative model-Transparency Report’. The description of the target in Spain’s CID was that a tax agency shall implement a project in 2021 which shall encourage multinational enterprises to disclose information about their operations and that 20 Transparency Reports would be submitted in 2021’. However, ECA found that this is a recurring activity since 2017 and that this activity had previously been funded from the national budgetary expenditure. Why did the Commission not notice that it was funding recurring national costs? Will the Commission get the funds spent reimbursed? What are the consequences? How many cases have you found internally of
RRF financing replacing recurring national budgetary expenditure? What are you doing to actively find such cases?

The Commission has expressed its disagreement with this finding in its replies to chapter 11 of the ECA’s 2022 Annual Report. The ECA’s finding is based on a novel reading of the RRF Regulation which the Commission considers incorrect.

“Under the RRF, payments are made by the Commission to the Member States based on the satisfactory fulfilment of pre-defined sets of milestones and targets. Both the disbursement amounts and the milestones and targets are set for each Member State by a dedicated Council Implementing Decision. During the original assessment of the RRPs, the Member States provide for each measure a cost estimate, indicating what parts of the measure they intend to finance with RRF support. The aggregate of these cost estimates is the ‘estimated cost of the plan’, which justifies the financial allocation provided to the Member State. These costs can include the entire estimated cost of the measure, a partial cost (e.g. when there is national financing or another EU fund intervenes for clearly delineated parts), or no cost at all to the RRF. In case a measure has no cost under the RRF, it means that the Member State does not receive financial support from the RRF for that measure.

The measures in the plans consist of both investments, for which there is generally a cost which is covered by the RRF, but also reforms such as legislative changes or administrative actions. Such reforms often have no costs under the RRF but may actually require some financing to implement, such as staff salaries, research, the setup of new institutions, etc. Such financing may come from national sources (e.g. staff salaries) and in some cases may also come from other EU funds (e.g. research, administrative support through the Technical Support Instrument, etc).”

Article 5(1) of the RRF Regulation provides that “Support from the Facility shall not, unless in duly justified cases, substitute recurring national budgetary expenditure and shall respect the principle of additionality of Union funding as referred to in Article 9.”

Rather than the timing of when costs incur, this clause provides that the RRF cannot cover regular annual or monthly expenses, which the Member State would incur also without the RRF.

Concerning the example referred to in the question, which appears in Box 11.2 – Paragraph 11.26 of the ECA’s 2022 annual report, the target measures the number of ‘Transparency Reports’ which companies submit to the Spanish tax authority. The target measures the result of efforts by the tax authority to ensure that companies will continue to send such reports even in the context of the COVID-19 pandemic. Spain has achieved the target and indeed received more than the required number of such voluntary reports. ECA considers, based solely on the target, that, as such transparency reports had already been received by the tax authority in previous years, this represents ‘a recurring activity funded from national budgetary expenditure’. However, the measure is a reform for which Spain has not put forward any cost, meaning the RRF is not funding any activity.
The Commission takes note of the ECA’s position, but recalls that there is no basis for it in the RRF Regulation. Before the RRF existed, Member States were undertaking standard and recurring actions for which an increased level or improvement of those actions are later included in plans. The Commission furthermore recalls that the Regulation explicitly provides that such recurring national budgetary expenditure may be included under plans if duly justified. Moreover, as circumstances change, including in particular in the context of the severe economic and social disturbances brought by the COVID-19 pandemic, previously present actions may also have ceased to take place without their inclusion in the plan.

Finally, the Commission recalls that, after assessing the eligibility of measures during the assessment of the plans, the Council decides by means of a Council Implementing Decision whether a measure is eligible or not. At the payment stage, the Commission cannot overrule the Council to decide that a given measure should not be paid under the RRF. In this respect, as long as milestones and targets in the Council Implementing Decision are satisfactorily fulfilled, the related payment from the Commission cannot be affected by an error.

In summary, the Commission considers that the finding is (a) based on an incorrect reading of the legal base, which does not exclude recurrent activities, (b) based on an incorrect consideration of the facts of this case, where no costs are ‘funded’ by the RRF and (c) that the legal base does not expect or require the Commission to re-assess ‘eligibility’ criteria for the original plan for each payment.

Lastly, the Commission wishes to underline that even if it had accepted the ECA’s reading on the ineligibility of the measure, the financial implications of this would have been zero. Ineligibility means that the measure should have been excluded from the plan. As no costs were attributed to the measure to begin with, excluding the measure would neither have had any implication for the overall financial allocation to Spain, nor for the size of actual disbursements. Against this backdrop, the Commission does not agree either with the way the ECA has quantified the error.

18. As part of their work for ECA AR 2022, ECA auditors found a case of double funding in Slovakia. The milestone consisted of establishing an investment plan for railway infrastructure projects. ECA however found that the investment plan of this milestone was already funded by the European Social fund. Funding from different EU instruments in a single project is possible, as long as the same cost is not financed twice from different EU funding streams. Therefore, cross-listed projects would have to be looked at more closely to make sure that the same cost is not financed twice. How did the Commission not notice it was funding the same project twice? Are you cross-checking with other funds, like the European Social Fund, to find examples where projects are cross-listed? What databases are you using to check whether projects are receiving financing from more than one EU fund? Are the databases updated regularly?

**Commission’s answer:**
The Commission has expressed its disagreement with this finding in its replies to chapter 11 of the ECA’s 2022 Annual Report:

“Under the RRF, payments are made by the Commission to the Member States based on the satisfactory fulfilment of pre-defined sets of milestones and targets. Both the disbursement amounts and the milestones and targets are set for each Member State by a dedicated Council Implementing Decision. During the original assessment of the RRP, the Member States provide for each measure a cost estimate, indicating what parts of the measure they intend to finance with RRF support. The aggregate of these cost estimates is the ‘estimated cost of the plan’, which justifies the financial allocation provided to the Member State. These costs can include the entire estimated cost of the measure, a partial cost (e.g. when there is national financing or another EU fund intervenes for clearly delineated parts), or no cost at all to the RRF. In case a measure has no cost under the RRF, it means that the Member State does not receive financial support from the RRF for that measure.

