

The recovery and resilience facility:

Too complex a governance system
for meaningful accountability?



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Preface

In the summer of 2020, in the wake of the COVID-19 pandemic, the European Union Member States agreed to take an unprecedented step in the history of European integration: to jointly borrow a large sum of money to aid EU Member States in coping with the economic effects of the pandemic. The package, labelled ‘Next Generation EU’ (NGEU), contained both direct contributions and loans with favourable interest rates to the Member States. The agreement also entailed paying back the money over a period of 30 years (2028–2058), using new own resources. However, NGEU did not go through the normal procedures of the EU budget and consequently sidelined the European Parliament, traditionally one of the main players in EU budgetary matters.

In this report, *Maria-Luisa Sánchez-Barrueco*, Senior Lecturer of European Law at the University of Deusto, analyses the governance framework of NGEU’s main component – the so-called ‘Recovery and Resilience Facility’ (RRF) – in terms of its accountability arrangements. She identifies the relationships contained in the implementation of the programme and assesses whether accountability has been effectively carried out throughout the process. She concludes that while the European Parliament did not manage to establish a meaningful role for itself during the negotiations, it nevertheless thus far has managed to hold the European Commission accountable for the implementation of the RRF.

By publishing this report, SIEPS seeks to shed light on a growing concern relating to the EU’s finances, whereby accountability arrangements are becoming ever more important and the relationships between the most important actors increasingly need clarification.

Göran von Sydow
Director, SIEPS

About the author

Maria-Luisa Sánchez-Barrueco is Senior Lecturer of European Law at the University of Deusto (Bilbao). Her main area of research is the effectiveness of accountability mechanisms in the EU, with a specific focus on spending policies funded from the EU budget. In 2018, she founded EUFINACCO, the research network on financial accountability in the European Union, with Paul Stephenson and Hartmut Aden. In the 2019–2024 legislature, she is a research services provider to the BUDG and CONT committees of the European Parliament. During the 2022–2024 period she has been a grant holder of two Erasmus+ projects: a Jean Monnet Chair EU-BREATHE (EU Budget for Recovery: Effectiveness and Accountability to Harbor Resilience) and a Jean Monnet Module nEUraLAW (legal implications of smart neural implants). Her legal opinion on the budgetary implications of Brexit was extensively quoted by the House of Lords in 2017 (HoL 125/2017).

Recently, she has authored: papers on the democratic accountability of the Council's administrative spending (Common Market Law Review, 2021, 58:2) and the legal architecture of Next Generation EU (Revista de Derecho Comunitario Europeo, 2021, 25:69); studies for the European Parliament on the shift towards public-private partnerships and financial instruments in EU external action programmes (2022) and the European Public Prosecutor's Office (2019); and two book chapters on the European Court of Auditors (Edward Elgar, 2023) and the contribution of the CJEU to the protection of the EU's financial interests (Centro de Estudios Políticos y Constitucionales, 2022). A regular collaborator of the College of Europe, Professor Sánchez-Barrueco has delivered executive training programmes on EU external action in Latin America since 2018, as well as on the finances of EU external action at the European Diplomatic Academy in 2023.

Abbreviations and Acronyms

BICC	Budgetary instrument for convergence and competitiveness
CEPOL	European Union Agency for Law Enforcement Training
CONT	EP Committee on budgetary control
ECA	European Court of Auditors
ECOFIN	Council on Economy and Finance
EMU	Economic and Monetary Union
EP	European Parliament
EPPO	European Public Prosecutor's Office
EU	European Union
EURI	EU Recovery Instrument
INI	EP's own initiative report or resolution
MFF	Multiannual Financial Framework
NGEU	Next Generation EU
OLAF	European Anti-Fraud Office
PIF	Protection of the EU's financial interests
RRF	Recovery and Resilience Facility
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

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Executive summary

This research explains the main governance features of the Recovery and Resilience Facility (RRF) as a case of cross-pollination of the EU's macroeconomic coordination policy into cohesion policy, which strengthens complexity and executive dominance under the pressure of emergency. It showcases the shortcomings of the accountability arrangements enshrined in the governing legal framework (Regulation 2020/241 of the Council and of the Parliament) and provides a comprehensive review of earlier practices and strategies put in place by accountability watchdogs to overcome these limitations.

The RRF is the channel that distributes 80% of NGEU funds to Member States, divided into two components: EUR385.8 billion in loans and EUR338 billion in grants, in 2022 prices. The RRF is embedded in cohesion policy but it departs from the usual practices in that area in several respects. Formally speaking, the RRF regulation places funds under 'direct management' by the Commission. However, funds are disbursed on a pay-per-plan, not on a pay-per-project, basis. The Commission manages payments in very high figures and cannot decide the destination of the funds. Priorities and conditionalities are decided at the EU level (top-bottom), but the concrete reforms and investments are proposed by Member States in their national recovery and resilience plans (bottom-up). The Commission plays a middleperson's role, technically assessing milestones and thresholds proposed or achieved by national authorities, and preparing key implementing decisions to be adopted by the Council. The RRF strengthens executive power in the EU through its threefold supranational (Commission), pooled (Council and European Council) and national (central governments) dimensions, to the detriment of democratic accountability institutions and substate actors. National governments used the European Council to shape key details of the RRF, leaving little margin to the legislative powers of the Commission and the European Parliament.

In splitting managing and monitoring roles, the RRF regulation suggests that all decisions taken at one level are monitored by the other(s). Yet, the numerous and broad criteria informing the decision and the lack of measurement indicators that may be consistently applied across levels increase the risk that the checks enshrined in the legal framework become in practice a semi-automatic endorsement (in the case of the Commission) or prioritise political reasons over substance (in the case of the Council). The governance framework transpires a mainly managerial nature, unfitting for the significance of the Resilience and Recovery Facility as the biggest spending programme of the EU in the 2021–2027 programming period, as a once-in-a-generation opportunity for modernisation of EU Member States, and as a source of debt that Europeans will have to repay until 2058.

This research examines the governance and accountability of the RRF from the accountability theory perspective, drawing on Mark Bovens's definition of accountability as a 'social relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences'. Under the pressure of emergency rule, accountability relations in the RRF are blurred by the presence of multiple forums and multiple actors.

Focusing on the accountability watchdogs, the research examines the role played by parliaments at the national and EU level. National parliaments are depicted as reluctant forums in the budgetary field, where common fiscal rules adopted at the EU level restrain their voice on the national budget, and their gatekeeping role in funding sources of the EU is restrained by tight calendars and external pressure. However, the lack of substantial powers in both the decision and the control stages of the policy cycle would not explain why some national parliaments actively monitor EU affairs and others do not. The legal framework of the RRF aspired to an involvement in the design and adoption of national recovery and resilience plans but results have been disappointing, according to early surveys. The average national government did not rely on the parliament for democratic legitimisation of the plan, arguably due to time constraints. The average parliament did not get actively involved in the social legitimisation of the plan (except in Italy), internal adaptation to the complex RRF governance (except in Portugal) or scrutiny of the contribution of the recovery plan to EU priorities. National parliaments are endowed with potential but seem unwilling to claim control power despite the high stakes of the RRF.

The European Parliament participated in the adoption of the RRF as a co-legislator; however, it did not manage to reserve a meaningful role for itself during the implementation of the Facility. This affected the democratic legitimacy of the decision-making and accountability of the RRF, which is suboptimal for a funding instrument of this size. The choice of the examination procedure for implementing decisions led to the EP being sidelined from key stages in the implementation of the RRF, such as the approval of the plans, the negotiations of the operational arrangements and the payment orders. Here, the reason is not really linked to time pressures or emergency rule. Member States have not wanted the EP to meddle in the political steering of RRF implementation, which mainly focuses on the national level. The EP's budgetary powers are linked to the EU budget and this leaves national budgets out. The ever-present dynamics of the European Semester – where the EP's involvement is insufficient – have hijacked the legal framework of the RRF, hindering the EP's chances of overseeing the implementation of the Facility at all stages. Funds involved in the RRF may only be monitored by the EP where they enter the EU budget, and this excludes national budgets and the loan component of the RRF, which amounts to 52% of the total allocation of the programme. The EP's powers under the RRF and related legal acts are modest and ill-suited to keeping dominant executives at

arm's length. The European Parliament has exploited its powers in budgetary control (the discharge procedure) to clamp down on the Commission as manager of the RRF, issuing actionable demands that will also oblige the Member States to improve accountability, indirectly.

