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ANNEX 5

ANNEX

to the

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of the Recovery and Resilience Facility

Annex V: Final recipients under the Recovery and Resilience Facility

This annex further clarifies the concept of final recipients under the RRF Regulation and the scope of the publication of data on the 100 final recipients receiving the highest amount of funding for the implementation of measures under the RRF, as required by Article 25a of the RRF Regulation.

Who is a final recipient under the RRF?

Definition

The definition of final recipients stems directly from Article 22, paragraph 2, point (d) of the RRF Regulation. In accordance with that provision, a final recipient is the last entity receiving funds for an RRF measure that is not a contractor or a sub-contractor. This is to be distinguished from the beneficiaries, which under the Facility are the Member States. In the absence of a different definition of final recipients in other articles of the RRF Regulation, the definition of Article 22, paragraph 2, point (d) must be applied systematically when interpreting other provisions of the Regulation, most notably its Article 25a, in line with common interpretation principles and in order to ensure a uniform and consistent implementation of the Regulation.

Some key terms of the definition warrant a more detailed explanation:

- "*the last entity*": A final recipient can either be a natural (e.g. a citizen) or a legal person (e.g. a ministry, public agency, regional or local authority, association, charity, or business). Intermediary recipients of funding (e.g. ministries or agencies that are not the contracting authority but are merely distributing funds further) should not be considered as the last entity (see also the section below for further guidance).
- "*receiving funds*": To be considered a final recipient, the entity should have received a monetary transfer[1] for the purposes indicated in the relevant RRF measure as set out in the Council Implementing Decision (CID).
- "*for an RRF measure*": the final recipient is receiving funds from the national budget to implement a measure in the CID.
- "*that is not a contractor or a sub-contractor*": Article 22, paragraph (2), point (d) of the RRF Regulation mentions final recipients as separate entities from contractors and sub-contractors[2].

[1] Where the final recipient is a (regional/local) public authority, there may not always be a monetary transfer between the different public authorities. Therefore, in such cases, this may also cover the allocation of budgetary payment appropriations, i.e., the amounts that are made available in a budget to execute payments in line with budgetary commitments.

[2] Where a contracting authority directly signs contracts with the contractors for the implementation of the RRF measure, this contracting authority is the final recipient (see further examples of public entities being final recipients of RRF measures below). There may also be cases

Specifically in relation to the list of the 100 largest final recipients, Article 25a, paragraph (2), point (c), requires that the "*amount received by each recipient*" is included in the information published. In this context, the commitment of funds and mere signing of a legal commitment (e.g. award of contract) to a final recipient is not sufficient to establish that an amount has been received, since this provision (and the correct identification of the final recipients having received the highest amount) should be based on payments that have taken place[3].

Public authorities

It needs to be determined on a **measure-by-measure basis** who is the final recipient, including if a public authority is the last entity receiving funds (other than a contractor or sub-contractor). One example where a public authority could be considered the final recipient would be the construction of a public hospital if the public authority receives funds and signs direct construction contracts with contractors without involving further intermediaries.

Conversely, if the public authority entrusts another entity to sign the necessary contracts to implement the measure, so that the public authority does not sign direct contracts with the contractors, that entity receiving funds and signing the contracts should be considered as the final recipient. For instance, this could be the case where the public authority uses a separate agency for the implementation of a measure, which organises the call for tender and signs the contracts with the contractor.

In the case of implementing bodies managing funds (e.g. managing indirect funding programmes for SMEs, or a governmental agency managing payment flows to other public authorities), these are usually not considered as final recipients of a given measure because of the reasons explained above.

There are also cases where a public authority can have a dual role, managing funds for one measure and being the final recipient of another. It is important to note that in this case, the public authority will not be considered a final recipient of the first measure, whereas it should be considered a final recipient of the other measure.

Whilst the determination of whom is the final recipient will always need to be done on a measure-by-measure basis, on the basis of the definition outlined above, a number of examples of where the final recipient is a public authority are presented below. In all such cases, the public body is the last entity receiving funds for an RRF measure that is not a contractor or subcontractor:

where a separate agency or private company uses contractors, in which case the agency or private company should be considered as the final recipient.

[3] This is without prejudice to the obligation stipulated in Article 22(2)(d)(i) – (iii) of the RRF Regulation to collect data on final recipients, contractors, sub-contractors and beneficial owners for the purpose of audit and control and to provide for comparable information on the use of funds already at the commitment stage (i.e., when the grant agreement or contract is concluded).

