European Commission

REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF AUDITORS' SPECIAL REPORT

Double funding from the EU budget

Control systems lack essential elements to mitigate the increased risk resulting from the RRF model of financing not linked to costs.

Contents

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 prohibition of double funding by EU funds is a long-standing concept in the legal frameworks governing EU funds. Both the Financial Regulation[1] and the Regulation establishing the Recovery and Resilience Facility (RRF)[2] allow for complementarity of EU funds as long as they do not cover the same cost, clearly applying a cost-based approach to the concept of double funding. More precisely, in the context of the RRF, double funding can occur if an EU instrument other than the RRF supports the same cost, as estimated by Member States upon submission of their Recovery and Resilience Plans (RRPs), or if a final recipient receives funding from different EU instruments to cover the same incurred cost.

The Commission applies the definition of double funding set out in the legal framework. The Commission considers that the statement: "*double funding can occur when the same underlying costs of an action are financed twice and/or when the same outputs/results are declared, and thus funded twice*."[3] has no legal ground in the RRF Regulation. The Commission recalls that not all measures included in the Recovery and Resilience Plans have estimated costs and that according to the RRF Regulation double funding only occurs if the same costs are funded twice.[4]

In addition, regarding the inclusion of zero-cost measures in the Regulation the ECA affirms that "the *RRF Regulation does not explicitly provide for zero cost measures*"[5] and criticises the Commission for not performing checks on the absence of double funding for this type of measures.[6] The Commission does not agree with these observations. Firstly, the Commission recalls that **the inclusion of reforms – which often do not entail cost – in the RRPs is clearly envisaged by the RRF Regulation and even required for the positive assessment of RRPs**. During the inception phase of the RRF, the Commission further clarified to Member States that "when reforms are needed to address the national challenges or where they are necessary for the implementation of the investments, they should be included, even if they do not imply additional costs to be taken into account for the cost estimate."[7] Secondly, in the Commission's view, **by definition, there cannot be double funding for zero-cost measures since no RRF funding has been provided for these measures**, and, as such, the RRF could not have covered the same cost as other EU funds. In the Commission's view, the inclusion of measures with no estimated costs (mainly reforms) in the RRPs, which hence entail no additional financial allocation under the RRP national envelope, shows the very strong added value of the RRF that supports long-standing structural reforms across EU countries. Finally, imposing additional checks for zero-cost measures would lead to additional bureaucracy for an unclear benefit.

The Commission cannot share the view from ECA that "*the use of funding instruments based on financing not linked to costs leads to a higher risk of double funding*".[8] The Commission considers

[1] Financial Regulation, article 191.
[2] RRF Regulation, article 9.
[3] See ECA observation 13.
[4] See ECA observation 14. The Commission also notes that the example on the windmills presented by the ECA would be a clear case of double funding for the Commission, and that Member States are not allowed to finance the same costs with two different EU funds.
[5] See sub-heading of ECA observation 32.
[6] See ECA observation 46.
[7] SWD(2021) 12 final, Part 1 - page 14.
[8] See ECA observation in the Executive summary, §III.

that the ECA's perspective on zero-cost measures is not aligned with the letter and spirit of the RRF Regulation, including the policy objective of combining investments with reforms.

While linking the disbursements to performance, **the RRF Regulation provides that the primary responsibility to prevent, detect and correct double funding lies with the Member States**.[9] Where double funding is identified but not corrected by the Member State through a recovery of funds from the final recipient, the Commission can recover RRF funds directly from the Member State. To support National authorities in exercising their responsibility, the Commission has provided relevant guidance and tools since the early stages of the RRF to help Member States prevent and detect double funding (for instance, through the data mining and risk scoring tool "Arachne", bi-lateral and technical meetings, capacity building actions etc.).

Systematic checks of double funding are an integral part of the Commission's control and audit strategies since the beginning of the implementation of the RRF. Before approving any RRP, the Commission assesses the absence of double funding for all RRF measures as well as the control arrangements put in place by Member States.[10] On this basis and where relevant, the Commission and the Member States agree specific audit and control milestones to address weaknesses in the national systems (there are in total 14 audit and control milestones related to the double funding). Compliance with these audit and control milestones is a prerequisite to unlock disbursements. In addition, upon receipt of a payment request, the Commission verifies the consistency of management declarations and summaries of audits submitted by Member States which includes the results of checks carried out by National authorities to avoid double funding. This assessment is complemented during the implementation of RRPs by system and ex-post audits, including on double funding.