1 Introduction

1.1 Background

Next Generation EU (NGEU) is the code name for a series of legal acts adopted at the EU level to provide financial relief to Member States in the aftermath of the COVID-19 pandemic. NGEU is fed through credits taken by the EU in international capital markets. The proceeds of bonds issued by the Commission enter the EU budget, although they are separate from the other revenue sources. Architecting the inflow side of NGEU required waivers to various long-standing constraints imposed by Member States on Union institutions in the budgetary legal framework. Emergency and urgency explain why the whole process was completed in a record time. The occasional interstate struggles – only logical given the huge amount of debt at stake (EUR750 billion in 2018 prices) – never represented a credible threat to the global construction in the making. No national leader wished to become a scapegoat before disease- and crisis-hit citizens, should the supranational proposal fail. Yet, Member States made sure, under the pressure of the ‘group of the frugals’, that all legal acts under the umbrella of NGEU underline the one-off and short-term nature of the experiment (Crowe, 2021) and enshrine a high degree of conditionality (De la Porte and Dagnis Jensen, 2021:392).

The Recovery and Resilience Facility (RRF) is the main channel through which NGEU distributes funds to Member States. It aims ‘to mitigate the economic and social 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’. Member States receive a financial contribution to implement reforms stated in national resilience and recovery plans that are approved by the Council upon proposal by the Commission. National reforms and investments must be aligned with the EU’s global priorities (notably, digital and green transition and inclusive economy) and address the challenges identified in the country-specific recommendations issued within the European Semester framework of economic and social policy coordination. Although the RRF is a cohesion policy tool (based on Article 175.3 TFEU), it enshrines policy and macroeconomic conditionality as a novel feature. Its budgetary size is huge: EUR723.8 billion (in 2022 prices) in loans (EUR385.8 billion) and grants (EUR338 billion). This represents 80% of NGEU funds, which amounts in turn to five times the annual EU budget.

The RRF governance is intricate for a temporary instrument. Even if the governing regulation establishes the share of each Member State, access to funds is delayed by a number of thresholds and milestones, notably the approval of the RRF (one-off) and of the payment applications (annually). The assessment criteria informing these decisions are made explicit; at the same time, they are

abundant, potentially conflicting and abstract enough for managers to enjoy convenient qualitative leeway. The main actors in this process are national governments, individually or pooled in the Council and the European Council, and the Commission.

The reinforcement of executive power has become a pattern in the transfer to the EU of decision-making for unconventional last-resort measures. The pandemic is but the latest crisis in a series that has now lasted more than two decades. The urge to provide workable exits to emergency and complexity combined in a cross-national perspective has prompted a learning process in EU institutions, which now appear to be the go-to level to ensure government of, and during, crises (Curtin, 2014; White, 2019; Matthijs, 2020). Unfortunately, the urge for the EU to remain worthy of citizens' trust (legitimacy by results, or output legitimacy) naturally places the onus on the early stages of the policy cycle (planning and decision-making) rather than on the latter ones (control and evaluation). As a result, the risk arises that the governance system devised to redress the impact of the crisis fails to achieve its objectives or even fuels deviations in the course of implementation.

1.2 Aims and scope

This policy paper addresses this oversight by analysing the governance framework of the Recovery and Resilience Facility from the perspective of accountability. It has two core aims:

- To identify the relevant accountability relationships throughout the implementation process of this innovative spending programme; and
- To assess the extent to which the accountability arrangements in place allow watchdog bodies to fulfil their role in an effective way.

These goals are even more relevant given that the RRF governance framework strengthens executive power in the EU, without a commensurate increase in democratic accountability. Moreover, the huge amount of spending involved in the recovery funds and their credit-financed nature cannot be stressed enough: Europeans will pay creditors until 2058.

The scope of this research is limited to the accountability of the Recovery and Resilience Facility, covering both its legal framework as reflected in Regulation (EU) 2021/241 of the European Parliament (EP) and of the Council of 12 February 2021 and its implementation up until early August 2022. It does not review the accountability arrangements of the revenue side of NGEU (the borrowing power conferred upon the Commission). Neither does it address other programmes receiving NGEU funds on top of the RRF (e.g. ReactEU, RescEU or InvestEU). The RRF absorbs the bulk of NGEU funds and the rest is dedicated to reinforcing the structural and cohesion programmes until 2022 (12%) and, to a lesser extent quantitatively but politically strategic, to objectives of civil protection (0.6%), research and innovation (1.6%), climate neutrality

(3.2%) and rural development (2.4%). References to cross-national perspectives are included by way of example but should not be understood as the product of a comprehensive analysis.

1.3 Methods

Our starting point in this research is Bovens's seminal definition of accountability as a 'relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences' (2007). The actor is typically the body endowed with executive power, while the forum implements some form of control over the former. In practice, however, multiple actors and forums coexist, giving rise to accountability relationships of different natures. The nature of the forum and the criteria informing the control function lead to a distinction among *political accountability*, when implemented by parliaments; *legal accountability*, concerning prosecutors and courts; *administrative accountability*, regarding auditors and ombudspersons; and *social accountability*, with respect to media and civil society organisations. This paper prioritises analysis of accountability arrangements featuring public bodies at both ends of the accountability relationship.

A multiple-forum situation may be assessed from a horizontal perspective, within the same level. For instance, the Commission answers to the EP, the Ombudsman and the European Court of Auditors (ECA). Alternatively, a vertical perspective compares the intervention of similar bodies at the EU and national or subnational levels: for instance, how the EP and national parliaments hold the executive power accountable on the same issue. In theory, the multiplicity of forums increases actors' perception of being the target of control ('[p]ublic officials are expected to act in anticipation of having to account for their actions' (March and Olsen, 1995)), prompting learning processes over time, provided that coexisting accountability mechanisms apply consistent criteria and reinforce one another. This assumption might yield, however, a fake image of accountability, since each forum will approach its accountability role from its very own institutional set-up (scope of mandate, powers, resources, professional standards, and cultural understandings and practices). This is even truer in the EU's multilevel governance system, where the overall picture of accountability is blurred by the need to consider actors and forums at EU, national and substate levels, all of them in cross-national perspective (Papadopoulos, 2007). Achieving seamless accountability remains a utopian goal.

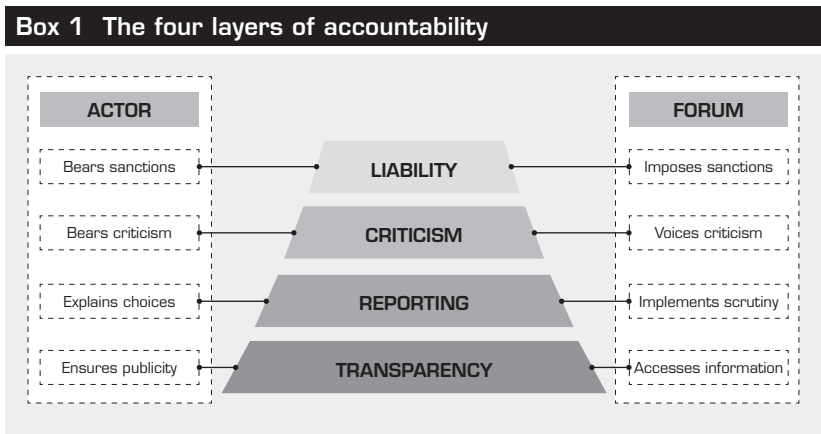
Accountability is not a goal in itself but a component of democratic legitimacy. Democratic legitimacy, understood as citizens' trust in the system, may stem from three different sources. First, the results of efficient public policies guarantee or improve citizens' well-being (*output legitimacy*). Second, public policies are responsive to the interests of all sorts of citizens, who therefore feel 'seen' by the system (*input legitimacy*). Third, citizens are provided with

assurances that transparency, integrity and answerability are safeguarded in the institutions steering the system (*systemic legitimacy*) (Laffan, 2003; Schmidt, 2013). Accountability fits into the latter legitimacy dimension. Due to its instrumental nature, accountability concerns must be balanced against those linked to the output and input dimensions. An excessive focus on accountability might jeopardise performance, for instance, if managers are wary of taking legitimate risks for fear of being punished. As public finances are finite, disproportionately resourcing control institutions could weaken *output* legitimacy, if funds are insufficient to tap the full potential of public policies; or *input* legitimacy, if citizens' inclusive access to those benefits is constrained. This has practical implications beyond theoretical discussions: for instance, efficiency concerns explain the introduction of the principle of cross-reliance of audits in the EU legal framework of financial management, forcing each control layer to rely on (and to not repeat) audits carried out by previous instances, provided the latter's institutional framework complies with predefined criteria. Such a system guarantees a more efficient use of public funds but does not fully prevent accountability gaps.

