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ANNEX 2

ANNEX

to the

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of the Recovery and Resilience Facility

Annex II: Eligibility of measures under the Recovery and Resilience Facility – start date for eligible measures.

At the early stages of the COVID-19 crisis, Member States individually and collectively implemented a series of measures to protect citizens and businesses, as well as to facilitate the management of the crisis and future crisis. Although such measures at times had large fiscal costs, those measures were critical to protecting economic, social and territorial cohesion by mitigating the social and economic impact of the crisis, helping both Member States individually and the Union as a whole to weather the crisis. The swift action of the Commission, Member States, the European Parliament and the Council to propose and agree NextGenerationEU, in particular the Recovery and Resilience Facility (RRF), stabilised both market and societal expectations. However, a time gap arose between the start of the crisis and the beginning of implementation of the RRF.

To support measures that might otherwise have been halted due to the large fiscal burden that the crisis put on Member States, as well as to support the early policy response to the COVID-19 crisis, the European Parliament and Council introduced a 'retroactivity' clause in the RRF Regulation. The intention behind this 'retroactivity' clause was to support Member States' early policy response. Moreover, learning from the lessons of recent crisis in Europe, the intention was to ensure that Member States would not stop or reduce investments in the context of the severe economic and social crisis caused by the pandemic, so as not to tighten the economic contraction further. Article 17(2) of the RRF Regulation therefore specifies that only "*measures started from 1 February 2020 shall be eligible provided that they comply with the requirements set out in this Regulation*". A similar provision with the same logic was added when the RRF Regulation was amended to add REPowerEU chapters (measures included in REPowerEU chapter "*shall only be eligible where they start from 1 February 2022 onwards*"). A key consideration for Member States and the Commission when designing and assessing recovery and resilience plans was therefore to determine when a measure was considered to have started.

A measure starts with implementation on the ground.

The RRF Regulation does not precisely define the concept of 'started' but provides indications as to its meaning. Notably, as Member States need to submit the estimated total costs of the measures that must have 'started' after 1 February 2020, it is reasonable to conclude that all costs should occur in statistical terms after that date.

In statistical terms, expenditure and assets are recorded only when a project begins implementation. Under the European system of national and regional accounts (ESA 2010)[1], public accounting operates on an accrual basis, meaning that transactions are recorded when economic value is created, transformed, exchanged, transferred, or extinguished. Economic value only begins to be created once implementation of a measure starts on the ground. This approach ensures that economic activities are accurately represented in the period when they actually occur. This method contrasts with cash-based accounting, where transactions are recorded when cash is received or paid, which usually takes place some time after a transaction is completed and a bill is issued.

The focus on the actual implementation of the measure, when costs actually materialise, is further justified by the fact that the signature of a contract does not necessarily correspond to the start of a measure. Public investment measures are generally preceded by multiple phases of planning, budgeting, procurement, and preparation. Preparatory phases include negotiation and signature of one or more contractual agreements. Contractual agreements typically contain clauses governing conditions such as precedent, termination and rescission, breach of obligations and instances of force majeure. Such clauses may prevent works proceeding or even starting, where it is noted that such clauses are of particular relevance in a global pandemic. Signature of contractual agreements does not therefore correspond to the start of a measure. Such an interpretation would be against the intention of the co-legislators and the RRF's intervention logic, given that it would result in the exclusion of several measures, where Member States decided not to postpone or terminate contracts, but to start their implementation and benefit from RRF support.

Therefore, in line with the above statistical and legal principles, the start of a measure has been interpreted as the beginning of implementation of the measure on the ground. This interpretation ensures consistency with the logic and principles of the RRF Regulation, and the performance-based nature of the RRF. It is when economic value starts to be created that the implementation of a measure can be considered as having started.

Commission guidance applies the principles of the Regulation

The Commission has provided guidance to Member States on how to interpret and apply the retroactivity clause. In line with the principles established by the co-legislators in the Regulation, the ESA 2010 and the performance-based nature of the instrument, the Commission issued guidance to the Member States in February 2021[2] specifying that measures

[1] The European system of national and regional accounts (ESA 2010) is the EU national accounts framework consistent with the international guidelines on national accounting. EU Member States are required to follow this macroeconomic statistical framework when producing their national accounts.
[2] https://commission.europa.eu/publications/guidance-member-states-recovery-and-resilience-plans-part-1_en.

can be supported "*only in so far as their implementation (for which the costs incur) has started only on or after 1 February 2020.*"

Furthermore, the guidance provided by the Commission services to national RRF implementing authorities, in reply to questions from them, further specified how to interpret the "start" of a measure: "*Projects whose preparation and initial phases (including procurement) were launched before 1 February 2020 can be considered eligible for RRF funding only for clearly defined phases or sub-projects that are implemented after 1 February 2020, and for which the entirety of the costs are recorded (in European System of Accounts (ESA2010) terms) after 1 February 2020.*"

Commission applies this guidance to ensure consistency

In its assessment of the plans and of the eligibility of measures according to Article 17(2), the Commission therefore applies two key tests to ensure compliance with the principles above.

1) Has implementation of the proposed measure started only on or after 1 February?; and
2) Have the costs incurred for that implementation started only on or after 1 February? Specifically, are the entirety of the costs recorded (in European System of Accounts (ESA2010) terms) after 1 February 2020?

The examples below illustrate how the Commission applies these two key tests:

Example 1:

- A Member State signs a contract for construction works for a new railway line connecting two regional cities, creating additional capacity in rail transport in December 2019.
- Extracts from the construction book signed by the contractor, as well as the first invoice issued by the contractor, demonstrate that actual work on the construction site began in March 2020.
- The Commission therefore considers that (i) a clearly defined phase of preparation that is not part of the RRF measure (signature of the contract) occurred before 1 February 2020, while (ii) a clearly defined phase of implementation that is part of the RRF measure (i.e. actual construction work) began after 1 February 2020 and that (iii) the entirety of the costs for that phase of implementation are recorded in ESA 2010 terms after 1 February 2020.

Example 2:

- A Member State issues purchase orders for the acquisition of IT equipment in December 2019.
- The transportation or delivery document which certifies the transfer of goods from the seller to the purchasing entity is dated March 2020.
- The Commission therefore considers that (i) a clearly defined phase of procurement [that is not part of the RRF measure] (purchase orders) occurred before 1 February 2020, while (ii) a clearly defined phase of implementation that is part of the RRF measure (i.e. the delivery, installation and operationalisation) began after 1 February 2020 and that (iii) the entirety of the costs for that phase are recorded in ESA 2010 terms after 1 February 2020.

Example 3:

- A Member State requests RRF support for the electrification of a railway line between two major cities, as part of a modernisation project adopted in 2019 concerning a longer stretch of railway than what is referred to in the RRP.
- The contract for the electrification of the whole railway line is signed with the contractor in December 2019.
- Work on the railway track between the two cities starts in April 2022, as attested by the project documentation foreseen in the contract.
- The Commission therefore considers that (i) a clearly defined phase of procurement that is not part of the RRF measure (purchase orders) occurred before 1 February 2020, while (ii) a clearly defined sub-project of implementation that is part of the RRF measure began after 1 February 2020 and that (iii) the entirety of the costs for that phase are recorded in ESA 2010 terms after 1 February 2020.