The measures in the plans consist of both investments, for which there is generally a cost which is covered by the RRF, but also reforms such as legislative changes or administrative actions. Such reforms often have no costs under the RRF but may actually require some financing to implement, such as staff salaries, research, the setup of new institutions, etc. Such financing may come from national sources (e.g. staff salaries) and in some cases may also come from other EU funds (e.g. research, administrative support through the Technical Support Instrument, etc).”

As stated in its reply to the ECA’s 2022 Annual Report, the Commission does not consider there is evidence of double funding in the case reported by ECA. The Commission disbursed the first payment to Slovakia based on a set of 14 milestones. One of these milestones concerned the implementation of a no cost transport reform by the Slovak authorities. The ECA concludes that double funding occurred because a specific report provided for this milestone was produced with support from another Union fund. The ECA expressly recognises however that zero estimated costs were included in the plan put forward by Slovakia for this reform.

The RRF Regulation provides that “Support under the Facility shall be additional to the support provided under other Union programmes and instruments. Reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost” (RRF Regulation, Article 9). Synergies between other EU funding and the RRF are possible, provided the same costs are not covered twice.

The Commission refers to its detailed replies to the ECA’s 2022 Annual Report (p.454) on this specific case. The Commission considers that the approach taken by the ECA to this ‘case of double funding’ is counter to the text of the RRF Regulation, which provides that Union support for a single measure can come from multiple instruments provided that they do not cover the same costs. By definition, if the Member State indicated that a specific reform or investment would be fully funded without RRF contribution, there cannot be “double funding”, even if another fund finances its
Committee on Budgetary Control

As for concrete measures implemented by the Commission to pre-emptively avoid double funding in general, we refer to the reply to question 29 of this questionnaire. The Commission has not identified any case of double funding related to the RRF in the course of 2022.

19. Is the Commission considering rolling-out further instruments which are based on the principle of the “financing not linked to costs”. If so, how would the Commission address the major concerns regarding the control side of the spending and the ECA assessment that there is an accountability gap when it comes to the RRF control systems?

Commission’s answer:

“Financing not linked to cost” is a possibility under the Financial Regulation and is already used by a number of instruments (e.g. Horizon Europe, instruments in the field of agriculture or cohesion, etc.) where the Commission has adjusted the relevant control systems accordingly. It may also be considered in the future. As for all legislative proposals, such proposals will be based on lessons learned from prior instruments.

The Commission reiterates that it does not consider that there is an accountability gap in the RRF control system and refers to its replies to ECA’s special report 7/2023:

“While the Commission agrees with substantial parts of the special report, it does not fully endorse or agree with all the ECA’s observations and related conclusions. Notably, the Commission considers that the RRF control system does not leave an accountability and assurance gap at EU level. The RRF control framework is tailored to the legal design of the RRF, which attributes a clear responsibility for the assessment of milestones and targets to the Commission and a clear responsibility to Member States – as beneficiaries – ‘to take all the appropriate measures to protect the financial interest of the Union and to ensure that the use of funds in relation to measures supported by the facility complies with the applicable Union and national law’ (Article 22, RRF Regulation). Even so, the Commission is very actively engaged in ensuring an adequate protection of the financial interest of the Union. First, it has made a thorough assessment of the adequacy of national control systems in the context of the assessment of the RRP. Second, where warranted, it has insisted with Member States on additional and timebound improvements to those systems, as a pre-condition for future disbursements. Third, it intends to carry out at least one system audit per Member State and is progressing with the delivery of its audit schedule. Given the importance of the protection of the financial
interest of the Union, the Commission also stands ready to intensify its audits beyond
the objectives stated in its audit plan if deemed necessary."

The full replies are published alongside the ECA report:
https://www.eca.europa.eu/Lists/ECAReplies/COM-Replies-SR-2023-07/COM-
Replies-SR-23-07_EN.pdf

Even so, the Commission has taken action to address concerns raised by the ECA (see
also replies to questions 23 and 24).

20. Can you provide an overview of the Commission's follow-up to the RRF-related
recommendations made by both the ECA (2021 annual report and special reports) and
Parliament (resolution on the 2021 discharge)? What are the most important improvements
put in place following those recommendations, in particular with regards to the control
system?

**Commission’s answer:**

A report containing detailed information on the follow-up to the recommendations from
the 2021 discharge resolution from the European Parliament and from the Council’s
2021 discharge recommendation will be issued in the coming weeks, like every year.
The Commission can already at this stage confirm that it is implementing the
recommendations within the legal and operational limitations available and considers
the majority of recommendations to be implemented thanks to the intense work that it
has carried out since. For instance, the Commission has duly pursued the publication of
the data for the 100 largest final recipients of RRF funds, which has now been made
available by most Member States, with the others having indicated imminent
publication. Also, the Commission has adapted its audit procedures to include more
systematic checks on compliance related to state aid and public procurement during ex
post audits.

As regard the recommendations from the ECA, the Commission duly follows-up to
those that it has accepted. In its Annual Report on financial year 2022 (see Annex 11.3
– page 368), the ECA reports about the state of implementation by the Commission of
the three recommendations related to RRF from the ECA’s 2021 Annual Report. Of the
three recommendations, ECA already considers Recommendation 2 as fully
implemented, based on the adoption of the Commission’s methodology for the
determination of payment suspension under the RRF Regulation in February 2023 (See
Annex II to Communication COM(2023)99). The ECA considered it too early to assess
implementation for the two other recommendations, which concern more clarity on the
milestone and target requirements in the Commission’s assessments and some
improvements to the internal documentation. The Commission considers both to be fully
implemented, notably through more detailed and structured preliminary assessments.