Taking Bovens's framework further, the accountability relationship may be disaggregated into *four accountability layers*, presented in an incremental way below (Box 1):

- *Transparency* represents the fundamental basis for accountability, which 'cannot thrive in the dark' (Sánchez-Barrueco, 2021a). Paraphrasing Hood (2010), this paper depicts the transparency-accountability relationship as 'Siamese twins', ignoring their potential frictions. A key issue here is whether the forum's rights of access to the actor's information is sufficient.
- *Reporting* refers to the actor's obligation to tell and explain choices that the forum may scrutinise. Accountability is mediated here by the form, frequency and quality of the outputs produced by the actor, and the competence and independence of the forum.
- *Criticism*. The forum has a power to judge the actor's behaviour and performance and the latter may not refuse to bear potential criticism. Key questions at this stage include the form of the forum's assessment (spontaneous or regulated, informal or formal), its degree of publicity (or secrecy) and the impact on the actor's reputation (notably considering the lifespan of the criticism).
- *Liability*. This dimension explores options for the forum to impose informal or formal sanctions on the actor when disregard of its conduct of operations reaches a sufficient level. Options for penalties are manifold and diverse. The primary focus is not to draw up a list of sanctions and their formal features, but to examine whether the likelihood that the forum applies a sanction prompts learning processes in the actor, preventing or discouraging deviations. However counter-intuitive it might seem, softer sanctions placing the actor

under relentless pressure without threatening their existence may trigger behavioural changes in a more effective way than ‘nuclear options’ that are rarely enforced (Sánchez-Barrueco, 2021a).



Source: Author’s own elaboration.

In each stage, assessing the suitability of the accountability arrangements involves going beyond the institutional design (of both the forum and the actor and the legal framework governing the accountability relationship) to consider institutional practices. Concluding that the actor’s obligations and the forum’s powers are adequate based on the sole analysis of their respective means (powers and resources) risks overrating the quality of the accountability mechanism in place and ignoring the negative impact of institutions unwilling to hold or be held to account.

1.4 Structure

The remaining sections are organised as follows. First, the paper will identify and explain complexity, isomorphism and executive dominance as the three distinct features of the RRF (Section 2). Then, the research will disentangle the manifold accountability relationships embedded in the RRF, building on Bovens’s ‘accountability as a social relationship’ framework (Section 3). The challenging identification of, respectively, the actor(s) and the forum(s) paves the way for the shortcomings of the accountability arrangements, which are identified and assessed in the following section using an original framework (Section 4). By way of conclusion, the last section summarizes our findings.

2 The Systemic Features of the RRF

The main elements of the RRF were agreed as part of the budgetary ‘package deal’ resulting from the European Council of 17–21 July 2020, then translated into EU legislation through Regulation (EU) 2021/241 of 18 February 2021 (the ‘RRF regulation’). The RRF allocation amounts to EUR672,000,000,000 (Article 6.1), distributed in loans (53%) and grants (46.5%). Those funds are not provided through the EU’s regular revenue sources (own resources and national transfers) but through credits taken by the EU in international capital markets, which are entered in turn into the EU budget. The legal engineering of NGEU labels those RRF funds as ‘external assigned revenue’, meaning in practice that they can only be used to implement the RRF, a marked difference with respect to other EU funds.

It should be noted that, although the RRF is fed from repayable credits, it is partly distributed as non-refundable subsidies. Here lies the solidarity feature of the EU’s response to the coronavirus crisis. *The RRF enshrines a redistributive effect that translates solidarity among Member States and departs from EU responses to previous crises* (De Gregorio Merino, 2021; Katsanidou et al., 2022). The economic recovery goals could not be achieved through traditional loans-only crisis responses without jeopardising the euro, and a shift towards grants was accepted. Becker and Gehring recognise there a ‘functional spillover’ (2023:338), a concept coined by functionalist authors to explain that integration broadens to new areas to secure the correct functioning of the existing integrated areas.

Why did states agree to subsidising crisis recovery? The grant component of the RRF was jointly advocated by the Franco-German axis. Despite initial reluctance due to their traditional creditor role, Northern states agreed to the grant component, wary of the threat COVID-19 posed to the eurozone (on negotiations among ‘the Frugal four’ and the ‘solidarity coalition’ states, see Fabbri (2022)). Polls showed a heavily polarised public opinion in these countries, with transnational solidarity winning by just a slight majority (Bauhr and Charron, 2023:1093). Yet, the global agreement was not possible without the *insertion of harder conditionalities* in the RRF regulation: Member States do not freely decide how to invest their share; in general, proposed reforms and investments must contribute to the (very broad) objectives of the RRF (Article 3 RRF) and fall within the scope of the six RRF pillars (Article 4 RRF); moreover, a sizable share of funds must be allocated to green (37%) and digital (20%) transitions.

While every member state is entitled to the RRF, the share benefits some of them disproportionately. The regulation sets out the distribution criteria in two

phases (Article 11). For 2021 and 2022, the share is determined on the basis of population, GDP per capita and unemployment rates, as listed in Annex IV of the regulation. Based on the evolution of the country's GDP since the outbreak of the pandemic, amounts were updated in late June 2022. Greece, Portugal, Spain and Italy get 'disproportionally great funding' (Picek, 2020:327). Bauhr and Charron (2023) have evidenced that this imbalance 'depressed public support among highly educated citizens and in Central European states' (2023:21).

The RRF is legally embedded in cohesion policy but the legal basis is stretched to accommodate the 'macroeconomic governance links' of the Facility. The choice of Article 175.3 TFEU as the legal basis of the RRF was motivated by two main advantages. On the one hand, the (ordinary legislative) decision-making procedure was comfortable and avoided the hurdles of Article 352 TFEU (EP consent and unanimity of the Council). On the other, the broad scope of Article 175.3 TFEU ('any measure necessary to achieve cohesion goals' outside the structural funds) was helpful in keeping the Union within the boundaries of its conferred competences (De Witte, 2021:656). The boundaries of the legal basis were, however, stretched to accommodate the level of ambition and certain features of the RRF, which were ill-suited to cohesion policy (Box 2).

Box 2 Where the RRF departs from regular cohesion funds

- RRF funds are allocated to Member States, not regions.
- RRF funds enjoy a significantly higher allocation.
- RRF funds are exclusively invested in state-led plans, not in EU-led projects (EU frames priorities).
- RRF funds are managed under 'direct' modality by the Commission instead of 'shared' with States.
- RRF funds feature a strong link with the macroeconomic policy tools.

2.1 Complexity

The governance system of the RRF is complex and intricate. It unfolds around several stages where different actors intertwine. Complexity as a feature in governance systems may become a stumbling block for accountability, particularly in the face of difficulties in identifying where true executive power lies. That is the question addressed in this section, through an analysis of the legal institutional framework and its practice during the first 24 months of RRF implementation running from February 2021 to February 2023.

From a budgetary perspective, the RRF regulation assigns fund implementation to the Commission, under the modality of 'direct management' (Article 8 RRF). Recalling that the RRF is grounded in cohesion policy, the choice of direct management departs from the usual 'shared management' applied in cohesion funds. Without entering into the details (provided later), it is worth noting that

funds under the RRF are disbursed on a pay-per-plan, not on a pay-per-project, basis. This implies that the Commission manages payments in very high figures, while national authorities retain discretion over the individual projects that will get specific funding. In this sense, *the reality of the RRF does not match the spirit of 'direct management' as governed by the Financial Regulation*. Following Koopman, the RRF can be described as a 'unique form of direct management' (2022:30).

Delving into the governance system of the RRF, there are five main stages of implementation: 1. submission of a national reform plan ('the plan'); 2. approval of the plan; 3. prefinancing; 4. bilateral arrangements; and 5. payment requests. The first four stages are completed only once in the lifespan of the RRF, whereas states may make payment requests twice a year. The paragraphs below analyse these stages in the legal framework. To add insights from the practice over the first 24 months of RRF implementation, Box 3 illustrates the completion of each stage (submission and approval of the plan, prefinancing, operational agreement) by Member States. The measuring unit is the days taken to complete each stage (within bars).

