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ANNEX 3

ANNEX

to the

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of the Recovery and Resilience Facility

Annex III: Eligibility of measures under the Recovery and Resilience Facility – Substitution of recurring national budgetary expenditure.

The Recovery and Resilience Facility provides financial support to Member States with a view to achieving the milestones and targets of reforms and investments as set out in their recovery and resilience plans. In the provision of that financial support, a number of eligibility provisions are required to be complied with.

Recurring national budgetary expenditure is expenditure of a Member State from its national budget that happens on a repeated basis. A typical example of such expenditure is staff costs, which result in expenditure on a monthly basis.

As a general rule, substituting recurring national budgetary expenditure with RRF support has questionable European added value and raises concerns on the sustainability of such expenditure after the lifetime of the RRF. Nonetheless, it is recalled that the RRF was created in a specific context – notably that of the COVID 19 pandemic – where it was identified that there could be reasons to substitute such expenditure, for example, to support an increase in staffing at hospitals.

In this context, Article 5(1) of the RRF Regulation requires that "*support from the Facility shall not, unless in duly justified cases, substitute recurring national budgetary expenditure*". This provision, as such, generally prohibits the substitution of recurring national budgetary expenditure with RRF support but does allow for it in duly justified cases.

In applying this provision from the RRF Regulation, four cumulative tests can be identified:

1. Does the measure involve budgetary expenditure that is directly tied to the proposed measure?
2. If so, is that expenditure of recurrent nature?
3. If so, does financial support from the RRF substitute that recurring expenditure?
4. If so, is it not falling into a duly justified use?

If all four of these tests are met, the measure proposed would not be compliant with Article 5(1) of the RRF Regulation and, as such, not be eligible for RRF support.

In its assessment of the recovery and resilience plans of Member States, the Commission uses these four tests to determine the eligibility of measures and the compliance of the recovery and resilience plan with Article 5(1) of the RRF Regulation.

In order to provide clarity on how the Commission has applied these tests, each of these tests is explained in turn.

Does the measure involve budgetary expenditure that is directly tied to the proposed measure?

Potential non-eligible measures are firstly identified by considering whether that measure has national budgetary expenditure that is directly tied to the proposed measure. For example, a measure to construct a wind-turbine has construction costs that are directly tied to the implementation of the measure. In contrast, a measure to adopt legislation does not mean that, for instance, the salaries of the civil servants that draft it should automatically be considered as national budgetary expenditure directly tied to that measure, in particular where those costs would have materialised irrespective of the measure going ahead or not.

The costs declared by a Member State associated with that measure are taken into consideration, since it is not possible for a Member State to both declare a cost to be supported by the RRF and at the same time consider it is not directly tied to the proposed measure.

If so, is that expenditure of recurrent nature?

Should a measure involve national budgetary expenditure directly tied to it, it needs to be considered whether that expenditure is of a recurrent nature, meaning that it occurs on a repeated basis. This repeated basis means that it must materialise more than once, with some degree of periodicity (for example, weekly, monthly or yearly). Examples of such recurrent costs can include salaries, maintenance costs, or service or subscription fees.

The fact that, at some point in time previously, the Member State has incurred a one-off cost that is then repeated in order to fulfil an RRF measure does not imply that the expenditure is recurring. For example, in case a Member State has previously incurred costs to implement a study or survey does not preclude it from including estimated costs for a new study or survey under an RRP measure.

If so, does financial support from the RRF substitute that recurring expenditure?

Should a measure involve national budgetary expenditure directly tied to it that is of recurrent nature, it needs to be considered whether the RRF is substituting that expenditure.

In accordance with Article 18, paragraph (4), point (k) of the RRF Regulation, Member States should set out the estimated total costs of the reforms and investments covered by the recovery and resilience plan. Should the Member State put forward in its RRP that expenditure as estimated costs, it is apparent that the RRF would be financially supporting that expenditure and, as such, would substitute the recurring national expenditure.

The above is relevant only for measures for which Member States presented estimated costs, given that the assessment on whether those costs constitute recurring national expenditure that cannot be supported under the RRF presupposes that the Member States presents those costs as part of their plan. Should the Member State not include any estimated cost for that measure, the inclusion of such measure is not taken into account for the calculation of the Member States' financial contribution under the RRF and, as such, the Member State does not include any estimated cost for the RRF to financially support it. In this respect, it is not possible for the RRF to substitute national budgetary expenditure that takes place for that measure (or for a part of the measure not covered under the RRF), even if that expenditure is recurring expenditure. This is because no substitution has taken place.

If so, is it not falling into a duly justified use?

Finally, should a measure involve national budgetary expenditure directly tied to it that is of recurrent nature and the RRF financially supports it, it needs to be considered whether its substitution by support from the Facility can be duly justified and, as such, permitted by the exception provided for in Article 5(1) of the RRF Regulation.

The Regulation does not provide exact criteria for what should be considered a duly justified case. In applying this, the Commission services have communicated to Member States to use three tests. Specifically, whether:

(i) the estimated cost is an integral part of a reform/investment;

(ii) this reform/investment contributes to meeting the assessment criteria defined in Article 19 of the RRF Regulation; and

(iii) the financing of such reform/investment will be sustainably ensured after the RRF lifetime and that the negative effect on the government balance is only temporary.

Based on the practice established, some general considerations can be drawn on what may constitute a duly justified case:

- Generally, the compensation of public employees that work in the public administration on the preparation or implementation of reforms/investments covered by the RRF should not be included in the cost estimate. However, in duly justified cases (e.g. need for specific expertise or to temporarily increase administrative capacity), the cost of non-permanent personnel during the implementation period of the recovery and resilience plan can be included where necessary.
- Costs for training of civil service staff related to a reform or investment linked to the objectives of the Facility could be covered if duly justified and fully integrated in a reform or investment of the plan.
- Social expenditure such as hiring subsidies or student scholarships may be financed by the RRF if the expenditure (or revenue shortfall) is one-off or by nature temporary with

an end within the lifespan of the RRF. It needs to have positive long-term effects supporting the objectives of the Facility, and its impact on public finances should be limited in time.