



REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF AUDITORS' SPECIAL REPORT

ECA Special Report 'Design of the Commission's
control system for the RRF'

'Assurance and accountability gap remains at EU level in the
new delivery model, despite extensive work being planned'

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This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the [Financial Regulation](#) and to be published together with the Special Report.

I. THE COMMISSION REPLIES IN BRIEF

The Commission welcomes this Special Report by the European Court of Auditors (ECA).

The Recovery and Resilience Facility (RRF) is a key part of the European Commission's strategy to tackle the impact of the coronavirus pandemic and make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions. Under the RRF, the Commission can provide €723.8 billion (in current prices), available in loans (€385.8 billion) or grants (€338 billion), to help Member States implement reforms and investments in line with the EU's priorities. Naturally, with such sums at stake, the Commission has worked hard to design an optimal system of control for RRF spending in the Member States.

The Commission's monitoring and control systems for the RRF reflect the nature of the RRF as a new kind of instrument: the RRF is fully performance based and, in accordance with the RRF Regulation, the only beneficiaries of the RRF are the Member States. The Member States commit to implement a set of measures, with specific milestones and targets which they must achieve to unlock a disbursement from the Commission. Disbursements by the Commission enter the national budgets and accounts. While the cost to implement a measure was estimated and assessed at the beginning of the process, unlike for other programmes, the actual costs incurred by a Member State do not influence the disbursement received by the Member State from the Commission.

The RRF's design provides a unique mechanism to complete reforms, many of which the Council has long recommended the individual Member States to implement. As the RRF is not concerned with actual costs, the Member State must satisfactorily fulfil the relevant milestones and targets of both investments and reforms in order to receive the full funding available.

The RRF is an ambitious and fully novel instrument. We welcome the fact that the ECA recognizes the Commission's achievement in designing, in a relatively short time, a control system that provides for an extensive process for verifying the fulfilment of milestones and targets. The timeline for the RRF as a response to the Covid-19 pandemic was indeed ambitious. The first pre-financing was paid in August 2021, merely six months following the entry into force of the RRF Regulation, and the first payment based on milestones and targets followed in December 2022. Given its nature and size, the Commission had to develop completely new services and units, establish new working arrangements and procedures whilst at the same time making sure that Member States put forward and deliver on ambitious investments and reforms.

To avoid the launch of the RRF being held back whilst work on creating a control system was completed, the design and implementation of elements of the Commission's control system were rolled out in line with needs. Priority needs based elements of the system were introduced straightaway, while other elements were developed over time. For instance, the Commission focused first on establishing thorough processes for the assessment of Plans and, as a second step, thorough processes for the assessment of payment requests. In parallel, audit methodologies were established and a dedicated audit unit was set up and audit staff trained.

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 recovery and resilience plans. 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 Commission will learn from the report and take its insights and recommendations into account to further improve its control systems.

The Commission notes that the report is based on the design of the control system as of April 2022. As the audit was carried out during the early phase of RRF implementation, the Commission has since then developed its control system further, including through implementation of previous ECA recommendations.

II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA

1. Protecting the financial interests of the Union

The Commission would like to recall that the RRF is a performance-based instrument and that the RRF Regulation Article 22(1) explicitly provides that Member States bear primary responsibility for ensuring the protection of the financial interests of the Union (PFIU). This Member State responsibility is fully in line with the RRF control framework arrangements, given the RRF as a programme in which the Commission neither directly implements measures, nor makes payments based on reporting of actual costs. Rather, under the RRF, the Commission receives extensive documentation for, and assesses, the fulfilment of milestones and targets.

Nonetheless, the Commission accepts a residual responsibility, i.e. the Commission deems necessary to ensure that Member States do indeed put in place suitable control systems that adequately protect the financial interests of the Union and in particular prevent, detect and correct corruption, fraud, conflict of interest and double funding. Member States' control systems are assessed ex ante by the Commission in the context of assessing Member States' recovery and resilience plans. Where necessary the Commission agreed specific control milestones with the Member State which they must fulfil for the first payment request. In addition, the Commission audits the control systems' implementation; 16 such system audits have already been undertaken in 2022. The Commission agrees with the Court that a proper PFIU by Member States is of utmost importance, and in this context it stands ready to intensify its audit work beyond the objectives stated in its audit plan if deemed necessary.