In sum**, the Commission monitors possible double funding from the early phase of RRP design and throughout their implementation**. This is why the Commission considers that its audits cover the risk of double funding comprehensively and not "*to some extent*"[11] or "*only if member states flag potential issues in their management declarations or audit summaries or if its own previous assessments and audits revealed potential issues of double funding affecting the fulfilment of milestones and targets.*"[12]

The Commission notes that **the ECA did not detect any case of double funding in the context of this performance audit**. Moreover, in its annual report for the financial year 2023, the ECA has not identified any case of double funding under the RRF, while in its 2022 annual report, the ECA identified only one case of double funding – a finding the Commission does not agree with as the measure at stake is fully funded without any RRF contribution (a so-called "zero cost measure").

The Commission considers that the ECA's conclusion that "*limited number of cases identified so far may indicate that the tools available are not sufficiently effective to detect double funding*" is not accurate.[13]**As also noted by the ECA, the Commission has found two cases of possible double funding.** The Commission will continue to audit such issues in the future and remains vigilant to ensure that such risks are adequately addressed by Member States.

Finally, the report acknowledges that the way the financing not linked to costs ("FNLTC) model is implemented under Cohesion Policy differs from the one under the RRF.[14] Indeed, no FNLTC

[9] RRF Regulation, article 22.
[10] RRF Regulation, article 19(3)(j).
[11] See sub-heading ECA observations 88 - 91.
[12] See ECA observation 87.
[13] See ECA observation 92.
[14] See ECA observation 8, footnote 7.

operations under Cohesion Policy for the 2021-2027 period could have been included in the sample of this audit.

II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA

1. Definition of double funding under the RRF

To ensure an efficient and complementary implementation of Union funds, **the RRF Regulation specifically foresees that "reforms and investment projects may receive support from other Union programmes and instruments *provided that such support does not cover the same cost.*"**[15] The Commission takes this provision into account at all stages during the implementation of the RRF. The provision mirrors the Financial Regulation, which stipulates that "in no circumstances shall the *same costs* be financed twice by the budget".[16]

In the RRF context, as clarified in the technical guidance on Double Funding provided by the Commission to Member States in September 2022, **double funding can occur: 1) at Member State level**, based on the estimated cost of measures included in the Recovery and Resilience Plans; **and 2) at final recipient level**, based on incurred costs. In both cases, costs should not be financed from other EU funds, mirroring the rule that applies for grants under Article 191 of the Financial Regulation.

In light of the above, the Commission considers that the RRF Regulation does specify the concept of double funding under the performance spending model of the RRF[17] and that there is no misalignment between the provisions on double funding in the Financial Regulation, the RRF Regulation and the Commission guidance[18]. **The Financial Regulation, the RRF Regulation as well as the Commission guidance, all define double funding as the funding of the same costs by different EU funds.** With its technical guidance shared with Member States in September 2022 and complemented in July 2024, the Commission has explained the application of the cost-based concept of double funding into the performance-based implementation logic of the RRF. Measures that are fully funded from the RRF cannot be funded by any other EU fund. Measures that are only partially funded from the RRF should clearly delineate between those parts of the measures that are funded from the RRF and those that are funded from other EU funds. A pro-rata split of the measure where both funds finance a share of the cost can be applied under a set of specific conditions where the clear cost delineation is not feasible or excessively burdensome. This approach ensures that the output/result measured under, and funded from, the RRF is aligned with the cost estimated ex-ante and that no cost is covered twice.

The Commission considers that the ECA's perspective on zero-cost measures is not aligned with the letter and spirit of the RRF Regulation, including the policy objective of combining investments with reforms. According to the ECA, "*the RRF Regulation does not explicitly provide for zero cost measures*".[19] However, the Commission considers that it is a direct consequence of the combination of investments with reforms, which is one of the main objectives of the RRF Regulation.

[15] RRF Regulation, article 9.
[16] Financial Regulation, Article 191(3)
[17] See ECA observation 28.
[18] See ECA observation 29.
[19] See ECA observation 32 and the preceding title.