Similarly, as regards the recommendations from the ECA in Special Report 21/2022 on
the assessment of the RRP5s and Special Report 7/2023 on the Commission’s control
system for the RRF, the Commission has by now implemented the recommendations that it had accepted. For instance, in September 2023, the Commission adopted a framework concerning the reversal of milestones and targets (See Annex II to COM(2023)545).

The ECA will follow-up on the Commission’s implementation of recommendations from its Special Reports in next years’ annual reports, as per ECA’s standard practice.

21. DG ECFIN rejected a sub-recommendation from the 2021 Annual Report of the Court on the need to develop internal guidelines for the consultation of Commission services prior to the inter-service consultation. Can you explain why? It would seem as a good idea to strengthen cooperation with other Commission services when assessing the fulfilment of milestones and targets?

**Commission’s answer:**

The Commission understands the question references recommendation 1 of the ECA Special Report 7/2023, which requests:

“Building on the experience it has gained so far, the Commission should further develop procedures, which ensure adequate documentation of its assessment and clarify the role and scope of technical consultation with other DGs.”

Read alongside the associated ECA findings and conclusions, this recommendation does not concern guidelines for the consultation of services, but rather is recommending the Commission to create a record (“ensure documentation”) of all staff-level interactions (“technical consultations”) between different Commission departments related to the RRFs.

Collaboration between different services at working level is a standard part of the Commission’s working methods. Such collaboration can serve to express expertise, views, ideas, interpretation, background knowledge, and any other information on a topic between individual members of staff. Such exchanges are in quality or formality not different from exchanges within a single unit or service. Such interactions express individuals’ professional positions or views, rather than the views of a DG or of the Commission as a whole. A large number such interactions take place on a daily basis in the context of the RRF work.

As outlined by ECA in the report and explained in the Commission replies, the Commission has developed detailed procedures. It ensures records both through formal procedures, notably two formal written inter-service consultations, and through an additional internal record of the key steps of the assessment process. The Commission does not consider it feasible to narrowly limit and define on which elements of a draft assessment internal experts of different Commission services may express their individual views, nor deems it possible to keep a detailed record that would allow to clearly trace oral or written exchanges between experts working in different Commission services or on which precise elements internal experts expressed opinion.
or views. Such formalisation would seriously undermine collaborative work within the institution, is not warranted given the existence of formal interservice consultations, and is not feasible given the short assessment periods that bind the Commission.

22. ECA found that the Commission’s ex ante assessments do not systematically cover compliance with all eligibility conditions and that the design of the preliminary assessments done by the Commission were too simple. They found that the scope was limited only to satisfactory fulfilment of milestones and targets and did not cover horizontal eligibility conditions. How is the Commission improving ex ante assessments, are you covering horizontal eligibility conditions now?

**Commission’s answer:**

The Commission is obliged to apply the legal framework of the RRF Regulation. The RRF Regulation foresees an initial assessment of the eligibility criteria as part of the assessment of the RRP. Such an assessment is based on in-depth examination of the measures proposed by the Member States explanations and evidence and leads to ineligible measures being removed from the plans. Based on the Commission’s positive assessment of the plan and proposal, the final decision as to which measures, and related milestones and targets, the Member State must achieve is taken by the Council when it adopts the Implementing Decision on the specific plan, based on a Commission proposal. Such a Decision can only be altered by a new Council Implementing Decision.

The Commission cannot therefore unilaterally add or remove measures from the approved plans. In accordance with Article 24 (3) of the RRF Regulation, the Commission is obliged to assess the milestones and targets as laid out in the Council Implementing Decision, and the Regulation provides no basis for the Commission to re-assess the eligibility of measures set out in that Council Implementing Decision. If the milestones and targets as set by the Council have been satisfactorily met, the Commission, having taken the opinion of the Economic and Financial Committee into account for its assessment, is obliged to make the payment.

There is accordingly no legal basis for the Commission to repeat the assessment of eligibility for each measure repeatedly at the time of assessing the satisfactorily fulfilment of each milestone and target. At the payment stage, the Commission cannot overrule the Council to decide that a given measure should not be paid under the RRF. However, the Commission accepts to include verifications in its ex-ante work (i.e. the procedures prior to the payment) regarding whether the evidence that is submitted to justify that a milestone or target has been met is outside the eligibility period (i.e. prior to February 2020 for all measures except those finance under REPowerEU, for which February 2022 applies). Such verifications also already form part of the scope of the Commission’s ex-post audits.

Beyond this legal point where the ECA recommends the Commission to take action outside the legal and institutional framework, the Commission also highlights that it disagrees also on *substance* with the ECA’s view concerning the eligibility of the
specific measures identified in chapter 11 of the ECA’s 2022 Annual Report. For more information, please refer to the Commission replies to chapter 11 of the ECA’s 2022 Annual Report to the reply to question 17.

23. The DG ECFIN Annual Report 2022 states that DG ECFIN conducted ‘additional work’ to further build the assurance it could provide for 2022 concerning member states obligations on compliance with public procurement and states aid rules pursuant to Article 22 (2) a of the RRF regulation. This was in response to the ECA Special Report on the design of the Commission’s control systems for the RRF. What specifically was the additional work that was done?

**Commission’s answer:**

Article 22 of the RRF Regulation puts the primary obligation for the protection of the financial interests of the Union firmly on the Member States. The Commission provides however assurance that the Member States’ control systems are adequate and functional. Such assurance is provided through the original assessment of the RRPs, dedicated control milestones, and system audits on the national control systems. In the context of the revision of national RRPs, and based on the results of its audit work, the Commission proposes, where necessary, additional audit and control milestones that need to be addressed before the next payment in view of securing the protection of the financial interest of the Union.