The RRF Regulation also provides the Commission a possibility for financial corrections in case of a serious breach of obligations of the RRF Financing Agreement or Loan Agreement. The RRF Regulation also explicitly requires that Member States ensure respect for all national and EU laws for each specific investment. While the Regulation does not make it an obligation for the Commission to check the respect of such rules at the time it assesses milestones and targets, the Commission nonetheless undertakes such checks at the system level. The Commission audits the adequacy of the Member States' control systems from the PFIU angle, i.e. the Commission 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. The Commission's risk assessment methodology, which drives its own audit work concerning the RRF measures in the

Member States, considers public procurement as one of the criteria to determine the level of risk and on this basis the scope of audits. In addition, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) exert their competencies, where applicable, in protecting RRF amounts.

Concerning the assessment of Member State control systems as set out in the RRFs, the ECA recalls findings of the special report 21/2022. In its replies to that report, the Commission reminded that the remaining critical points relate to features of the instrument. The RRF Regulation prescribes an ex-ante assessment of the control systems, which the Commission has undertaken. The Commission has in addition put in place several mechanisms to follow up and ensure systems are in place, notably dedicated control milestones, where necessary, as well as Commission audits of the national systems.

2. Verifying the satisfactory fulfilment of milestones and targets

The Commission welcomes the overall positive observations made in the report on the Commission's controls for the verification of satisfactory fulfilment of milestones and targets. The ECA highlights the extensive work of the Commission, which draws on expertise from across the Commission.

The Commission fully supports internal exchanges and interactions between the staff working in different services. The Commission has established a process whereby the lead services DG ECFIN and SG-RECOVER work together with other services to ensure that the final Commission assessment of fulfilment of a milestone or target takes into account the available information and expertise. In addition to the informal cooperation, two formal inter-service consultations on the assessment of each payment request (one on the preliminary assessment and one on the Commission decision) take place, which allow all DGs within the Commission to provide comments.

The ECA considers nonetheless that *'documentation of technical consultations did not always provide a clear understanding of the elements/aspects of the milestone or target on which the DGs consulted had expressed their views'*.¹ The Commission recalls that it is a single institution and all final decisions on RRF payment requests are taken by the College of Commissioners. It therefore does not accept that it ought to formalise staff-level consultations. The Commission does not consider it feasible or beneficial to narrowly limit and define on which elements of an assessment internal experts of different Commission services may express their views, nor deems it possible to keep a detailed record that would allow to clearly trace internal exchanges between experts working in different Commission services or on which precise elements internal experts expressed opinion or views. This is both practically impossible and would severely limit the possibility for collaboration and the exchange of expertise and views. The Commission maintains a record of the key contributions to each assessment and, in addition, undertakes two inter service consultations, one for the preliminary assessment and one for the disbursement decision, which provide a record that the relevant services have been consulted and that they do agree with the assessment led by DG ECFIN and SG-RECOVER.

On the relevance of the description of individual measures for the assessment of a milestone or target, the ECA recalls findings of its 2021 annual report. In its reply to the annual report, the Commission acknowledges that its internal guidelines on the assessment of milestones and targets could be strengthened and has, several months before the finalisation and publication of the 2021 annual report, improved its internal guidelines for preparing these preliminary assessments.

¹ See ECA observation 51

Notably the preliminary assessments published by the Commission are now more detailed and specify, where relevant, which elements of the description of the measure were considered as relevant for the milestone assessment and accordingly were assessed.

3. Commission controls

The Commission notes that² the ECA draws conclusions from expenditure-based programmes to identify risks in a performance-based programme, notably concerning the compliance with EU and national rules.

The ECA recognises that the Commission has an audit strategy which includes system audits on the protection of the financial interests of the Union (PFIU). However, the Commission underlines that its system audits include checks that the Member States' systems generally provide for and check compliance with EU and national rules, in particular those relevant for the protection of the financial interest of the Union. The Commission has undertaken 16 system audits on PFIU in 2022, covering 16 coordinating bodies and 48 implementing bodies

In addition, the Commission relies not only on the results of audit work by national authorities as described in the 'summary of audits' which Member States submit for each payment request, but also on its regular exchanges with national audit authorities (bilateral meetings were organised with all national audit authorities between the end of 2021 and 2022) and assesses Member States' national audit strategies, and actively provides feedback to the Member States to help improve the quality and coverage of their audit work. The Commission also reviews national auditors' work before drawing any assurance from it.