The ECA also references a finding of the ECA's Annual Report 2022, on what the ECA considered a double funding case related to a zero-cost measure.[20] The Commission does not share this legal interpretation, and has expressed its disagreement with it in its replies to the ECA Annual Report 2022.[21] The Commission recalls that the RRF Regulation requires Member States to include *both* reforms and investments in their RRPs. [22]

The inclusion of reforms, which mostly entail no cost, in RRPs is an essential condition for a positive assessment of the RRPs by the Commission and hence explicitly foreseen and even required by the RRF Regulation. Indeed, to be approved, the measures proposed in the RRPs must address all or a significant subset of Country Specific Recommendations, and this requirement can be met mostly by reforms. Various RRF recitals list possible reform measures which are unlikely to have any direct costs, such as reforms to promote open-source software, strengthen social dialogue, or minimise administrative burden, thereby making it clear that the co-legislators expected and even required zero-cost measures to be included in RRPs. In many cases, since there are no costs related to the implementation of these reforms, the Member State declares "zero costs" in the 'cost estimate' submitted during the preparation of the RRP.

Likewise, RRPs can include investments that are entirely funded by non-RRF funds as long as the Member State indicates that the investment is fully funded without any RRF contribution, i.e. declares zero cost under the RRF. Such an approach is fully in line with the RRF Regulation that provides "*Reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost.*"[23] Member States have in a few instances chosen to include such measures where, for example, an investment is linked to other measures contained in the RRP.

Therefore, the fact that a RRP may include targets or milestones linked to 'zero-cost' measures does not mean that the RRF covers costs related to these measures. By definition, if a Member State indicated in its cost estimate that a specific reform or investment would be fully funded without any RRF contribution, there cannot be any double funding, since the RRF has not covered any costs, even if another fund finances its implementation in part or in full.

The RRF only "funds" the measures for which an estimated cost has been included by the Member State, and for which such cost has therefore been taken into account to determine the financial allocation provided by the RRF to that Member State. The Commission considers that any other interpretation would directly contradict Article 9 of the RRF Regulation and prevent any complementarity between RRF funding and other EU funds.

The ECA also states that "*the risk of double funding is actually higher for zero cost measures than for measures with estimated costs*"[24], as neither the Commission nor the Member States carry out double funding checks on such measures, and the same outputs/results could be funded twice by different EU funds. Given that there is by definition no possibility of double funding for these measure, the Commission considers that there is indeed no need to check for it.

[20] See ECA observation 35.

[21] Commission replies to the ECA's Annual Report 2022, notably pages 449, 452-454, and 459: https://www.eca.europa.eu/ECAPublications/AR-2022/AR-2022_EN.pdf

[22] RRF Regulation, article 17(1).

[23] RRF Regulation, article 9

[24] See ECA observation 35.

2. Commission's guidance and actions to prevent and detect double funding

Under the RRF, the responsibility to prevent, detect and correct double funding lies primarily with the Member States.[25] Therefore, the ECA's statement that "*both the Commission and member states are responsible*"[26] should be read in line with the specific provisions of the RRF Regulation. The Commission has further clarified the provisions on double funding enshrined in the RRF Regulation since the early design phase of RRPs through written guidance in February 2021.[27] In addition, Commission's services issued specific technical guidance on double funding to Member States in September 2022 and, in October 2022, followed up with an additional guidance note to clarify how Member States should report on funding from other Union programmes in the framework of the bi-annual reporting.[28] Finally, further guidance on double funding was issued in July 2024.[29]

Against this background, **the Commission does not consider that the guidance on double funding was late and incomplete**,[30] The Commission draws the attention of the ECA to the fact that continuous and comprehensive support and guidance was provided to Member States since the inception of the RRF. It is also important to recall that on top of the written guidance issued by the Commission, the Commission services have engaged in a constant dialogue with Member States, including through meetings of an informal Expert Group and a Q&A platform. Whenever necessary, the Commission provided further guidance bilaterally to ensure a common understanding, address Member State-specific issues and foster consistent implementation across Member States. While the ECA considers bilateral technical clarifications as a "*risk of Member States not receiving the same information*",[31] the Commission is of the view that such bilateral exchanges, in addition to horizontal guidance, are instrumental in ensuring a common understanding of the guidance given the very country-specific nature of the RRPs and an essential element to ensure the protection of the financial interest of the Union.

In the context of the assessment of the RRPs, the Commission analysed the information and evidence submitted by the Member States, and checked whether there was sufficient evidence to fulfil the additionality criterion.[32] The adequacy of the assessment of the RRPs done by the Commission was recognised by the ECA in its special report SR 21/2022.[33] The absence of double funding for zero-cost measures is not being checked, since by definition there is no RRF financing that could be "additional" to other EU funds (see explanations above). Therefore, the Commission does not share the ECA's observation that, by not covering measures with zero estimated cost, its assessment would increase the risk of double funding.[34]

The ECA notes that the Commission's assessment of control systems did not explicitly cover access rights for the multiple administrations involved.[35] The Commission recalls that during the assessment

[25] RRF Regulation, Article 22.