Following the recommendations received by the Parliament and the ECA, the Commission has extended the scope of its audit work. Notably, the Commission auditors examine the audit and control work carried out by other Commission’s services, in particular the Joint Audit Directorate for Cohesion, the national audit authorities and conducts specific audits and fact-finding missions to the Member States to gather evidence that checks were effectively regularly performed regarding compliance with public procurement and State Aid rules. In addition, the Commission’s audit strategy has been strengthened to systematically include checks in all audits carried out by the Commission on the RRF (audits on milestones and targets, system audits and compliance audits) on whether Member States are regularly and effectively verifying compliance with Public Procurement and State Aid rules for measures covered by the RRP.

24. What is the level of implementation of the recommendations for improvements that the Commission has given to the Member States subject to the systems audits carried out at the end of 2022?

**Commission’s answer:**

The Commission, at the end of 2022, had carried out 16 system audits on the Member States’ systems on the protection of the financial interests of the Union, covering 16 Member States, with 84 bodies audited. For each of these audits, the Member States and
the Commission engage on the basis of the findings and eventual draft recommendations. During these discussions, recommendations are often already addressed by the Member States and accordingly no longer included in the final reports.

Finalised audit reports from audits started in 2022 have been issued for 8 Member States with 214 Recommendations, of which 51 Recommendations (24%) have since been closed. A further 11 system audits have been carried out in the course of 2023. With these, the Commission has covered 26 Member States in total and, by the end of the year, all Member States will have been audited at least once. Additional audit reports will be finalised on a continuous basis.

Based on the Commission’s audit work, Member States implement the necessary improvements stemming from audit findings in both the audited implementing bodies and in other relevant bodies. In the context of the revision of plans, and based on the results of its audit work, the Commission proposes, where necessary, additional audit and control milestones.

**Questions concerning control and transparency**

25. According to our knowledge there is still no methodology for application of corrections in cases where the ex-post substantive test results indicate material errors in the assessment of the achieved milestones and targets. Is the Commission working on such a methodology?

**Commission’s answer:**

The methodology on partial suspension of payments published by the Commission in February 2023 will also be applied to determine corrections in case the ex-post substantive test results indicate material errors in the assessment of the achieved milestones and targets.

If the Commission finds serious irregularities in the implementation of specific projects funded by the RRF (i.e. fraud, corruption or conflicts of interest), it will inform the Member State authorities, who are legally obliged to correct these issues and recover any affected funds. Should the Member State fail to initiate such corrections, the Commission can recover the funds. If the Commission were to find a serious breach of the general monitoring and control obligations by the national authorities laid out in the financing and loan agreements signed between the Commission and the Member State, the Commission can also apply flat rate corrections from 5% up to 100%, subject to the gravity of the problem.

The Commission is not working on any additional methodology as these methodologies cover all possible cases.
26. How does the Commission ensure transparency regarding RRF implementation? In particular, how has the Commission addressed the Ombudsman’s recommendations in case SI/6/2021/PVV? Are there transparency practices developed in the context of the RRF that could be used for other spending programmes/instruments?

**Commission’s answer:**

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 RRPs.

The Ombudsman has very recently closed its case SI/6/2021/PVV. The Ombudsman’s Closing Note of 12 September 2023 welcomes improvements made by the Commission to increase transparency and highlights some further room for improvement.

The Commission takes note of the suggestions provided by the Ombudsman and will closely consider how to implement them with respect both towards the aim of increasing transparency, while considering the limits of the legal framework and operational constraints. The Commission also recalls that it has already made a significant effort to ensure transparency, as is recognised by the Ombudsman. Notably, the Commission provides through the Recovery and Resilience Scoreboard information on the progress of implementation, the timeline, the payments made, the fulfilled milestones and targets and other data as well as thematic analysis. An additional dedicated RRF website provides access to all primary documentation, including the Council Implementing Decisions, the Commission Staff Working Documents encompassing the assessment, and all documents related to the payment process, notably detailed preliminary assessments setting out the requirements, evidence, analysis and conclusion for each positively assessed milestone and target. Since March 2023 the RRF website also provides a map providing an overview of selected reforms and investments, information on their state of play and links to resources with further information. The Commission also has participated in 12 Recovery and Resilience Dialogues at Executive Vice President and Commissioner level, and close to 30 meetings of the Parliament’s RRF Working Group at Director General level.


As regards good transparency practices implemented for the RRF, the Commission strives to continuously improve its programme design and implementation. The RRF is a unique programme and its approaches not directly applicable to other programmes. Lessons learned will certainly also be considered in the design of other programmes, for instance for the clear communication of performance-based results and on how to assure transparency of payment request assessments.

27. Have Member States fulfilled all the milestones concerning audit and control that were identified during the assessment of the national plans or assessed in 2022? If this has not
been the case, could you explain whether the concerned Member States have received any payment?

**Commission’s answer:**

As part of the 13 payment requests assessed in 2022, the Commission has assessed 16 audit and control milestones, all of which it assessed as satisfactorily fulfilled. The ECA did not note any issues affecting the fulfilment of any of these 16 control milestones. The Commission will continue to closely assess audit and control milestones in any future assessments.

28. In the 2022 payments, has the Commission found any cases of reversal of measures or partial fulfilment of milestones and targets? If so, what measures have been taken?

**Commission’s answer:**

The Commission has not identified any case of reversal or partial fulfilment in the 2022 RRF payments. Should such cases arise, the Commission will carefully follow the procedures set out in its methodologies on payment suspensions and reversals published respectively in February and September 2023.

29. How does the Commission prevent double funding between RRF and other EU programmes, or substitution of recurring national budgetary expenditure? What are the mechanisms of control in this regard?

