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European Union Regulation establishing the Recovery and Resilience Mechanism.

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The European Union approves the Regulation establishing the Recovery and Resilience Mechanism with the objective of providing financial support to Member States to achieve the reforms and investments set out in the national recovery and resilience plans.

1. The Regulation establishing the Resilience and Recovery Facility: key milestones

On 18th February, Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility ("the Regulation") was published in the Official Journal of the European Union ("OJEU").

The Regulation establishes the Recovery and Resilience Facility with the objective of providing financial assistance to Member States in order to achieve the reforms and investments set out in the national recovery and resilience plans. The Regulation is part of the Next Generation EU Funds. The Regulation foresees that Spain can obtain non-refundable aid of more than 60 billion euros.

The Regulation foresees that 70% of the non-repayable financial assistance will be legally committed by 31st December 2022 and that, where appropriate, 30% of the loans will be committed by 31st December 2023.

The challenge is enormous. Spain must submit its National Recovery and Resilience Plan by 30th April. Once approved by the Council, Spain will have to legally commit, within a short time horizon of just 20 months, investment projects foreseen in this Plan for an amount equivalent to 70% of the total envelope established for Spain. Spain must have legally committed eligible investment projects under the Mechanism for an amount of 46,603 million euros by 31st December 2022.

The main milestones foreseen in the Regulation are as follows:

I. Pre-financing: Until 31 December 2021, if a Member State submits an application together with the national recovery and resilience plan, the Regulation allows for the payment of up to 13% of the non-refundable financial assistance and, where applicable, up to 13% of the loan to be paid to the Member State concerned.

II. The Commission will establish a recovery and resilience scoreboard showing progress in the implementation of Member States' recovery and resilience plans in each of the six pillars underpinning the Regulation.[1] The Scoreboard shall be operational by December 2021 and shall be updated by the Commission twice a year. The scoreboard shall constitute the reporting system on the performance of the Facility.

III. Until 31st July 2022, the Commission may submit to the European Parliament and the Council a review report on the implementation of the Facility.

IV. 70% of the non-refundable financial assistance must be legally committed by 31st December 2022. Article 23 of the Regulation specifies the scope of this legal commitment. Once the Council has approved by implementing decision the National Recovery and Resilience Plan, the Commission will conclude an agreement with the Member State concerned which will constitute an individual legal commitment within the meaning of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18th July 2018 on the financial rules applicable to the general budget of the Union ("the Financial Regulation").[2]

This agreement will entail obligations for the Member State concerned, inter alia: (i) it must regularly check that the funding provided has been properly implemented and (ii) it must take appropriate measures to prevent, detect and correct fraud in the use of the funds (Article 22(2) Regulation).

V. 30% of the loans must be legally committed by 31st December 2023.

1. These pillars are: a) ecological transition; b) digital transformation; c) smart, sustainable and inclusive growth, including economic cohesion, employment, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs; d) social and territorial cohesion; e) economic, social and institutional health and resilience, aiming inter alia at increasing preparedness and resilience; f) social and territorial cohesion; and g) economic, social and institutional health and resilience, aiming inter alia at increasing preparedness and resilience. in the face of crisis; and (f) policies for the next generation, children and youth, such as education and capacity building (Article 3 Regulation).

VI. Member States may apply for assistance in the form of a loan when submitting recovery and resilience[2] plans or at any other time until 31st August 2023. In the latter case, the application shall be accompanied by a revised recovery and resilience plan including additional milestones and targets.

VII. Until 31st December 2023, the Commission may grant a loan to a Member State, upon request, for the implementation of its recovery and resilience plans.

VIII. By 20th February 2024, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an independent evaluation report on the implementation of the Facility.

IX. The Commission may propose to the Council the suspension in whole or in part of commitments or payments made by the Commission under this Regulation.

X. By 31st August 2026, the investments foreseen in the National Recovery and Resilience Plans must be completed.

XI. Payments of financial contributions and, where appropriate, of loans to the Member State shall be made until 31st December 2026. These payments shall be made in accordance with the budget appropriations and subject to available Union funds.

XII. By 31st December 2028, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an independent ex-post evaluation report on the implementation of the Facility (Article 32(1) Regulation).

2. The National Recovery and Resilience Plan as a necessary instrument for fundraising

Member States wishing to receive the funds provided for in the Regulation must submit a duly motivated and justified Recovery and Resilience Plan to the Commission. The plan must detail how, taking into account the measures it includes, it represents a comprehensive and appropriately balanced response to the economic and social situation of the Member State concerned, thus contributing adequately to the six pillars.

Member States should submit their recovery and resilience plans, generally, by 30th April of the year in which they seek approval and should do so in a single integrated document together with their national reform programme. To ensure rapid implementation of the Mechanism, Member States must submit the draft recovery and resilience plan by 15th October of the previous year. This has been and will be the case for Spain.

The National Recovery and Resilience Plan should be aligned with national reform plans. Funds will be managed centrally. This does not imply the total absence of the regional and local authorities in this process. The Regulation itself contains references to the participation of regional and local authorities, although the content of Royal Decree-Law 36/2020, of 30th December, approving urgent measures for the modernisation of the Public Administration and for the implementation of the Recovery, Transformation and Resilience Plan gives clear clues as to how these funds will be managed.

The Commission will assess the Recovery and Resilience Plan or, where appropriate, the updated version of the Recovery and Resilience Plan, within two months of its submission, and will in turn submit a proposal for a decision to the Council. The Council shall, by means of an implementing decision, approve the assessment of the recovery and resilience plan submitted by the Member State.

2. Article 2 of Regulation 2018/1046 defines a legal commitment as "an act whereby the authorising officer responsible enters into or establishes an obligation which results in a subsequent payment or payments and the recognition of expenditure from the budget, including specific agreements and contracts concluded under framework financial partnership agreements and framework contracts".

The Council shall adopt implementing decisions, as a general rule, within four weeks of the adoption of the Commission proposal.

The measures included in the recovery and resilience plans of each Member State should represent an amount of at least 20% of the allocation of the recovery and resilience plan for digital spending and 37% for achieving ecological transition targets.

3. The Regulation provides for the suspension of aid where the Member State is moving away from compliance with the deficit reduction targets.

The Commission may submit a proposal to the Council to suspend all or part of the commitments or payments made where the Council decides[3], that a Member State has not taken effective action to correct its excessive deficit, unless it has determined the existence of a severe economic downturn in the Union as a whole.

Article 10 of the Regulation foresees the cases in which the Commission may propose to the Council to suspend all or part of the commitments or payments made under the Regulation. The Regulation gives priority to the suspension of commitments as payments will only be suspended when immediate action is needed in case of significant non-compliance. The decision to suspend payments will apply to payment claims submitted after the date of the suspension decision.

However, the suspension is not an irreversible decision as the Council may lift the suspension on a proposal from the Commission when any of the circumstances foreseen in the Regulation itself are met.

In short, the Regulation is conceived as the first Community instrument that provides for direct financial aid linked to the implementation of investment projects in line with the national reform plan. The Regulation poses new challenges for Spain. The clock is already ticking. Spain must submit its National Recovery and Resilience Plan within two months. Once approved, it must have committed 70% of the non-refundable financial assistance by 31 December 2022.

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3. This decision shall be taken in accordance with Article 126(8) or (11) TFEU.

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