[26] See ECA observation 36. Furthermore, the Commission notes that the legal references mentioned in paragraphs 6 and 7 are not explicitly linked to double funding.

[27] Commission Staff Working Document "Guidance To Member States Recovery And Resilience Plans", SWD(2021) 12 final, Part 1/2

[28] FENIX manual.

[29] See https://commission.europa.eu/publications/updated-guidance-recovery-and-resilience-plans_en

[30] See ECA sub-heading of observation 37 and ECA observation 40.

[31] See ECA observation 41.

[32] See ECA observation 45.

[33] ECA Special Report 21/2022 on *the Commission's assessment of national recovery and resilience plans* https://www.eca.europa.eu/Lists/ECADocuments/SR22_21/SR_NRRPs_EN.pdf, ECA's observation 118.

[34] See ECA observation 46.

[35] See ECA observation 51.

of the RRPs it checked the arrangements to avoid double funding, including databases and the IT systems put in place by Member States, and, as a result of such checks, **in some cases included specific audit and control milestones** relevant for this issue, where the control systems had weaknesses that could be remedied by an audit and control milestone, [36] for example, to ensure the effective collection and storage of data required by Article 22(2)(d) of the RRF Regulation. The Commission also recalls that non-compliance with these milestones would block all future payments. Further milestones to improve the cross-checks of information between different databases and interoperability amongst IT tools can also be included, whenever needed. This was the case for the initial Belgian plan, and for the revised RRPs of Austria, Finland and Portugal. Also, two Member States (Hungary and Poland) have included audit and control milestones regarding the use of ARACHNE.[37]

3. Member States control systems to avoid double funding

The RRF Regulation assigns the primary responsibility to prevent, detect and correct double funding at national level to the Member States. If double funding is identified but not corrected by a Member State, the Commission can in turn recover RRF funds from that Member State, in accordance with the rules included in the financing and loan agreements on the basis of Article 22(5) of the RRF Regulation, or the other Union programme's resources under the sector-specific rules.

The ECA finds that "*Member States encountered difficulties whenever they used numerous local IT systems to implement their RRPs*."[38]

To support national authorities in their controls and audits, including to detect double funding, the Commission developed and provided Member States with ARACHNE, a data mining and risk scoring tool, free of charge. Initially created for cohesion policy, it was subsequently extended to the RRF and is used by most Member States on a voluntary basis. The Commission encouraged Member States authorities to upload in ARACHNE information on projects implemented through shared management and under the RRF despite the fact that neither the Financial Regulation, nor the RRF Regulation provided for its obligatory use.[39] However, this will change with the recast of the Financial Regulation under adoption, which provides for the compulsory feeding of data by Member States, for all management modes and for all EU funds as from 2028.

National audit authorities perform audits of operations financed by Cohesion policy funds and of RRPs' milestones and targets, as well as system audits to provide assurance to the Commission on the absence of double funding. The ECA states that "*none of the Member States covered by this audit modified their approach to auditing double funding at final recipient level with the introduction of the RRF*".[40] However, the Commission does not see why Member States should have distinguished their approach between EU funding sources or target specific EU funding programmes. The scope of audit checks for double funding at the recipient level covers all public funding received by the beneficiary to determine if the same costs were reimbursed more than once. Furthermore, the ECA considers that "*by the end of June 2024, none of the member states in our sample had identified any cases of double funding*".[41] Meanwhile, the Commission informed the ECA that the Greek audit authority has declared a double funding case in July 2024, which is being followed up at national level for recovery.

[36] AT, BE, BG, HR, CY, CZ, DK, FI, EE, FR, EL, HU, IE, IT, LT, LU, NL, PL, PT, RO, SK, SI, SE, ES.
[37] See ECA observation 52.
[38] See ECA observation 70.
[39] See ECA observations 72 - 75.
[40] See ECA observation 79.
[41] See ECA observation 80.