**Commission’s answer:**

Concerning the question on recurrent national budgetary expenditure, please refer to the reply to question 17 for an explanation of the concept as applicable under the RRF. This eligibility condition is set out in Article 5(1) of the RRF Regulation. As provided by the RRF legal framework, this eligibility condition is assessed for each reform and investment as part of the assessment of the original plan. For no-cost reforms there naturally cannot be any concept of ‘substitution’ of recurrent national budgetary expenditure, as no RRF funds are required to implement the measure. For any other measure, the Commission closely considers the cost estimate put forward by the Member State, which is assessed along several criteria laid out in Annex V of the RRF Regulation. As part of this assessment, the Commission staff analyse the cost items put forward, and, where necessary, asks the Member State to correct or remove recurrent expenditure such as staff salaries.

Synergies between the RRF and for example cohesion policy are ensured through close cooperation among relevant Commission services. For instance, DG REGIO and DG EMPL were fully associated to the assessment of the national plans under the RRF, thus ensuring full synergy and knowledge about the Member States’ objectives under both policy interventions, RRF and cohesion policy funds.
Concerning the prevention of double funding, the RRF explicitly foresees the possibility for complementary funding in its Article 9: “Reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost.” While concurrent support by RRF to that of other EU funds could theoretically increase the risk of double funding of projects, such risk is largely and proactively mitigated by several provisions and mechanisms.

On the cohesion policy side, pursuant to Article 63(9) of the CPR, expenditure in a payment application for one of the funds shall not be included elsewhere under the same fund, or under another instrument. This restriction is already enforced under the 2014-2020 CPR (Article 65(11)) and is – and will continue to be – closely monitored through Member States’ control and audit activities. This provision is also strongly emphasised in the selection criteria of the projects.

Measures aiming to prevent double funding are implemented at various levels. These measures are first implemented by the Member States who are primarily responsible, according to the RRF Regulation. In the design phase of national RRPs, Member States must clearly differentiate measure funded under the RRF and measure benefiting from other EU funds. When a measure is financed through the RRF and other EU funds, the estimated cost of projects under the RRF must exclude all actions financed by other EU funds. In the negotiation phase of the RRPs, all relevant Commission services cooperate to ensure that Member States have sufficient preventive mechanisms to avoid double funding.

During the implementation of the plan, Member States are responsible for monitoring the use of funds and avoiding double funding, taking corrective action where double funding is discovered (i.e. recover the related amounts from the final recipient). In the management declaration accompanying its payment request, the Member State shall confirm the absence of double funding and the Commission carries out audits of national control systems to ensure these are adequate and functional to avoid double funding. Member States must also collect and report data on any investment or reform supported under their RRP which has or is receiving funding from any other Union programme. Moreover, as part of the Operational Arrangements signed with the Commission under the RRF, Member States also commit to jointly organise an annual event to discuss complementarity, synergy, coherence and consistency between the implementation of the RRP and the other EU programmes, including cohesion policy funds.

In addition, the Commission has included in its internal control framework in the context of the RRF the following steps:

- The additionality of the support provided by the RRF with regard to other Union funds and programmes is part of the eligibility check in the assessment by the Commission of the initial RRP. The Commission can require that additional measures are implemented to improve the control systems by including additional milestones in the plan.
The Commission checks the information on complementarity of EU funds reported by Member States in FENIX, and cross checks information on IT platforms such as ARACHNE, KOHESIO and the Financial Transparency System (FTS) in the framework of its ex-post audits on milestones and targets.

During its ex-post audits on milestones and targets, the Commission verifies the absence of double funding based on a statistical sample of projects for the selected targets, at three levels: coordinating body, implementing body and final recipients.

In addition, the Commission audits the national control systems, including the systems in place to avoid double-funding.

Moreover, audit results (audit findings and conclusions) and identified risks are systematically exchanged between the responsible Commission audit services for cohesion (DAC) and for the RRF to ensure that risks, including double funding, are effectively identified and mitigated. Formalising and expanding earlier cooperation, in April 2023, a Memorandum of Understanding was agreed between DG ECFIN, DG REGIO and DG EMPL for this purpose.

For both cohesion policy funds and the RRF, the Commission is empowered to recover funds or launch financial corrections if double funding is discovered and not corrected by the Member States in first instance, or in case Member States commit serious breaches of the obligations included in the RRF financing and loan agreements.

30. DG ECFIN’s Annual Activity Report 2022 mentions that the Fenix IT tool was set up in 2021 for Member States to report relevant information on the implementation of the plans in a user-friendly manner. Member States are supposed to submit the relevant information regarding the state of implementation of past and upcoming milestones and targets twice a year. Please list the member states that have actually done this using Fenix?

**Commission’s answer:**

All Member States have used FENIX to bi-annually report on the progress of implementation of their plans, concretely the milestones and targets contained therein, complying with the reporting obligations.

**Questions on RRF loans**

31. Payments concerning non-repayable support made in 2022 amounted to 271 million Euros in pre-financing and EUR 46.9 billion Euros in payments for achieved milestones and targets. Payments for loan support amounted to 1.942 billion Euros in pre-financing and 25.2 billion Euros in payments. Can you provide us with an overview of all milestones and targets that have been achieved for which the funding source was loans?
Committee on Budgetary Control

Commission’s answer:

Five of the regular disbursements made in 2022 included loan support: the first payment to Greece, the first and second payments to Italy, the first payment to Portugal and the first payment to Romania.

The assessments for each of these milestones and targets are published on the Commission’s RRF website on the respective country page.

The list of milestones and targets related to loan payments made in 2022 is provided as annex to this set of replies.

32. When a ‘fund of funds’ is set-up using loans: what kind of governance arrangements are put in place to make sure that the projects/ recipients funded through that fund are in line with the scope (Article 3), general and specific objectives (Article 4) and horizontal principles (Article 5) of the RRF Regulation, in particular when the institution responsible for managing the fund is not part of the national administration?