1. **In an entirely public investment**, **where a public body receives funds for an RRF measure that benefits the public sphere**. For example, the Greek Ministry of Infrastructure and Transport is designated as the final recipient for the construction of the Central Greece Highway, whereas the contractors and subcontractors of the highway project are not final recipients. In another example, in Germany, the education ministries of the different German federal regions are the final recipients of the RRF funds that they use to purchase the digital devices being provided to individual publicly owned schools.
2. **Where a public body receives funds for an RRF measure that involves providing services to the private sector and/or citizens.** There are two scenarios:
    i. The **public body can provide the service itself,** as is the case with the Biotechnical educational centre Ljubljana which will deliver trainings to mentors in companies, or the Academic Medical Centres of Amsterdam and Maastricht in the Netherlands, which receive the subsidy to provide e-health services to patients in their homes.
    ii. The public body could **outsource the provision of the services,** as is the case with the Authority for the Digitalisation of Romania, which is funding a programme that allows access to upskilling/reskilling of SME employees based on the applications submitted by their employers, with the trainings being provided by selected training firms (directly paid for their services by the Authority for the Digitalisation of Romania). These training firms are contractors, therefore, they cannot be considered final recipients.

Both in (i) and (ii), the final recipients are the public bodies receiving funds for the relevant RRF measures.

Holding companies

In the case of a holding company, owning/controlling several companies, it must be assessed on a **case-by-case basis** whether a group of companies forms one final recipient for the purposes of the RRF Regulation.

If the contract, grant, or equivalent instrument is awarded to the holding company, the determination of who is the final recipient depends on what basis the contract, grant or equivalent instrument was awarded. If it was awarded "just" to the holding company (i.e. not to one or several companies that are part of the group), the final recipient is only the holding company. If it was awarded directly to companies that are part of the group, all the involved entities would equally be considered to be final recipients. If it was awarded to the subsidiary (i.e. not the holding company or companies that are part of the group), that subsidiary is the final recipient.

Final recipients of reforms & zero-cost measures

'Zero-cost measures' are measures for which Member States did not include any expected costs in the ex-ante 'cost estimate' submitted with their recovery and resilience plans (RRPs)[4]. Whilst this predominantly covers reforms, there are such cases also for investments.

The RRF Regulation does not distinguish between measures that included expected costs and measures that did not include expected costs. In this respect, obligations that apply to RRF measures regarding the collection and storage of data on final recipients apply regardless of whether a measure had expected costs or not. In line with Article 22 of the RRF Regulation, what matters is whether there has been a "*use of funds in relation to measures supported by the Facility*"[5] where "funds" should be understood as any public funding received in relation to measures included in the RRP, be it from national or EU sources (not limited to the RRF), in line with what is provided for by Article 22(2), point (d)(iv).

- To the extent that there is such a use of public funds (regardless of what the expected cost was), entities that are the last to receive such funds should be considered as final recipients.
- To the extent that there is no such use of public funds (regardless of what the expected cost was), there is no final recipient.

Although the RRF Regulation does not introduce any distinction with legal implications between reforms and investments, for reforms there is an assumption that zero-cost reforms do not entail national expenditure. Such an assumption can be rebutted if the Council Implementing Decision clearly provides for national expenditure (e.g. conduct a procurement to procure a study).

Scope of reporting for the publication of data on the 100 largest final recipients

In accordance with Article 25a of the RRF Regulation, Member States are required to report on the 100 final recipients receiving the highest amount of funding under the RRF. To this end, the aggregate funding received for the implementation of any RRF-supported measure (be it supported by repayable or non-repayable support) over the lifetime of the RRF should be taken into consideration, i.e. all public funding necessary to implement the relevant milestone(s) or target(s) under the CID. The amount of funding received should be calculated in a cumulative

[4] Many RRPs contain measures for which the Member State has not put forward any estimated cost, so-called "zero-cost measures". While the inclusion of zero-cost measures does not increase the Member State's financial allocation, it ties the disbursement of RRF support to the achievement of the milestones and targets linked to the implementation of these measures.

[5] This is without prejudice to Article 9 of the RRF Regulation, which provides that '*Reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost.*' Hence, as regards possible double funding, if the Member State has declared no costs under the RRP – i.e. it is a zero-cost measure – by definition, there cannot be any double funding of such a measure.

way as of 1 February 2020 until the time of reporting for each final recipient, across all measures supported by the RRF.