Finally, the Commission acknowledges the ECA's observations regarding the possible divergences in the cohesion project data between Arachne and Kohesio This is normal since Arachne and Kohesio serve different but complementary purposes. Kohesio,[42] with a legal mandate (Article 115 of the Common Provisions Regulation), ensures public access to comprehensive information on all cohesion projects to promote transparency, mainly for communication purposes rather than for audit or control purposes. Moreover, Kohesio can provide useful information to the general public as well as to managers and controllers on funding received by beneficiaries. Arachne, on the other hand, has been developed as a risk assessment tool to help managing authorities in identifying and mitigating risks. Currently, the use of Arachne is voluntary, which accounts for the differing number of projects reported in comparison to Kohesio, with some Member States opting not to use it. The Commission is actively working to increase the adoption of the tool among Member States and has proposed targeted amendments to the Financial Regulation to make the use of a data-mining tool compulsory. It is important to highlight that the recent recast of the Financial Regulation (FR) has introduced a requirement for mandatory data provision in Arachne in the post-2027 Multiannual Financial Framework (MFF). This will significantly enhance the tool's coverage and data reliability. Such a change will not only improve the consistency of project data across EU databases but will also better serve our collective goal of safeguarding the integrity and efficiency of EU funding.

4. Commission assurance system on double funding

The ECA explains that "*the assurance the Commission is able to provide on the absence of double funding for the different funding instruments covered by this audit is limited*" and that "*the Commission is not sufficiently transparent about this and, for example, does not issue a reputational reservation qualifying the assurance it provides on the absence of double funding* ".[43] Similarly, the ECA affirms that the Commission audits "*focus on the design and set up of Member States control systems for double funding*".[44]

The Commission does not share the above positions from the ECA since it bases its assurance on the absence of double funding on three levels.

First, in line with the RRF Regulation, as part of the assessment of each RRP the Commission assessed the additionality of all RRF measures and examined that suitable systems (including IT systems) were in place to avoid double funding at EU level. Where weaknesses were detected, specific audit and control milestones were added to RRPs, which had to be fulfilled before the first payment. Upon the revision of RRPs the Commission considered whether the arrangements for the audit and control system were (still) adequate and in case deficiencies were detected, specific milestones were added to improve the implementation of controls on double funding that must be fulfilled before a payment can take place**.**

Second, Member States are obliged to sign a Management Declaration when submitting a request for payment to the Commission and confirm the absence of double funding. The Commission thoroughly analyses the management declarations and summaries of audits accompanying each payment request. This verification covers also individual audit reports done at national level as well as possible follow-up questions. Most importantly, any issue that affects the fulfilment of milestones and targets may lead to a negative assessment of the satisfactory fulfillment of the milestone or target and to the suspension of funds. This includes cases where the reporting on measures funded by the RRF reveals that the same items are being funded by other EU

[42] https://kohesio.ec.europa.eu/en
[43] See ECA observation 98.
[44] See ECA observation 96.

funds. For these reasons, the Commission does not agree with the ECA's view that its verifications before payment do not target double funding for cohesion or the RRF. [45]

Third, the Commission also assesses and checks the reliability and robustness of the national control systems and includes targeted checks on double funding as part of its ex-post audits, of its compliance audits on national audit authorities and of its system audits on the protection of the financial interests of the Union. In this context, the Commission requests information on final recipients and cross-checks this data with other information on projects under Cohesion as well as databases covering direct expenditure incurred by the Commission. In case deficiencies are detected during the audits, the Commission issues recommendations to the Member States and monitors their implementation. This is further supported by the Commission through the set-up of the FENIX platform, where Member States indicate as part of the bi-annual reporting[46] any previously unreported funding from other Union programmes received by an investment or reform supported under the RRP. This data is continuously monitored by the Commission throughout the implementation of RRPs.

For Cohesion policy funds, based on the conclusions from audit authorities' system audit reports and from its own audits, the Commission obtains assurance in a continuous way on the functioning of the management and control systems for each programme including on the effectiveness of management verifications on all legality and regularity aspects, that also cover double funding. Double funding is also covered as part of audits of yearly representative (statistical) samples of operations by programme authorities. The level of assurance for each management and control system is checked before the Commission makes any payment to the Member State and payments are interrupted or suspended if necessary for example in case of serious deficiencies identified in the functioning of management verifications to protect the EU budget.

As for the Connecting Europe Facility (CEF), risks of double funding are identified at selection stage based on declarations made by applicants, and further addressed during the preparation of grant agreements. At payment and reporting stage, the Commission systematically checks the declarations of the beneficiary on the use of other EU funds for the project. At a later stage, ex-post audits and checks are performed by auditors on-the-spot to verify any risks of double funding and how the double funding risk is avoided by the beneficiary, and finally additional checks are carried out in case of doubts.

Hence, the Commission considers that its control system, which includes systematic check of double funding at various level, is fully appropriate and considers that the view that the *Commission audits cover risk of double funding to some extent*[47] does not reflect nor take into account the extensive controls undertaken by the Commission.