RRF implementation kicked off with the *submission of national recovery and resilience plans* by Member States. The regulation set the deadline of 30 April 2021 as mere guidance (Article 18 RRF) in order to streamline recovery plans under the RRF with national plans under the European Semester (also due in April), thereby reducing bureaucracy constraints for Member States (Nguyen and Redeker, 2022:2). The same date, 30 April, is also the deadline for subsequent addenda to national recovery plans. As illustrated in Box 4, 85% of Member States submitted their plans within the first three months following the entry into force of the RRF, starting with Portugal after barely two months. The Netherlands was an exception to this: the government took nearly a year and a half just to forward a draft to the parliament ('Dutch finally present EU recovery fund plans', *Euractiv*, 30 March 2022).

Box 3 The six pillars of the RRF

- green transition;
- digital transformation;
- smart, sustainable and inclusive growth;
- social and territorial cohesion;
- health, and economic, social and institutional resilience;
- policies for the next generation, children and youth.

National governments sketch the reform and investment agenda of the Member State concerned. Measures proposed are eligible for funding only if they align with *six policy areas of European relevance*, code-named 'pillars' (Article 3 RRF) (Box 3).

The RRF features close – but not always clear – links with the *European Semester*. The reforms proposed in the recovery plan must align with the recommendations addressed to the state within the European Semester; likewise, in the course of implementation, payment requests put forward by the state will depend on evidence that the milestones and targets achieved by national reforms address European Semester recommendations. Indirectly, the RRF hardens the binding force of the country-specific recommendations in the European Semester, forcing a shift in the latter's nature. The European Semester essentially channels a top-down coercive mechanism, however flexible in its application (Crum, 2020:12; Schmidt, 2021), while recovery plans represent bottom-up exercises by national governments. At the same time, the RRF predates the European Semester insofar as only the country-specific recommendations that the Member State chooses to retain in its recovery plan are likely to be addressed during the current Multiannual Financial Framework: the RRF carries autonomous and strong financial incentives (the recovery funds), lacking in the European Semester (Nguyen and Redeker, 2022:5).

Additionally, the proposed reforms and investments must respect three *horizontal principles* stated in Article 5 RRF. First, recovery funds cannot cover recurring expenses from national budgets, except in duly justified cases. Secondly, EU funding needs to add European Value: 'additionality' means that the EU budget should only target projects or lead to results that would not otherwise be achieved through exclusive national funding. Thirdly, activities funded through the RRF must respect the 'do no significant harm' principle. The RRF requires that 37% of funds be invested in 'green transition' ('climate target', Article 16). This calls, first and foremost, for a harmonised definition of 'environmentally sustainable' activities, which is essential to prevent the implementing actors from watering down the 'green transition' goals of the RRF – this was achieved through the 'Taxonomy Regulation' (Regulation (EU) 2020/852, in force since July 2020). Moreover, the 37% of climate-friendly investments would be impaired if the remaining 63% of funds carried a damaging environmental impact with them, hence the 'do no significant harm' principle.

Recovery plans are presented as a bottom-up exercise. Indeed, the RRF regulation acknowledged that *national ownership lies at the root of the successful implementation and lasting impact* of the recovery plan in the Member State, and that a lack of ownership would impair the credibility of the EU programme. However, the regulation simply required governments to carry out, and keep track of, preliminary consultations with multiple stakeholders, *without turning the 'quality of public consultation into a formal criterion in view of approving the recovery plans'*. Such oversight has fuelled executive dominance and centralisation at the national level, two features that might jeopardise the future legitimacy and sustainability of reforms. Surveys gauging institutional practices in cross-national perspective suggest insufficient involvement of substate authorities and

social partners in the drafting of the recovery plans (EP, 2022b:7; EESC, 2021, 2022a, 2022b; Eurofound, 2023).

EU approval of the recovery plans follows a two-stage procedure where *the Commission plays a gatekeeping role through a preliminary assessment*. The Regulation sets a two-month time frame, which can be extended if needed (Article 19 RRF). The Commission assessment is presented as a heavily ‘technical’ examination of detailed guidance, criteria and even a rating system (Annex V), suggesting a strong focus on expertise and automation. Yet, a closer look reveals ‘ample room for qualitative judgment’ (Guttenberg and Nguyen, 2020:2). The wealth of supporting information and documents provided by Member States, combined with heavy reporting requirements and a short time frame, raises concerns over the capacity of the Commission to carry out a meaningful assessment of the national plans, both in quantitative (staff) and qualitative (know-how) terms. Further doubts arise as to the respective importance attached by the Commission to each of the many conditionalities and principles that must be assessed, as well as to its capacity to go beyond a semi-automated endorsement of the information provided by national governments.

Rejection of a national plan is legally possible, provided the Commission duly justifies its decision. Yet, a dead-end scenario ‘leaving states with no option than to review the plan and submit new proposals’ (Dias et al., 2021) does not benefit anyone. Thus, institutional practice shows that the Commission prioritises the soft stance (dialogue or negotiation) over the hard one (straightforward rejection).

All national plans have been approved by now. The slight majority (17 out of 27) got a green light from the Commission within the two-month deadline established in the regulation. Plans submitted by Estonia, Romania and Finland were positively assessed in four months, while Bulgaria took six months. Sweden (10 months), Poland (13 months) and Hungary (18 months) are outstanding cases. Delays with regard to Poland and Hungary undoubtedly link to the EU’s long-standing concerns over the rule of law situation in the two Visegrad countries (Vanhercke and Verdun, 2022:210; Schramm et al., 2022:6) and their failed attempt to have the CJEU annul the budgetary conditionality mechanism, closed with the judgement of 16 February 2022. Officially, the Commission gave the green light once these countries had addressed the recommendations on improving their rule of law performance. External observers have assessed the endorsement of both plans as heavily political, the critical juncture unlocking the approval being rather linked to the stance of those countries with respect to EU measures to tackle Russia’s war of aggression in Ukraine. Poland’s active support led the Commission president to step in and take the decision, in a move that prompted internal unease among commissioners (‘Amid Commission rebellion, von der Leyen defends Polish recovery cash plan’, *Politico*, 2 June

2022). Hungary's endorsement was unlocked by the Council in exchange for not blocking the aid package for Ukraine and the new own resource based on a global tax for multinationals ('EU secures deal with Hungary, unblocks joint aid to Ukraine' *EU Observer*, 13 December 2022).

Upon the Commission's proposal, the *Council formally approves the recovery plan by qualified majority* within a four-week time frame. From an intra-institutional perspective, discussions remained mainly at Coreper I and II levels (Vanhercke and Verdun, 2022:210), with the ministers stepping in only to formally adopt the implementing decision. The Council has respected the deadline, with the exceptions of Sweden (32 days), Czechia (36), Ireland (51) and Poland (54). Where the Commission's assessment took an exceptionally long time, the Council seems to have expedited the approval of the implementing decision (Bulgaria, 12 days and Poland, 16 days). Conversely, decisions on Czechia or Ireland took almost two months.

The decision to embed Council approval in a non-legislative (implementing) act hinders the right to know with regard to Council discussions on national plans. The Treaty waives certain transparency requirements of Council debates within decision-making procedures leading to legislative acts. On the one hand, there is no obligation to consult national parliaments, since the 'early warning mechanism' (Protocol No. 2 on subsidiarity) only targets legislative acts. On the other, the Council is exempt from transparency obligations as to the decision-making process. Accordingly, fundamental information on the approval of national recovery plans is missing. Meeting agendas include reference to individual plans only as non-discussion items, that is, for approval. Unless national representatives willingly decide to disclose the sense of, and reasons for, their vote, we know neither the number of Council meetings held before reaching the qualified majority (15 states, covering 65% of the EU population) required to approve each plan nor how broad that majority was. The Polish case illustrates this idea: by way of a voting declaration, Belgium, Denmark, the Netherlands and Sweden expressed concerns about the Polish approval and called on the Commission 'to carefully assess the satisfactory fulfilment of the relevant milestones before taking a decision on the approval of any payments' (*Politico*, 15 July 2022). The EP had also demanded the Commission to refrain from adopting the Polish and Hungarian plans while concerns over the observance of the rule of law and shortcomings of national systems to protect the EU's financial interests remained (2022b:17).

