BonelliErede with LOMBARDI

Competition/ Antitrust Practice

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Recovery and Resilience Facility: intervention areas, procedures and EU law aspects

1. The Recovery and Resilience Facility: funding, national plans and intervention areas

The Recovery and Resilience Facility ("**RRF**") is the core of the Next Generation EU, which is the €750 bn instrument adopted by the EU to repair the economic and social damage caused by the pandemic through an integrated approach.

The RFF, proposed by the European Commission ("**Commission**") last spring, became the subject of a political agreement between Member States.

The legislative process for the regulation that establishes the RFF is nearing completion: the regulation is due to enter into force in the next two weeks.

A. Budget, funding and allocation of funds

The RFF will make €672.5 bn available (€360 bn in loans and €312.5 bn in grants) to support reforms and investments by Member States. Its main purpose is to mitigate the economic and social impact of the pandemic and to make the European economy and companies more sustainable, resilient and better prepared to face the challenges and opportunities with the transition to green and digital.

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The main development is that the RFF will be funded through a temporary increase in the own resources ceiling that accounts for 2% of the EU's gross national income. This increase will bolster the Commission's credit rating and thus enable it to borrow €750 on the financial markets. The additional funding will be allocated through national programmes and repaid over a long period – no sooner than 2028 and no later than 2058 – through EU budgets.

Another feature is that the funds will be allocated among Member States on the basis not only of population but also of other criteria, e.g., GDP per capita, 2015–2019 unemployment rate and 2020 GDP decrease. Based on this allocation mechanism, Italy will be entitled to a maximum of €209 bn (€81.4 bn in grants and €127.4 in loans).

This allocation mechanism solves one of the main issues with using state aid to tackle the emergency, i.e., the enormous disparity between Member States in terms of purchasing power, which has exacerbated the disparities to the detriment of the economic and social cohesion in the EU.

B. National plans and intervention areas

Member States must submit recovery and resilience plans to be able to benefit from the RFF: this involves drafting an adequate reform and public investment package to be implemented by 2026. The plans must efficiently address the challenges identified in the European Semester, especially those in the special recommendations adopted by the Commission in relation to each Member State, and must take into account the four dimensions identified in the Annual Sustainable Growth Strategy 2021: environmental sustainability, productivity, fairness, and macroeconomic stability. The plans must also be structured around **six pillars**: (a) green transition; (b) digital transformation; (c) smart, sustainable and inclusive growth and employment; (d) social and territorial cohesion; (e) health and resilience; and (f) policies for the next generation, children and youth, including education and competences.

The Commission strongly encourages Member States to submit investment and reform plans in the following **flagship areas**:

Furthermore, each national plan has to allocate at least 37% of the funds to green and at least 20% to digital transformation.

The Commission has issued guidelines and a template for national plans and provided examples of reforms and investments for each flagship area, which can serve as a reference point to ensure national plans are in line with EU goals. The examples include the expected impact, the targets and the essential milestones for each reform and investment – the inclusion of which will facilitate monitoring of progress.

2. Procedural steps, timing and controls of the Commission and Council

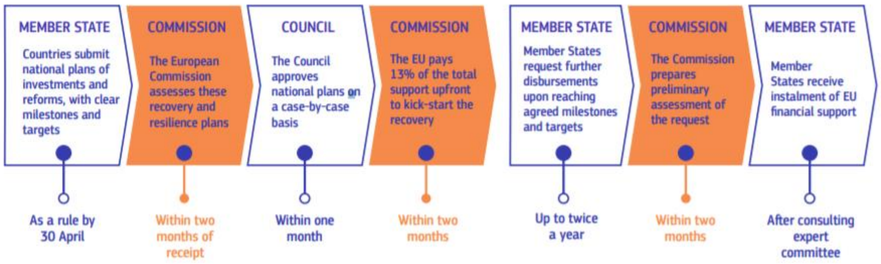
Member States may submit their national plans as soon as the RFF enters into force, which is expected around the second half of February. The deadline for submission is **30 April**.

The Commission has two months from submission to assess the national plans based on **four criteria**: relevance, effectiveness, efficiency, and coherence. This entails evaluating whether the envisaged investments and reforms: (a) will help efficiently address the challenges in the abovementioned recommendations; (b) contain efficient measures for the transition to green and digital; and (c) will help strengthen growth potential, job creation and economic and social resilience in the submitting Member State. The Commission's assessment will then be submitted for approval by Council resolution.

Once a plan is approved, 13% of the funds will be paid out up front. Subsequent disbursements will depend on whether the essential milestones (in terms of quality) and targets (in terms of quantity) in the national plan are achieved. As the targets will be achieved progressively, Member States will need to apply to the Commission for financial aid but can do so no more than twice a year. The Commission will assess the application and consult with the Economic and Financial Committee to determine whether the level of achievement of the milestones and targets is satisfactory.

In exceptional circumstances, if one or more Member States believe that another is seriously deviating from the essential milestones and targets, they may ask the President of the European Council to bring the matter to the European Council's attention at its next meeting. The financial aid to the Member State could be fully or partly suspended if non-compliance is determined.[1]

The Commission has until 31 July 2022 to submit a report on the RFF's implementation to the European Parliament and the Council.



3. EU law aspects

The preparation and implementation of the national plans entails analysing various EU law aspects in relation to individual investments, which relate to Member States and companies benefiting from the investments. The Commission's approval does not certify compliance of individual investments with EU law but rather only compliance with the RFF criteria.

We thus recommend that the applicant companies ensure:

- compliance with the requirements under the regulation that establishes the RFF and under the other legal instruments that will be adopted (including soft law instruments) and with the national plan approved by the Commission;

- evidence is kept that the intermediate milestones and targets of the individual investments have been achieved on time – this to be able to obtain the funds from the Commission;

[1] A suspension proposal from the Commission is considered adopted by the Council if the Council does not reject it by a qualified majority through an implementing act within a month from submission.

- documentation is kept that proves that the funds received were correctly used – this because audits by the Commission are very likely;

- compliance with EU law on state aid – which fully applies, as clarified by the regulation that establishes the RFF;[2] and

- compliance with other EU rules and regulations, e.g., those on antitrust, merger controls and the internal market (especially public procurement), and, more generally, industry regulations.

[2] The Commission released 11 templates, each reflecting a type of investment funded, to instruct Member States and companies on the main potential solutions to ensure compliance with state aid law.