The ECA suggests that the "*limited number of cases identified so far may indicate that the tools available are not sufficiently effective to detect double funding*".[48]So far, the Commission's control and audits identified two cases of risks of double funding between the RRF and cohesion policy programmes and between the RRF and the Digital Europe Programme, respectively. These findings are currently under a contradictory procedure with the Member State concerned. This demonstrates **the effectiveness of the preventive work carried out by the Commission in identifying risk of double funding where it may materialise**.

[45] See ECA observation 85 – 87.
[46] RRF Regulation, article 27
[47] See sub-heading of ECA observations. 88- 91
[48] See ECA observation 92.

Finally, the Commission considers the ECA statement that "*the Commission bases its assurance on the absence of double funding on limited evidence*"[49] does not take into account the fact that double funding is fully assessed as part of the Commission's control framework on RRF as explained in the Annual Activity Report 2023. **The alleged accountability gap was already addressed in the updated Audit strategy for RRF and also in the Annual Activity Report 2023**. In addition, cross checks with databases when verifying double funding are carried out as part of ex-post audits on milestones and targets. This type of audits is currently the most frequent, contradicting the ECA's view that the assurance on the absence of double funding is limited. Therefore, in the opinion of the Commission, there was no reason to issue reputational reservation in the Annual Activity Report 2023.[50]

III. COMMISSION REPLIES TO THE RECOMMENDATIONS OF THE ECA

Recommendation 1 – Adjust the definition of double funding to the specificities of the financing not linked to costs model

The Commission should clarify the definition of double funding, to account for both the costs and the performance dimension when EU funding programmes or instruments release funds through FNLTC delivery models:

(a) in guidance;

(b) in its next proposal for the revision of the Financial Regulation.

Target implementation date: (a) by the end of 2024, (b) when proposing the next revision of the Financial Regulation

The Commission **does not accept** Recommendation 1(a).

The Financial Regulation stipulates that the same costs must not be financed twice by the EU budget.[51] In line with this definition of double funding, the RRF Regulation explicitly allows for complementarity between EU funds, provided that support from different EU funds does not cover the same costs.[52] The Commission therefore does not see room for adjusting the definition of double funding.

Yet, in the context of the RRF, the Commission has explained the implications of the performance-based nature of the instrument for the concept of double funding in the technical guidance on Double Funding provided to Member States in September 2022 and complemented in July 2024. These followed initial guidance provided as of the design phase of RRPs in 2021.[53] The Commission considers that guidance provides clear explanations regarding the application of the concept of double funding in the context of the RRF and other EU instruments, including Cohesion Policy funding.

[49] See sub-heading of ECA's observation 94-98.
[50] See ECA observation 98.

[51] Financial Regulation, article 191.
[52] RRF Regulation, article 9.
[53] See section 2 above.

The Commission **does not accept** Recommendation 1(b).

The current definition of double funding in Article 191 of the Financial Regulation is relevant only to grants implemented under direct management, and the Commission does not view the issues identified in this special report as necessitating any change to the current definition in Article 191, which the Commission considers as adequate and appropriate for the purpose of the Article.

The potential need for any change to the definition in Article 191 in the future would be dependent on a number of variable factors, in particular the design of future EU programmes. However, at this stage the Commission cannot prejudge the design of future EU programmes or instruments, nor take specific commitment in relation to future legislative proposals as it cannot prejudge the right of initiative of the next College of the Commission and the position of the co-legislators.

Recommendation 2 – Strengthen the controls on zero-cost measures

The Commission should:

(a) Treat measures considered zero-cost like any other measures in terms of demarcation and controls, especially when they can involve investment costs;

(b) For future EU programmes or instruments based on FNLTC, no longer accept zero-cost measures where investments or direct costs are involved. For reforms not involving investments or direct costs, consider other alternatives, such as enabling conditions, taking into account the increased risk of double funding for zero-cost measures.

Target implementation date: (a) by the end of 2024 for the RRF; (b) if programming and implementing future EU programmes or instruments based on FNLTC.

The Commission **does not accept** Recommendation 2(a).

The RRF Regulation provides that Union support for a single measure can come from multiple instruments, provided that they do not cover the same costs. In line with this provision, the Commission is of the firm view that if a Member State indicates ex-ante that no RRF funds will be used to implement a measure (and the measure is therefore not “costed” under the RRP, i.e. it is a zero-cost measure), by definition, double funding cannot occur. This is independent of whether other EU funds are being used to implement it. Therefore, the Commission considers that this recommendation runs counter to the spirit of the RRF Regulation.