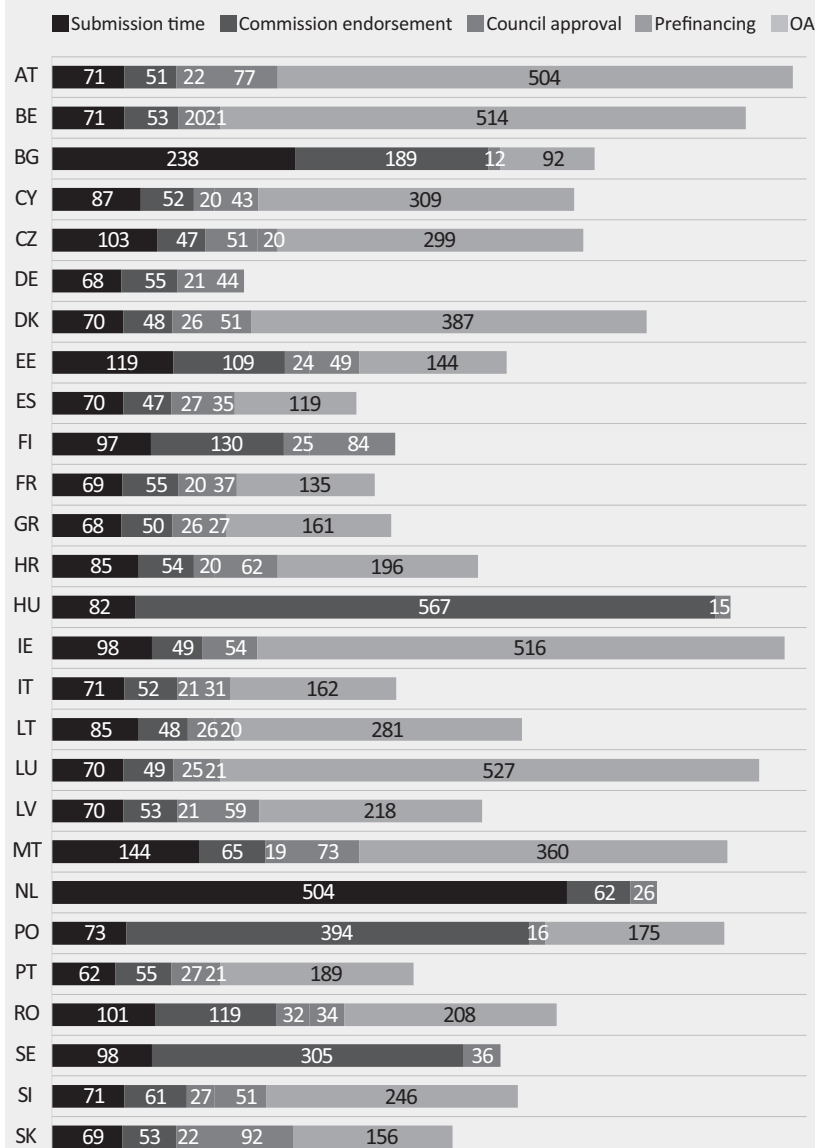
Approval of the recovery plan unlocks Member States' access to funds. The 'prefinancing' envelope is then released to states that requested it in the original draft recovery plan, up to 13% of the global amount allocated to the Member State, and split among grants, loans or a combination of both (Article 13.1 RRF). Spain received the first RRF payment in December 2021 (EUR10 billion).

The RRF regulation enshrines a global allocation for each Member State, leaving them a great margin of discretion as to the choice between grants and loans, provided the overall ceilings are respected (EUR312.5 billion in grants, EUR360 billion in loans, Article 6 RRF). States may request grants up to an amount determined by two factors: an allocation key (Annex II) and the cost of their intended reforms. The RRF does not force Member States into taking up loans. Amounts distributed under the loan component depend on the assessment of the loan request and cannot exceed 6.8% of their 2019 GNI. Initial assessments of the RRF predicted that the grant component would be taken up in full but resorting to loans would lag behind expectations. The reasons for the latter include diverging approaches to loan taking. EU loans offer better conditions than the open market (lower interest rates, longer maturity) and this attracts certain countries (e.g. Greece, Italy, Spain), but EU loans also carry conditionalities with them, discouraging other countries enjoying higher credit ratings (De Witte, 2021:678). Two years after RRF implementation, both components fall short of expectations, most particularly loans. States may only request loans until 31 August 2023 (Article 14.2 RRF) but, by April 2023, disbursements had reached just 13% of the total amount (EUR47.11 billion). The grant component is at 29.9% (EUR105.41 billion), but the request rate might accelerate nearer the deadline (all payments must have been made by 31 December 2026, Article 24 RRF). These low figures have been explained by the paradox of states' fund absorption capacity: states agree on high figures at EU level based on perceived needs, only to realise afterwards that their administrative and business fabric cannot match the bureaucratic requirement to put forward projects for financial assistance (European Parliament, 2022b:12).

Once the recovery plan is approved and prior to the disbursement of funds, *three agreements* must be signed between the Commission and the recipient state.

- '*Individual legal commitment*' (23.1 RRF): the EU commits to disbursing funds up to the financial contribution to the state concerned. In addition to the global commitment, the agreement may refer to annual instalments.
- '*Loan agreement*' (15.3 RRF), if the state has requested loans.
- '*Operational arrangement*' (27 RRF): key implementation and accountability aspects of the national plan, such as the timetable for monitoring and implementation or the relevant indicators to assess whether the proposed milestones and targets have been fulfilled. These arrangements grant the Commission full access to the underlying national data (Article 20.6 RRF), thereby enabling it to monitor the implementation of the plan. Operational arrangements are also considered in the biannual reporting by Member States in the context of the European Semester (Article 27 RRF). To date, 22 operational arrangements have been signed, negotiated over seven months on average. Their text is available on the Commission's RRF website.

Box 4 Timeline of RRF implementation by Member States



Source: Own elaboration based on the Commission's RRF Scoreboard.

Twice a year, Member States may submit *payment requests* to the Commission, up to their respective financial contribution allocated to the country, and with 31 December 2026 as the final deadline for disbursement (Article 24 RRF). Requests must be duly substantiated, with particular attention being given to

the satisfactory fulfilment of the milestones and targets proposed in the recovery plan and reflected in the Council implementing decision that approved the plan. With the potential help of experts, the Commission carries out a preliminary assessment of the information provided by the state, in the two months following the payment request. Where the assessment is positive, the Commission asks the ECOFIN committee for its opinion on the level of achievement of the milestones and targets and takes its views into account, before authorising the disbursement of the funds by way of a decision. A negative opinion implies that the Commission is not convinced of the achievement of the milestones and targets, and entails a suspension of the fund stream towards the state concerned, which has one month to present observations. Only when the milestones and targets are sufficiently evidenced by the state may the suspension be lifted; however, if this process takes longer than six months, the Commission will reduce the financial contribution allocated to the state for the whole lifespan of the RRF accordingly. Again, such a decision is only applied after a contradictory procedure with the state concerned, which has two months to react.

A deliberately crafted wording reduces the gatekeeping function of *milestones and targets* regarding RRF funds. The original text of the RRF regulation proposed their ‘implementation’ suggesting a focus on Member States’ endeavours towards their completion instead of actual results. Upon the suggestion of its budgetary control committee, the EP complained that milestones and targets may not be ‘implemented’ and proposed ‘achieved’ instead. This term would have enabled the Commission to carry out a binary assessment (achieved – not achieved), thereby creating stricter obligations and greater risk for Member States, so the Council arguably rejected it in the course of legislative adoption. Eventually, the RRF regulation speaks of ‘satisfactory fulfilment’, an ambiguous expression allowing the assessment of the state’s progress on a scale; this makes it more difficult for the Commission to deny progress.

Beyond the RRF goals, Article 19.3 RRF requires the Commission to assess whether the national recovery plan is ‘expected to contribute to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations’ within the European Semester. This cautious wording enhances the steering role of the Commission regarding country-specific recommendations – without gaining hard power, though; that is, the power to impose strict compliance with them (De Witte, 2021:676; Nguyen and Redeker, 2022).