Commission’s answer:

According to Article 17(1) of the RRF Regulation, public investment may include public schemes that aim to incentivise private investments. Following this logic, a transfer of funds to a financial scheme, which then uses the money to incentivise investments by private entities, can be an eligible RRF investment under certain conditions. Among others, ensuring the policy objectives set in the RRPs and horizontal principles of the RRF Regulation should be reflected in a binding manner both in the implementing agreement signed between the Member State and the financial intermediaries managing the funds, and in the documents establishing the financial scheme (e.g. investment strategy) adopted by the concerned financial intermediaries. Controls for the absence of conflict of interests on financial intermediaries shall take place and be conducted ex-ante for all financial actors involved. Funding Agreements signed with additional financial intermediaries should include all the requirements, accordingly adapted, to take decisions in compliance with the decision making and investment policy requirements set in the implementing agreements.

Where applicable, the description of the financial instruments in the Council Implementing Decisions and the related milestones and targets reflect these various conditions and ensure that RRF disbursements are conditioned on their fulfilment.

Questions on absorption of funds and financial of forecasting

33. Many concerns have been raised about the ability of countries to absorb all of the RRF funds, particularly in view of the end of 2026 deadline for the final Recovery and Resilience Facility payment of funds (as mentioned in the RRF dialogue joint meeting of the committees for budgetary control and budgets, October 2, Strasbourg). What
Committee on Budgetary Control

steps are being taken to ensure that the funds are absorbed in time? Are there already any measures taken because of non-performance?

**Commission’s answer:**

When discussing with Member States the RRPs in 2021, both prior to and following their formal submission, the Commission paid particular attention that Member States align the timelines of all milestones and targets included in their plans with the 2026 deadline of the RRF Regulation. In its guidance documents from 2021, the Commission provided general guidance on aspects related to administrative capacity for the monitoring and implementation of the RRF. Furthermore, the Commission provided additional guidance on how to further strengthen administrative capacity and ensure adequate resources to monitor and implement the national plan. The Commission is promoting exchanges of good practices among Member States regarding the implementation of the RRF in a dedicated informal expert group on the RRF, to which both Parliament and Council are observers. The discussions in this forum cover also aspects related to administrative capacity and absorption of funds. The Commission is also facilitating support to strengthen administrative capacity in national authorities, and support the implementation of specific reforms, under the Technical Support Instrument. While the absorption of funds varies across Member States and is influenced by different factors such as national frameworks, maturity and type of selected investment projects, the Commission supports Member States to address bottlenecks in this regard.

Regarding non-performance: milestones and targets effectively monitor progress of implementation, which implies that funds must be used for the implementation of the underlying reforms and investments. As such, progress in implementation of the RRP therefore clearly aligns with the actual use of funds. In application of Article 21 of the RRF Regulation, Member States are putting forward requests to amend parts of their RRPs which are no longer achievable due to objective circumstances, allowing them to adapt their plans to address any serious implementation issue.

34. What kind of risk are the higher interest rates causing? Will the Commission prohibit a cannibalization of programs? What methods are you using for financial forecasting?

**Commission’s answer:**

On the impact on the budget purchasing power of higher interest rates: bond issuances are taking place in a very different market context than when the 2021-2027 Multiannual Financial Framework (MFF) was adopted and NGEU was launched. The pace of the increase in interest rates for all bond issuers, including the EU, has been one of the steepest in the past decades. Interest rates on 10-year EU-Bonds have increased from 0.09% at the time of the inaugural 10-year NGEU bond in June 2021 to 3.2% now. Comparable increases have been observed for highly rated euro area sovereign issuers. The sudden and sharp increase in interest rates has substantial budgetary implications. For the MFF 2021-2027, an amount of €14.9 billion (in current prices) had been planned.
for covering the interest payments for NGEU non-repayable support. This was based on interest rate expectations back in 2020.

The EU issuance programme continues to command strong investor support even in the midst of market turmoil, however the rate increase means higher borrowing costs. The ultimate size of the bill – and the overrun on the amounts that had been budgeted at the beginning of the MFF – remains subject to uncertainty, both because of interest rates and the amounts and timing of NGEU disbursements.

The Union will meet in all circumstances its obligations towards bondholder. The Commission proposed in the framework of the mid-term revision of the MFF a technical modification to the MFF to optimise the budgetary treatment of NGEU borrowing cost given their inherent uncertainty.

To underpin the forecasting of NGEU borrowing, the Commission services forecast payment needs based on the latest best staff-level estimates regarding the submission and assessment of each RRF payment request, based on its continuous exchanges with the Member States to discuss the progress of implementation.

Questions on modifications of national plans:

35. Several countries are rewriting their RRF national plans to respond to evolving crises and needs. For example, Greece is rewriting its country plan to try to incorporate more projects addressing wildfires and their aftermath. What is the methodology or the criteria used to review requested changes?

Commission’s answer:

The revised RRPs are assessed on the same criteria as the original plans in accordance with Article 19 of RRF Regulation, except for the additional elements introduced by the REPowerEU Regulation of 1 March 2023, which apply to the REPowerEU chapters. The Commission closely assesses whether the revised plan, as a whole, fulfils the criteria and whether each measure in the plan is in line with the eligibility criteria. The Commission also closely analyses that the changes made are justified in line with the possibilities for change set out in the legal base.

The guidance provided to the Member States for Commission Notice C/2023/1259: “Guidance on Recovery and Resilience Plans in the context of REPowerEU 2023/C 80/01” sets out the information expected from the Member State to demonstrate fulfilment of the criteria, and the requirements related to the legal bases for change. This guidance is public:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023XC0303%2801%29
36. Member States can revise their plans based on the available legal grounds under the RRF regulation and the Guidance on the Recovery and Resilience plans. What steps is the Commission taking to make sure member states simply do not just push for a change of national plan when the national government changes after an election?