The Commission recalls that it carries out thorough controls for all measures included in the RRPs. As zero-cost measures are not implemented with the RRF funds, the Commission notes however that there can be no meaningful checks on double funding on such measures.

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The Commission **does not accept** Recommendation 2(b).

As already stated in the Commission's replies to the Court's special report on RRF absorption[54], the Commission cannot prejudge the design of future EU programmes or instruments, nor accept a recommendation whose implementation ultimately depends on the positions of the co-legislators. The Commission notes that future legislative proposals and programme design will need to be tailored to the specific context in which they are made and as such cannot be subject to ex-ante framing. In particular, the Commission notes that instruments based on financing not linked to costs can take different forms, which makes it also in practice impossible to define ex-ante in a general notion the key features that each such instrument should have, including how reforms should be accounted for and incentivised. The inclusion of reforms or not in a future instrument will be based on many different policy considerations that cannot be anticipated now.

In addition, as outlined in the previous sections, the Commission cannot agree with the Court's conclusion that there is an "increased risk of double funding for zero-cost measures" that would warrant specific prohibitions in the future. Such prohibitions would also run the risk of increasing unnecessary and unjustified bureaucracy by creating additional requirements that do not serve any identified policy objective.

Recommendation 3 - Clarify and strengthen the control requirements for double funding under programmes and instruments using financing not linked to costs

The Commission should provide specific guidance on minimum control requirements for member states aiming to ensure the absence of double funding for the RRF and any other funding programmes and instruments using FNLTC. This should include controls of actual costs incurred at the level of beneficiaries/final recipients.

Target implementation date: by the end of 2024.

The Commission **does not accept** Recommendation 3.

The Commission recalls that, under the RRF, Member States are primarily responsible for the prevention, detection and correction of double funding. To support National authorities, the Commission provided specific guidance to Member States in 2023 setting minimum control requirements to ensure the absence of double funding.[55] Concretely, this internal document provides guidelines on how to assess the national internal control systems and the key requirements stipulated in Annex I of the Financing Agreement. Furthermore, the guidance provides examples of good practices to clarify the expectations related to the key requirements, including on the avoidance of double funding.

For Cohesion policy funds, the Commission has already issued guidance[56] on providing assurance on the implementation of financing not linked to costs' (FNLTC) schemes, including specifically on the avoidance of double financing and the set-up of respective control systems. Therefore, the Commission considers that additional guidance is not necessary. The Commission also considers that

[54] Commission replies to ECA Special Report 13/2024 on *Absorption of funds from the Recovery and Resilience Facility* COM-Replies-SR-2024-13_EN.pdf (europa.eu)

[55] *Guidance on the assessment of the Internal Control Systems set in place by Member States under the Recovery and Resilience Facility.*

[56] *Explanatory note on the application of Article 95(3) CPR (1) - how assurance is provided when implementing a 'financing not linked to costs' (FNLC) scheme (CPRE_23-0008-02 -09/06/2023)*

the last sentence in this ECA recommendation would deviate from Article 95(3) of Regulation (EU) 2021/1060 (the CPR). In line with this provision, Commission and Member States' audits and management verifications carried out by Member States on Union contribution based on financing not linked to costs shall exclusively aim at verifying that the conditions for reimbursement by the Commission have been fulfilled or the results have been achieved. Therefore, the regulatory framework explicitly excludes controls on actual costs incurred at the level of beneficiaries. By definition, FNLTC schemes should not be related to actual costs in order to achieve the required simplification. Adding the real costs principle to FNLTC would not only undermine the simplification that is looked for, but would generate a double financial system (with all the control burden for stakeholders and beneficiaries linked to it) based at the same time on real costs and on performance indicators.

For all the reasons stated above, and to ensure legal certainty, the Commission does not intend to take the recommended action.

Recommendation 4 – Strengthen coordination between funding programmes and instruments

The Commission should:

(a) strengthen coordination and disseminate good practice on the demarcation between the different funding programmes and instruments in the member states to prevent double funding;

(b) promote that all national and regional bodies involved in the control and audit chain for a given member state have access to complete information on recipients of EU funding and projects, so that they can detect double funding;

(c) ensure that its own services have access to the same data;

Target implementation date: mid 2025.

The Commission **accepts** Recommendation 4(a).