Linked to the above, it is perhaps necessary to recall that *the Commission’s powers to touch upon the financial contribution allocated to each Member State are scarce*. Within the limits of the lower amount of either the state allocation under the RRF or the one claimed in the recovery plan, or its subsequent amendments, the Commission may only play with the time dimension to delay or suspend the disbursement of payments. It cannot implement a reduction in the funds

accessible to Member States based on a negative qualitative assessment of their (proposed *ex ante* or produced *ex post*) outputs. States' allocations may only be proportionally reduced based on the excessive time (six months) required to process a payment request.

National leaders within the European Council retained continuous monitoring of individual payment decisions in the form of 'exhaustive' discussions on the satisfactory fulfilment of the milestones and targets (European Council, 2020a:paraA19). In seeking to keep the RRF within the boundaries of EU legality to avoid actions for annulment against the regulation, national representatives introduced two caveats. The first one limits the timeline of the European Council involvement to three months following the consultation of the ECOFIN. This would arguably defuse individual or collective attempts to hijack the procedure and hamper access by another state(s) to payments under the RRF. The other, linked to the principle of institutional balance, prevents the European Council from encroaching upon the Commission's power of initiative (17 TEU) and exclusive budget management role (317 TFEU). In short, national leaders may criticise the Commission's assessment and even put political pressure on the latter to change its view, but they cannot reverse or veto it (De Gregorio Merino, 2021:12; De Witte, 2021:677).

The last procedure included in the implementation of the RRF is the (potential) 'termination procedure' (Article 24.9 RRF). This represents a 'nuclear option' in the hands of the Commission, to be triggered in the event that 18 months elapse since the approval of a national plan by the Council without 'any tangible progress' on the part of the state in respect of 'any relevant milestones and targets'. After giving the state concerned two months to present observations, the Commission adopts a decision terminating the agreements mentioned above, with two key implications: 1) funds committed in the EU budget to that Member State are 'released' – this is known as 'decommitment'; and 2), a recovery procedure is triggered as regards any amount that might have been disbursed to the state under prefinancing. Even if the regulation suggests an empowered Commission in this procedure, the rigid wording of the substantial requirements – no tangible progress in any milestone or target – renders termination an unlikely scenario that Member States will easily circumvent. The termination procedure acts as a 'procedural safeguard' needed in the legal framework, but will hardly pose a credible threat to Member States in regard to accessing RRF funds.

By way of conclusion, the core governance features of the RRF presented above suggest the following reflections:

- *The RRF governance framework conceals executive dominance behind a veil of mutually accountable layers of executive power: national (governments), supranational (Commission) and pooled (Council). In splitting managing and monitoring roles, the regulation suggests that all decisions taken at one level are monitored by the others. Yet, the*

numerous and broad criteria informing the decision and the lack of measurement indicators that may be consistently applied across levels increase the risk that the checks enshrined in the legal framework become in practice a semi-automatic endorsement (in the case of the Commission) or prioritise political reasons over substance (in the case of the Council). The governance framework transpires a mainly managerial nature, unfitting for the significance of the Resilience and Recovery Facility as the biggest spending programme of the EU in the 2021–2027 programming period, as a one-in-a-generation opportunity for modernisation of EU Member States, and as a source of debt that Europeans will have to repay until 2058. The RRF ‘reduces spending decisions to purely administrative acts and thus fails to acknowledge the political nature of fiscal policy decisions unlocking billions of euros’ (Guttenberg and Nguyen, 2020:1). The shortcomings of parliamentary oversight will be discussed in depth in forthcoming sections.

- *The grant component of the RRF is formally managed by the Commission under direct management; however, the key choices on fund distribution remain in the hands of national governments.* Earlier studies referred to ‘delegation to the Member State level’ (Crum, 2020:12), but there is no formal delegation in the RRF regulation, at least not in the way reserved in the Financial Regulation for ‘shared management’ funds (Article 63.1 FR).
- *The RRF is presented as a performance-based instrument but the Commission’s margin of discretion to incentivise reforms (according to national recovery plans) is restricted to binary decisions (to disburse the funds or not) or to the timeline for payments.*

2.2 Innovation or isomorphism?

The RRF has been hailed as an innovative instrument but its core governance (and substantial) features represent a spillover of macroeconomic governance dynamics into cohesion policy. Those dynamics were at the root of two projects that never saw the light of the day and had thus not been tested in practice: the Reform Support Programme (European Commission, 2018) and the budgetary instrument for convergence and competitiveness (BICC) (European Commission, 2019). The Juncker Commission steered those projects to incentivise structural reforms in euro area states (BICC) and non-euro area states (Reform Support Programme), linked to the European Semester. The Commission aimed to apply them in the 2021–2027 Multiannual Financial Framework; however, the pandemic trumped the legislative process and the two proposals were dropped when the Commission proposed the RRF on 28 May 2020. That the RRF inspired on economic policy coordination tools but then grounded on cohesion policy will help explain the accountability drawbacks in forthcoming sections.

The *Reform Support Programme* formed the ‘structural reform’ pillar of the Juncker Commission priorities within the European Semester. The Commission

had concluded that states failed in addressing the weaknesses pinpointed in the European Semester through effective structural reforms for three main reasons:

- Weak administrative capacity, affecting various substate levels in an uneven way;
- Poor engagement by policymakers, wary of the short-term negative impact of structural reforms aimed at achieving positive results that will only be felt after the end of their mandate;
- Heavy bureaucratic requirements, which reduce the impact of reforms during implementation.

To address these shortcomings, the Reform Support Programme was embedded in the EU budget and supported Member States with institutional, administrative and growth-enhancing structural reforms through three components (European Commission, 2018):

- *Reform Delivery Tool* (EUR22 billion) would have provided financial incentives to all Member States to foster reforms in the context of the European Semester;
- *Technical Support Instrument* (EUR0.84 billion) to assist specifically with the administrative implementation of reforms;
- *Convergence Facility* (EUR2.16 billion) combined financial and technical support to help non-euro area states to prepare for the EMU, provided they had taken ‘demonstrable steps to adopt the single currency within a given time frame.’

The *budgetary instrument for convergence and competitiveness (BICC)* traces back to the ‘Meseberg Declaration’ (19 June 2018), a Franco-German initiative for a genuine eurozone budget to promote competitiveness, convergence and stabilisation in the euro area. Independent from the EU budget, the eurozone budget would have been fed from national contributions, allocation of tax revenues and European resources. National representatives meeting within the Eurogroup (June 2019) decided instead that the instrument (renamed the ‘BICC’) should be embedded in the EU budget, and asked the Commission to put forward a proposal (European Commission, 2019), fine-tuned in turn in the Eurogroup of October 2019. Importantly, the geographical coverage of the BICC was limited to the euro area states, while currently all EU members benefit from the RRF. The BICC built on the European Semester to determine the structural reforms within its scope. The BICC required a national co-financing rate of 25%. By enhancing macroeconomic conditionality in funding programmes, the Commission and the Eurogroup would enjoy greater leverage on structural reforms at state level. Moreover, the BICC would have retained a strong role for national governments, while preserving the basic roles of the European Commission as manager as well as of the EP and ECA as watchdogs. Strategic guidance was however retained by national executives partaking in the Euro summits and the Eurogroup. The financial allocation of the BICC was to be agreed in the context of the MFF, raising the stakes and reducing the

flexibility of the instrument (Lindner and Tordoir, 2020; Schoeller, 2021; De Souza Guilherme, 2021; Huguenot-Noel et al., 2018).

Box 5 offers a synthetic overview of the features where the RRF borrows from the Reform Support Programme and the BICC (in green), as well as the main differences between them (in red). The chart tellingly proves that *the RRF does not represent an expansion of former cohesion funds but rather an example of cross-pollination between economic coordination and cohesion policy*.

Doubts remain as to whether this architecture stems from careful reflection grounded in economic and legal craftsmanship or it embodies an example of improvisation in the face of urgency. Jonathan White has extensively studied ‘emergency politics’ in the EU and finds that decisions commonly follow a ‘largely improvised approach that raises a range of problems’: ‘decisions achieved in this makeshift way are often inefficient’, with power leading to ‘further concentration on executive institutions, political and technocratic, at the expense of parliaments, courts and wider publics’ (2022:784). This is precisely the concern discussed in the next section.