**Commission’s answer:**

The guidance referenced in the reply to section 35 makes clear on which grounds the Member State may propose a change to its plan. As provided in the guidance, each change needs to be justified by the Member States, and the Commission is closely assessing whether the justifications are sufficient to apply the respective reasons for change. Measures cannot simply be removed because they are politically inopportune, and the Commission can reject a request for an amendment of the plan which is not sufficiently justified, as provided by Article 21(3) of the RRF Regulation. Overall, with each proposal to modify RRPs, the Commission also closely assesses that the revised plans at least keep the initial ambition intact and that it continues to meet the RRF assessment criteria.

As for the original plans, the Commission requests detailed information and documentation to undertake its assessment. In case of a positive assessment, the Commission puts forward a proposal for a Council Implementing Decision amending the initial Council Implementing Decision on the approval of the relevant RRP which, in recitals, provides the legal grounds for changes to specific measures.

37. What steps are you taking to make sure countries are being treated equally when judging whether milestones and targets have been fulfilled?

**Commission’s answer:**

The Commission has published its framework for assessing milestones and targets under the RRF Regulation in March 2023 as Annex to the Communication COM(2023)99: “Recovery and Resilience Facility: Two years on – A unique instrument at the heart of the EU’s green and digital transformation”

Each milestone or target is unique and must be read in light also of the underlying measure and the national legal context. As laid out in the Commission’s framework, the Commission first establishes the requirements applicable to that specific milestone or target. As provided in the legal base, the obligation to demonstrate fulfilment lies with the Member State. Based on this understanding of the requirements, the Commission considers the justification and evidence provided by the Member State.

The process is rigorous and in the case of numerical targets with a high number includes also the sampling of specific items. Where necessary, the Commission will request further evidence and may, if necessary, even pause the payment request procedure until all documentation has been provided. The documentation related to a single milestone or target can encompass from just a few up to hundreds or occasionally thousands of items of evidence.
For its assessment, the co-legislators provided the Commission with a limited discretion, providing explicitly for ‘satisfactory fulfilment’, rather than simple literal fulfilment. In line with this margin of discretion, the Commission’s framework lays out a precise set of *de minimis* deviations from the established milestone and target requirements, which are applied equally to each Member State, allowing for instance minimal deviations in numerical amounts, such as when 950 out of 1000 items have been achieved, or in timing, such as when a legal provision applies with a reasonable delay to allow market actors to adapt.

The assessment, including each of the elements highlighted above and the provided evidence, is in each case transparently set out in the preliminary assessment which the Commission provides to Parliament and Council and publishes on the RRF website.


**Questions on combating corruption:**

38. No payment to Hungary under the RRF is possible until Hungary has fully and correctly fulfilled the 27 super milestones. Yet, on the 2nd of October, the Commission sent mixed signals as to when payments to Hungary could resume. Does the Commission estimate that certain super milestones are already fulfilled? Does the Commission intend to resume payments before all 17 remedial measures, 27 super milestones and the 4 enabling conditions are clearly implemented and fulfilled? What steps are you taking to coordinate communication within the Commission and across services so that no varying messages about RRF funding to Hungary are spread in the media?

**Commission’s answer:**

The Commission can and will only make a payment to Hungary under the RRF when all audit and control milestones (informally called “super milestones”) set by the Council are satisfactorily fulfilled. Hungary has not yet submitted a formal payment request and the Commission has accordingly not made a formal assessment of whether the requirements are fulfilled or not.

Fully separate from the RRF milestones and targets, under the Conditionality Regulation, the measures adopted by the Council can be lifted if Hungary demonstrates that it has remedied the situation that led to their adoption. For that purpose, Hungary must formally submit the relevant information and evidence to the Commission, which is responsible for assessing it and making a proposal to the Council, if appropriate. Based on the Commission’s proposal, the Council decides in line with the Conditionality Regulation whether to adapt or lift the measure. Hungary has not submitted any such formal notification so far. The Commission continues its dialogue with the Hungarian authorities with the objective to remedy the risks for the Union budget identified in the Council Implementing Decision.
Moreover, in accordance with the Common Provisions Regulation (CPR), the Commission cannot reimburse expenditure claimed by Hungary and related to CPR funds, until it considers that all enabling conditions are fulfilled. This applies to all expenditure, except for expenditure for technical assistance and for operations leading to the fulfilment of the enabling condition in question. The dialogue with Hungary is currently ongoing, with the latest explanations from the Member State received on 19 October. The Commission services are currently assessing these in detail.

With a view to ensure consistency and coherence of initiatives and actions related to the rule of law, the Commission services keep each other regularly informed, in particular in the framework of the Interservice Steering Group on the Rule of Law.

39. In the RRF dialogue joint committee meeting of the committees of budgetary control and budgets on October 2 in Strasbourg, several MEPs complained that larger companies are creating smaller companies solely for the purpose of circumventing the rules and having access to RRF funds. Is the Commission aware of any cases circumventing the rules with this kind of method? To what extent do you guarantee that SMEs and start-ups are profiting? How do you prohibit that large scale companies are profiting several times from RRF using the possibility to disincorporate parts of their company or to fund and create new start-ups? How are you coordinating and communicating with member states to ensure a wide variety of companies have access to opportunities related to RRF funds?

**Commission’s answer:**

Under the RRF, the only beneficiaries of RRF funds are the Member States. This means any disbursement by the Commission is made to the Member State, not individual companies. Member States are responsible to implement their plans, composed of both reforms and investments, and will receive a disbursement if they satisfactorily fulfil a set of pre-defined milestones and targets.