III. COMMISSION REPLIES TO THE RECOMMENDATIONS OF THE ECA

1. Recommendation 1 – Improving procedures for ex ante verifications

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.

Target implementation date: as of 2023

The Commission **does not accept** this recommendation.

As outlined by ECA in the report and explained in the Commission replies above, the Commission has developed detailed procedures and 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

² Special Report, paragraph 34

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 formalization 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.

2. Recommendation 2 – Drawing up guidance on the reversal of a measure related to a previously fulfilled milestone or target

The Commission should develop guidance and procedures that address the reversal of a measure related to a previously fulfilled milestone and target to ensure consistent interpretation and implementation of it.

Target implementation date: as of 2023

The Commission **accepts** this recommendation and will develop internal guidance and procedures to this effect.

3. Recommendation 3 – Addressing the EU-level assurance gap on compliance with EU and national rules.

The Commission should identify the measures required to address the assurance gap at EU level regarding RRF funded investment projects' compliance with EU and national rules.

Target implementation date: as of 2023

The Commission **partially accepts** this recommendation.

The Commission does not share the conclusion that there is an assurance gap at EU level in the Commission's control work with respect to Member States' compliance with EU and national rules. The Commission underlines that the RRF is a direct management instrument whereby the Commission makes payment to the Member States based on the fulfilment of milestones and targets. The RRF Regulation clearly places the principal responsibility to ensure respect for national and EU law on the Member States.

In addition, in the context of its system audits, the Commission 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. The Commission has already conducted 16 system audits covering 64 national authorities and has checked in that context whether Member States regularly check that the financing provided has been properly used in accordance with all applicable rules, including compliance with EU and national rules particularly relevant for the protection of the financial interest of the Union. The Commission will continue to carry out these system audits and will emphasize more clearly the scope of the audit work related to checking these procedures.

The Commission **accepts** however, and in any case intends to, continue to undertake audits and obtain reasonable assurance on the systems which the Member States implement to ensure such compliance. The Commission stands ready to intensify its audit work on Member States systems beyond the objectives stated in its current audit plan if necessary and feasible.

4. Recommendation 4 – Aligning reporting on RRF-related fraud

Target implementation date: as of 2023

The Commission should align RRF related fraud reporting and record RRF related cases of fraud and other illegal activities in the Irregularity Management System;

The Commission **partially accepts** this recommendation.

Under Article 22 of the RRF Regulation, Member States are required to submit a management declaration and summary of audits, the former of which includes reporting on detected irregularities, but the Commission has currently no legal instrument to oblige Member States to align this reporting. On this basis, the Commission would not be able to implement the recommendation in full. However, in upcoming reviews of relevant EU legislation, the Commission will consider this issue.

In the meantime, the Commission accepts to remind and encourage the Member States to make use of the Irregularity Management System (IMS) for recording such irregularities, in addition to their legal obligation to report in the management declaration. To this end, the Commission has already adapted IMS so that the system can be used for the RRF by the competent national authorities for such purposes. But, unless all Member States systematically use IMS, the Commission would be reluctant to publish partial data in its annual PIF report.

5. Recommendation 5 – Developing internal guidance on corrections

Target implementation date: as of 2023

The Commission should develop internal guidance on the application of the flat rate corrections laid down in the financing agreements in respect of weaknesses in Member States' control systems for protecting the financial interests of the Union

The Commission **does not accept** this recommendation.

The RRF Regulation provides for corrections without specifying any levels, criteria or conditions. The Financing Agreement signed between the Commission and each Member State provides for the possibility of flat rate corrections of 5%, 10%, 25% and 100% of funds. These reduction rates are defined alongside a definition of the gravity of a deficiency that would lead to such a correction. By introducing these provisions in the Financing Agreements, the Commission has already provided the criteria that it will apply in case such a deficiency is detected. In every case this provision is used, the Commission will justify and spell out why a correction has been applied, including an explanation how the level of gravity of this deficiency has been determined.