Box 5

How the RRF built on prior untested projects instead of Cohesion tools

	RRF	RSP	BICC	COHESION
Policy/Legal basis	Cohesion (175.3 TFEU)		EMU 136.1b + 121.6 TFEU	Cohesion (other)
Financial allocation	Huge (EUR 750b)	EUR 25b	EUR 12b	
Geographic coverage	All MS	Non-Euro states	Euro area states	
Financial management mode	Commission (direct)			Shared
Role of EU budget	Macroeconomic stabilisation			Redistribution
Targeted reforms	All-encompassing		Incentive	Sectorial
Links with European semester	Conditionality			No
Application	Member States (voluntary basis)			Various applicants
Pay-per-plan	NRRP	Yes (reform proposals)		Pay-per-project
Global envelope by state	Yes (financial contribution)			
Criteria to distribute funds	Needs (differentiated approach)	Population (progressive approach)		
Kick-off payment + Yearly calls	Pre-financing + yearly calls (x2)	Initial disbursement + yearly calls (x1)		Yearly calls only
National cofinancing	No		25 %	Variable rate
Transfer from structural funds	Yes	Yes (up to 5 %)		n/a

Source: Author’s own elaboration.
 Note: The colour code shows similarities across programmes with regard to individual features.

2.3 Executive dominance

National governments used the European Council to shape key details of the RRF, leaving little margin to the legislative powers of the Commission and the European Parliament. While the urgency and the financial implications of NGEU may justify the involvement of national leaders, the detailed European Council conclusions arguably bent the institutional balance enshrined in EU Treaties, narrowing the chances of supranational institutions (which represent the general interest within the EU legal framework) discussing and making political choices (see Box 6) – yet another instance of ‘executive dominance’ within a now well-documented trend (Mény, 2014; Curtin, 2014; Fromage, 2020; De Souza Guilherme, 2021:87; Schramm and Wessels, 2022). A similar degree of detail is observed in the configuration of the rule of law conditionality mechanism, which touches upon RRF funds management (e.g. European Council, 2020a:23, 2020c:2).

Box 6 How the European Council framed the RRF to the detail	
<i>European Council</i>	<i>Aspects of the RRF decided</i>
<i>17–21 July 2020</i>	<ul style="list-style-type: none"> • Timeline of commitments (up until 31 December 2023) and payments (by 31 December 2026) (A13, A14) • Commitment rates for grants (70% in 2021–2022, 30% by end 2023) (A15). • Loan-taking capacity was capped at 6.8% of the GNI for each Member State (A15). • The criteria to split funds among states (A16). • Digital transition taking at least 20% of recovery plans (European Council, 2020b:8). • Access to prefinancing by Member States: the timeline (2021) and share (10%) (A16). • Assessment of national recovery plans by the Commission: the timeline (two months), the priority given to country-specific recommendations within the European Semester in that assessment (A19). • The procedure (Council by qualified majority upon Commission proposal) and form (implementing act) for the approval of national recovery plans and subsequent payments; the involvement of the ECOFIN committee; the exceptional referral to the European Council if a member state disagrees with the approval of another national recovery plan (A19).
<i>1–2 October 2020</i>	<ul style="list-style-type: none"> • > 20% RRF funds for the digital transition (p.8).
<i>24–25 June 2021</i>	<ul style="list-style-type: none"> • Pressure on the Commission to approve the national recovery plans (p.7).

3 The Social Relationship(s) in the RRF

Although Bovens defined accountability as a ‘social relationship’ between an actor and a forum, practice shows a less straightforward scenario (2007). Governance frameworks often feature multiple bodies at both ends of the accountability relationship, that is, no single body plays the role of either the ‘actor’ or the ‘forum’, but we find multiple actors and multiple forums instead. Besides, a single body may alternatively fulfil both the ‘actor’ and the ‘forum’ function. For instance, the RRF regulation attaches the role of actor to the Commission (it directly manages the RRF) but it also endows it with monitoring powers (typical of a ‘forum’) over the use made by national authorities of their financial contribution. This remark calls for an analysis from an intra-institutional perspective, given that the functions are normally operated by different units within the body. A question worth examining is how intra-institutional political agendas or power struggles affect the balance between (and performance in) the two functions inside the institution. This section analyses the RRF as a compound of dyadic accountability relationships, paving the way for the forthcoming analysis of accountability arrangements.

3.1 Who the ‘actor’ is, or the ‘problem of many hands’

Goetz and Martinsen (2021:1009) rightly point out that ‘[i]n the midst of a crisis, responsibility for actions taken becomes blurred. It becomes unclear who has the obligation to explain and justify which actions. In addition, the forum’s ability to hold actors accountable declines significantly, at least during the height of a crisis. Normal democratic principles and accountability relations are likely to be put on hold’.

As explained earlier, RRF funds are implemented under a *sui generis* form of direct management by the Commission where, in practice, Member States retain a key role in splitting funds among final beneficiaries and remain the primary shield to protect the financial interests of the EU.

The Commission gains power under NGEU, it now raises resources through bond issuance, and steers a supranational economic policy within the RRF (Corti and Núñez Ferrer, 2021:4; Vanhercke and Verdun, 2022:210). The full integration of the RRF and the European Semester represents a ‘marriage of convenience’ (Nguyen and Redeker, 2022:2), not least because it boosts the Commission’s ability to push some countries into heeding its economic advice in the coming years. Upon approval of the recovery plans, the Commission holds the key to releasing payments requested by states, twice a year. The Council simply issues an opinion (through the economic and financial committee) and can therefore

not reverse the Commission's decision. Through its power to judge the progress made in the achievement of milestones/targets as 'sufficient', the Commission acts as the gatekeeper of RRF funds and 'hardener' of the European Semester. The Commission's executive power grab as regards the European Semester is likely to stay; even if the RRF was devised as a temporary instrument, the governance shift will represent the template to discuss future programmes (Nguyen and Redeker, 2022; Fabbrini, 2022:17).

Internally, the Commission has centralised the management of the RRF and the coordination of the Semester under the remit of the newly established Recovery and Resilience Task Force (RECOVER). RECOVER is embedded in the Secretariat-General; it works in close cooperation with the Directorate General for Economic and Financial Affairs (DG ECFIN) and reports directly to President von der Leyen (Vanhercke and Verdun, 2022:210). Building on interviews, Schramm et al. (2022:5) suggest a strong leadership (*Chefsache*) of the latter and its cabinet in the process. Operational arrangements signed with Member States assign both RECOVER and ECFIN, representing the Commission, the role of interlocutors for the monitoring of RRF implementation.

Moving on to the state level, *national governments have remained the main actors in the early stages of the RRF implementation*. An early EP resolution of 10 June 2021 felt that central governments had taken advantage of time constraints to hijack the process of drafting national recovery plans (2022b:7). Later research on the extent to which substate authorities have asserted themselves against central governments yields uneven results across Member States, even in federal ones. Some regions would have been very active in Spain (Hidalgo-Pérez et al., 2022) and Italy (Menegus, 2022; Domorenok and Guardiancich, 2022), while Germany's *Länder* were surprisingly absent (Scheller and Körner, 2022:35). Studies have pointed out that the RRF blurs the traditional boundaries of cohesion policy to target all-encompassing measures. Ascribing responsibilities for RRF implementation inside the state is complex. The far-reaching scope of the programme not only affects the determination of the level (central or regional) for decision-making and policy implementation but also imposes heavy coordination demands on national policymakers across the wide array of policy areas targeted by the RRF (and recovery plans). Central governments would have arguably taken advantage of that window of opportunity at the decision-making stage, but the involvement of substate authorities is essential for the long-term performance of the RRF to preserve the overall legitimacy of the RRF (and, by extension, of NGEU). The Commission liaises with a single body in each Member State, as stated in the operational arrangement. That body is responsible for monitoring and reporting on RRF implementation, and coordinates any meeting with, or inspection of, substate authorities. Vertical and horizontal coordination at substate level remains a key issue worth following up, due to its impact on the performance of RRF funds.

3.2 Majoritarian institutions as ‘forum’: European Parliament and national parliaments

In times of crisis, Parliaments find themselves constrained to shape the solutions ex ante; however, they retain ex post control powers over the implementation of those solutions. Crises become a window of opportunity for the executive power due to the need to quickly provide solutions to mitigate citizen suffering (White, 2019). Performance goals prevail over democratic principles in policymaking and in lawmaking too, since executive rule allows the bypassing of parliamentary processes. To preserve the democratic quality of the political system, it is essential that parliaments actively exercise their *ex post* control powers over the choices made in a crisis and their lasting implications.