In this setup, the Commission itself does not design, steer, manage or otherwise control any specific grant schemes, calls for proposals or other investments implemented by the Member States. The Commission will confirm that the Member States fulfil the requirements set by the milestones and targets. For instance, in case a Member State committed to provide support to a specific number of small and medium enterprises, the Commission will check based on the Member States’ documentation whether the specific requirements are indeed fulfilled, which may for instance include requirements related to specific criteria in the call for proposals or to the nature of the funded entities.

Separately from this process, the Commission also provides assurance on the national control systems and tests whether national control systems are functional. In the context of system audits, the Commission checks also that the Member States’ systems generally provide for and check compliance with EU and national rules, including specific elements of the public procurement procedure.
Contractors which are put in charge of implementing projects financed by the RRF are not considered to be final recipients and are therefore not included in the published lists of Member States’ 100 largest final recipients. The Member States however must collect this data and the Commission, the European Anti-Fraud Office (OLAF), where applicable the European Public Prosecutors Office (EPPO), and the ECA, may request such information for audit and control purposes.

The Commission takes note of this concern expressed by Parliament but has no information that would suggest that such actions are common or widespread within RRF measures.

40. How do you implement the anti-fraud and anti-corruption strategy in the control of companies (ex ante and ex post) to prevent corruptive and fraudulent companies and organisations from applying? How is the Commission working together with member states to avoid fraud and corruption in the use of RRF funds?

**Commission’s answer:**

Please refer to section 3 of DG ECFIN’s Annual Activity Report:

The RRF control framework is tailored to the unique nature of the RRF as an EU spending programme that provides adequate financial and reputational protection for the EU budget. The RRF control strategy is built upon two main pillars:

- Controls to provide reasonable assurance over the legality and regularity of commitments and payments, based on specific controls related to the achievement of the agreed milestones and targets. To ensure the legality and regularity of the payments made, the Commission assesses through ex-ante controls and ex-post audits whether the agreed milestones and targets included in the payment requests submitted by Member States are satisfactorily fulfilled.

- Controls to ensure adequate protection of the financial interests of the Union, in the manner prescribed by Article 22 of the RRF regulation setting out the respective roles and responsibilities of Member States and of the Commission.

The principal obligation to prevent, detect and correct fraud lies with the Member States. The Commission however provides assurance that the national systems are effective and efficient. In case it detects information on fraud, the Commission immediately provides this information to the OLAF which may investigate the case and liaises with the EPPO where relevant.

On the preventive side, the Commission is proactively working with the Member States through various fora to ensure vigilance, highlight specific risks, and encourage exchange of good practices.

On 3 May 2023, the Commission adopted an anti-corruption package, which represents a milestone in the fight against corruption at national and EU level. In particular, the Commission proposed a new Directive on combating corruption. The proposal
strengthens the existing EU anti-corruption legal framework including by setting stricter rules on corruption in the private sector. Companies held liable for corruption offences can be excluded from entitlement to public benefits or aid and public procurement procedures.

Questions concerning other topics

41. Could the Commission provide information, if available, on investigations carried out or recommendations issued by OLAF and EPPO with regards to the RRF?

**Commission’s answer:**

When the Commission becomes aware of suspected cases of fraud, corruption and any other illegal activity affecting the EU budget, it informs OLAF.

OLAF analyses incoming information of potential investigative interest to determine whether there are sufficient grounds to open an investigation. OLAF’s investigations are confidential, therefore the Office does not in general comment on cases it may or may not intend to open, nor on its ongoing investigations.

As stated in DG ECFIN’s Annual Activity Report, by end 2022, the Commission reported to OLAF six cases of potential irregularities identified during ex-post audits or from open sources in respect of RRF supported actions. In the first semester of 2023, the Commission reported 13 new cases to OLAF.

In August 2023, EPPO notified OLAF of the first RRF-related cases under judicial review.

For the time being, the Commission is not aware of any recommendation issued by OLAF in relation to the RRF.

As the EPPO is an independent body, the Parliament may address its questions directly to the EPPO.

42. The investments under EFSI took place under the previous MFF, but results should be achieved in following years. Is there any reporting about the follow up of EFSI implementation and about possible reuse/recycling of the returns from repayment of interests (revolving effect of investments)?

**Commission’s answer:**

As per Article 24 of the Guarantee Agreement signed between the EU and the European Investment Bank (EIB) on the Guarantee of the European fund for strategic investments (EFSI), a proper follow up of EFSI implementation is ensured through a concise reporting framework, under which the EIB Group is required, on a regular basis, to submit different reports to the Commission (half yearly Operational report, quarterly Risk profile report, annual Financial report). The EIB Group annual financial reports are
audited by external auditors, which provides an additional layer of assurance to the Commission.

Moreover, the Commission ensures an appropriate monitoring of EFSI through its report pursuant to Article 41(5) of the Financial Regulation, annexed to the annual Draft Budget and the Annual Activity Report. Finally, the Commission also prepares EFSI Annual accounts, part of consolidated Commission accounts. The whole framework is under the ECA’s scrutiny.

Regarding revenues and reflows generated from EFSI operations, these are also subject to reporting received from the EIB Group. These reflows have so far been transferred to the EFSI Compartment of the Common Provisioning Fund.

43. Is there a clause in the InvestEU implementing agreement with the EIB requiring EIB to use EDES? If not, what is the reason?

**Commission’s answer:**

As per Article 31 of the Guarantee Agreement signed between the EU and the EIB and the European Investment Fund (EIF) on the EU Guarantee under the InvestEU Regulation, the EIB and EIF have access to the information on decisions on exclusion included in the early detection and exclusion system database set up by the Commission to verify whether there is an exclusion, and to exclude a person or entity subject to a decision on exclusion contained in this database.

The implementing partners also have the obligation to transmit to the Commission information related to cases of detected fraud or irregularity and their follow up pursuant to Article 142(2) of the Financial Regulation as regards, among others, applicants and tenderers for financing under a Financial Product, Financial Intermediaries and Final Recipients.

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