Member States should consider any measure included in their RRPs where there has already been a disbursement to a final recipient, irrespective of whether the Member State has already completed the relevant milestones and targets, submitted a payment request, or received funding under the Facility. This is because Member States receive disbursements ex-post once the Commission has assessed that relevant milestones and targets have been satisfactorily fulfilled (and independently from any expenditure incurred).

Data to be provided

Article 25a of the RRF Regulation specifies which data is required to be published, namely:

a. in the case of a legal person, the recipient's full legal name and VAT identification number or tax identification number, where available, or another unique identifier established at the national level;
b. in the case of a natural person, the first and last name of the recipient;
c. the amount received by each recipient, as well as the associated measures for which a Member State has received funding under the Facility.

In addition, beyond the requirements of the RRF Regulation, Member States are encouraged to provide additional information on the specific projects which receive funds from their RRP (e.g. location, state of implementation, received amount), which will then also feed into the interactive map of RRF-supported projects available on the RRF website.

Member States may publish a list going beyond the minimum of 100 set by the RRF Regulation.

When to report

The amended RRF Regulation does not set a specific deadline for Member States to update the data on the (at least) 100 largest final recipients. However, it does introduce an obligation for Member States to update this published data twice a year. Given that the Commission must centralise and publish the data, it has invited Member States to update the data published on their national portals and to share that updated data with the Commission at the same time as the bi-annual reporting exercise, in April and October.

Considerations regarding personal data for the publication of data on the 100 largest final recipients

In accordance with Article 25a(4) of the RRF Regulation, and in order to ensure proportionality and respect of privacy, where final recipients are natural persons, where personal data are published, the information should be removed by the Member State concerned two years after

the end of the financial year in which the funding has been paid to the final recipient. This provision only applies when personal data are published, meaning when the final recipient is a natural person. Moreover, the provision applies not from the date of publication but "*two years after the end of the financial year in which the funding has been provided to the final recipient*." This requires the data should not be deleted two years after *publication*, but two years after the end of the financial year when that recipient last received RRF funding.

Member States need to update the data twice a year and can choose to delete old data sets after two years (unless such data sets include personal data, in which case such data should be deleted, see the previous paragraph). The Commission recalls that records are to be kept even after the deletion of the above data from the public domain, in line with Article 132 of the Financial Regulation, as also referenced in Article 11(1)(d) of the Financing Agreement and where applicable, Article 20(1)(d) of the Loan Agreement.

Nonetheless, information removed on this basis should continue to be taken into account when calculating the consolidated amount of funds received, should the same natural person receive further funding.

In addition, a few exceptions to the publication of data, provided for in Article 25a(3) of the RRF Regulation, with reference to Article 38(3) of the Financial Regulation, are applicable to the RRF. These concern the following cases:

- education support paid to natural persons and any other direct support paid to natural persons most in need such as unemployed persons and refugees (Article 191(4)(b) Financial Regulation).
- very low value contracts awarded to experts selected on the basis of their professional capacity (Article 237(2) Financial Regulation) as well as very low value contracts below EUR 15 000 (the amount referred to in point 14.4 of Annex I to the Financial Regulation).
- financial support provided through financial instruments for an amount lower than EUR 500 000.
- where disclosure risks threatening the rights and freedoms of the persons or entities concerned as protected by the Charter of Fundamental Rights of the European Union or harming the commercial interests of the recipients.

In Article 25a(3) of the RRF Regulation, and following administrative practice, information on final recipients of financial support granted under direct management for amounts below EUR 15 000 (cf. the reporting exemption under the Financial Regulation for "very low value contracts awarded to experts selected on the basis of their professional capacity (Article 237(2) Financial Regulation) as well as very low value contracts below EUR 15 000") is not required to be published.

In any event, the recipients of such low values are unlikely to make it to the list of the 100 largest final recipients that Member States are required to publish under the RRF Regulation.

Considerations regarding amounts to be reported for the publication of data on the 100 largest final recipients

The amount of RRF funds received by a final recipient as referred to in Article 25a, paragraph (2), point (c) should be reported in EUR. Amounts received in other currencies should be converted to EUR using the latest monthly conversion rate used by the European Commission (Inforeuro: https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en) as applicable for the reporting date, i.e. the applicable conversion rate should be chosen as close as possible to the reporting date.