The Commission notes that its services already extensively share and exchange information with each other and encourage Member States to ensure information exchanges between different coordinating bodies. To this end, the Commission provides guidance to National authorities (e.g. under the RRF), as well as to potential final recipients (e.g. CEF) and organises annual meetings with relevant stakeholders and bilateral meetings with Member States to help them strengthening coordination on different EU programmes and instruments. The Commission also notes that the Financial Regulation recast, subject to adoption by the co-legislators, already foresees strengthening of data exchange and notably the use of data systems on final recipients for future funding programmes.

The Commission **accepts** Recommendation 4(b).

The Commission accepts to continue promoting access to complete information on recipients of EU funding for national and regional bodies involved in audit and control activities. As regards the RRF, the Commission recalls that the responsibility to collect and store information on recipient of EU funding lies with Member States. However, Member States are already providing information on the 100 largest recipients, published on the Recovery and Resilience Scoreboard, and the Commission has made available a data mining and risk scoring tool to analyse relevant data, in line with article 22(4) of the RRF Regulation. The Commission will continue to encourage Member States to increase transparency on recipients of RRF funding. As concerns Funds governed by the Common Provisions Regulation (CPR)[57], the lists of all operations selected for support by Cohesion Funds is publicly available and updated at least every four months, in line with the CPR Article 49(3). As regards CEF, the final recipients are made public and therefore accessible to all relevant parties. All national and EU bodies specified in Article 12 of the Financing Agreements (including OLAF, ECA and EPPO) can access this information for the audit and control purposes.

The Commission **partially accepts** Recommendation 4(c)

For Cohesion Funds and CEF, final recipients are made public and therefore fully accessible including by Commission services. As for the RRF, Member States are already expected to collect and ensure access by the Commission to specific categories of data on final recipients and funded measures (RRF Regulation, article 22(d)). However, the RRF Regulation frames the provision of these data in the context of audit and control activities and does not envisage the provision of complete information on all recipients and measure funded by the RRF.

With regard to future instruments, the Commission will duly consider this Recommendation while preparing the legal basis of the next multiannual financial framework (MFF). Yet, it cannot commit on the content of next MFF at this stage, as it cannot prejudge the right of initiative of the next College of the Commission and the position of the co-legislators.

Recommendation 5 – Set up and use integrated and interoperable IT systems and data mining tools for all funding programmes and instruments

With a view to identifying potential cases of double funding, the Commission should:

(a) support and incentivise member states to set up and systematically use integrated and interoperable IT systems within the member state for all funding programmes and instruments;

(b) interconnect Arachne with other Commission databases of EU funded projects and their beneficiaries to increase its potential.

These IT tools should be easily accessible to all relevant parties in the control and audit chain.

Target implementation date: (a) by mid 2025, or when proposing the legal framework for the post-2027 period, and (b) by the end of 2025.

The Commission **accepts** Recommendation 5(a).

The Commission continuously encourages Member States to set up and systematically use integrated and interoperable IT systems and has systematically proposed legislative amendments to make their use mandatory. However, those proposals were not adopted by the co-legislators. The Commission

[57] Regulation (EU) 2021/1060.

will nevertheless continue to advocate for the usefulness and necessity of integrated and interoperable IT systems and data mining tools for EU funds for better control and audit purposes.

The Commission **accepts** Recommendation 5(b).

The Commission is working on the modernisation and update of the current Arachne tool, which includes the analysis of how the data can be enriched with other information available including the possibility to interconnect with other Commission databases of EU funded projects and their beneficiaries.

The Commission plans to make these data available to relevant National authorities by the end of 2025, provided there are no major technical problems.

Recommendation 6 – Strengthen assurance on the absence of double funding when using financing not linked to costs

The Commission should strengthen the assurance on the absence of double funding it obtains from its own audit work and member states' control systems by covering both dimensions - costs and outputs/results - when using the financing not linked to costs delivery model.

Target implementation date: by April/May 2025, when preparing the next assurance declaration.

The Commission **does not accept** Recommendation 6.

The Commission provides assurance in line with the respective legal basis of each instrument, whereby it considers that the control and audit systems set up (e.g. under RRF regulation article 22(1), or under CPR article 69 (1)) provide reasonable assurance on the sound financial management, including risk of double funding in simplified schemes such as FNLTC.

Concerning the RRF, the Commission also refers to DG ECFIN's Annual Activity Report 2023, which provides in detail how the Commission's assurance concerning double funding is built for the RRF. The Commission considers that scope and extent of the audit work carried out in 2023 is sufficient to provide assurance on the absence of double funding without any limitation.

For Cohesion policy funds based on financing not linked to costs, the Commission obtains reasonable assurance on absence of double funding in particular by assessing ex-ante the arrangements in place at programme level to avoid double funding.