This section examines the place reserved for the European Parliament and national parliaments in the Recovery and Resilience Facility governance.

3.2.1 The European Parliament: a forum without sufficient power

As explained in Section 2.1 above, constraints linked to core principles of EU law have shaped NGEU as an ensemble of acts, each of them grounded in a different Treaty provision. Each of these legal bases accords a different involvement to the EP, resulting in uneven lawmaking and control powers across the NGEU pillars, to be assessed on a case-by-case basis. For instance, the ‘borrowing’ dimension of NGEU was introduced first within the EMU framework (with the European Union Recovery Instrument, Council Regulation 2020/2094), then brought into the EU budget as ‘external assigned revenue’ (Own Resources Decision, Council Regulation 2020/2053). Focusing on the ‘incoming’ dimension of NGEU, obtaining the financial resources, neither Article 122 TFEU nor 311 TFEU granted the EP any power beyond information rights; by contrast, the ‘outgoing’ dimension, the distribution of funds, depicts the EP as a colegislator (RRF Regulation, based on 175.3 TFEU).

Even where the EP has lawmaking powers, its margin of discretion is constrained by the detailed guidance provided by national leaders within the European Council, a feature of executive dominance that was mentioned earlier. Aside from key policy choices, the pressure to treat the Recovery and Resilience Facility ‘as a matter of exceptional urgency in order to ensure that the EU can respond to the crisis’ (European Council, 2020a: A32) arguably constrained the EP’s ability to internally discuss and decide on the core matters shaping the RRF (Schramm and Wessels, 2022:10).

At the decision-making stage, the EP was more successful in obtaining policy concessions than a strong involvement in the governance (and accountability framework). It failed, for instance, to exploit the ‘window of opportunity’ to claim a more important role in the European Semester (Closa et al., 2021:172). The

EP had to settle for ‘having a seat at the table’ (Wozniakowski et al., 2021:98), leaving the unbound Commission and Council ‘at the driver’s seat’ (Fromage and Markakis, 2022:8). However, the EP warned that crisis management in emergency situations ‘must never be an excuse to bypass Parliament and undermine democratic accountability’ (2021b:7).

Institutional adaptation to the RRF involved the creation by the EP of a standing working group in March 2021, composed of 27 MEPs (and 14 substitutes) from the committees (Box 7). In 2021, the working group held 18 meetings with the Commission, experts and stakeholders (European Parliament, 2022b:3). The working group is steered by two committees with primarily legislative functions, suggesting a lesser institutional interest in scrutiny.

Box 7 How the EP Working Group on the RRF is composed

Lead Committees

- Committee on Economic and Monetary Affairs (ECON)
- Committee on Budgets (BUDG)

Associated Committees

- Committee on Employment and Social Affairs (EMPL)
- Committee on the Environment, Public Health and Food Safety (ENVI)
- Committee on Industry, Research and Energy (ITRE)
- Committee on Transport and Tourism (TRAN)

Source: Author, based on European Parliament, 2022b.

The *EP’s scrutiny powers over the revenue dimension of NGEU fall short of expectations*. In the Interinstitutional Agreement (IA) among the Commission, the Council and the EP of 16 December 2020, the Commission commits to producing an annual report on the European Union Recovery Instrument, which the EP may in turn discuss and assess (point 17 IA).

The original Commission proposal on the RRF (May 2020) did not include considering parliamentary control, but the EP used its legislative power to spearhead amendments on scrutiny. Indeed, the EP considered the RRF ‘an unprecedented instrument in terms of volume and means of financing’, whose ‘democratic control and parliamentary scrutiny’ ‘is only possible with the full involvement of Parliament at all stages’ (European Parliament, 2021a:B–C).

Following the template of the ‘economic dialogue’ in the context of the EU’s post-crisis economic governance, Article 26 RRF sets up the ‘*Recovery and Resilience Dialogue*’. The EP may summon the Commission every two months to discuss the state of play of the RRF with its competent committee (De Witte, 2021:677). The very short interval of only two months represents an improvement from the

Economic Dialogue (Fromage and Markakis, 2022:7) that allows the EP to exert continuous – and thus more intense – scrutiny over the RRF.

The RRF extends the EP's watchdog powers to collateral areas, insofar as the lack of compliance by a Member State with the supranational governance framework on fiscal and economic coordination may cause the suspension of commitments or payments under the RRF (for instance, if the state becomes the target of the Macroeconomic Imbalances Procedure under Regulation 1176/2011). In such cases, the Commission must keep the EP informed, attend meetings when convened and consider the EP's views (Article 10.7 RRF).

To sum up, *the EP powers under the RRF and related legal acts are modest and ill-suited to keeping dominant executives at arm's length*. The current framework features the EP as an *ex post* bystander to key decisions, such as the approval of national recovery plans, the evaluation of implementation progress, payment decisions and their suspension. The choice of the examination procedure for implementing acts stripped the EP of the potential capacity to veto key decisions within the RRF. The EP lacks the capacity to change the regulatory framework, which would require agreement with the Commission and the Council. Moreover, a meaningful revision is highly unlikely for a temporary instrument with such a short lifespan as the RRF (bound to expire on 31 December 2026).

3.2.2 National parliaments in the RRF: reluctant forums

The EU legal order reserves a meaningful place for national parliaments in neither the decision-making nor the control stages of the policy cycle. The Lisbon Treaty merely improved their information rights on draft EU legislation (Article 12 TEU) without however enabling them to make a difference (e.g. the early warning system in subsidiarity, Protocol no. 2)¹.

Accordingly, *national parliaments actively monitor EU affairs in an uneven manner*. Some parliaments are very active and feature well-established practices of holding the executive accountable, while others do not. The salience accorded to EU affairs in the plenary is the highest and most stable in Austria, Germany and Sweden, with Denmark, Portugal and Greece at the other end of the scale (Lehmann, 2022:380). Diverging cultural approaches to accountability and political system asymmetries play a key role in keeping the collective of national parliaments a weak actor. Statistical analysis of EU salience in parliamentary activity evidences that 'EU politicization is cyclical and driven by critical junctures, instead of increasing linearly over time' (Lehmann, 2022:381), but studies also show a smooth upgrading of patterns of parliamentary contestation and emergent inter-parliamentary coordination (for a detailed review, see Crum, 2022).

¹ By way of exception, national parliaments enjoy veto power over Council decisions determining which aspects of family law with cross-border implications may be regulated at EU level, which they can exercise within six months of the notification of the draft (Article 81.3 TFEU).

These findings hold especially true in the budgetary field. That complexity affects national parliaments in an asymmetric way (Rasmussen, 2018:356) is evidenced in the two fields of macroeconomic policy coordination and the EU budget. In the former area, the supranational surveillance of national policies led to the imposition of fiscal rules such as fiscal balance or total debt, setting boundaries to parliaments' discretion over national budgets (Kreilinger, 2022:46), arguably stripping them of their 'voice'. Moreover, the lack of timely access to key documents constrains their scrutiny powers too, in view of following up the national implementation of country-specific recommendations within the European Semester (Fromage, 2020:476; Kreilinger, 2020:12; Wozniakowski et al., 2021:98; Skazlic, 2022:188). When it comes to the EU's own budget, national parliaments enjoy 'hard power' over the sources of EU revenue, given that the entry into force of the Own Resources Decision is subject to national ratification (311 TFEU). In practice, however, a crisis scenario may compel them to quickly sign it off after little more than a cursory review, as the light-speed ratification process in 2020 evidenced (Sánchez-Barrueco, 2021:575).

NGEU features high stakes for national parliaments: the debt incurred to cover for the extraordinary revenue will be paid back through an increase in transfers from the national budgets to the EU, and through new EU own resources that may require unanimous voting in the Council and even national ratification (Crowe, 2020:341). Yet, *the RRF regulation keeps silent as to minimum national thresholds for democratic oversight.* What is more, where Article 18.4.q RRF requires governments to include a summary of the consultation process, when preparing or updating national recovery plans, it mentions substate authorities and civil society actors but not national parliaments. The legal framework does not guarantee that parliaments scrutinise recovery plans at least as properly as national budgets (Kreilinger, 2020:12).

Practice corroborates that impression: *some national governments submitted a recovery plan without even discussing it with the national parliament* (COSAC, 2021; European Commission, 2022b:3). Italy represents an exception: in early 2021, 'parliamentary committees welcomed civil societies, businesses, representatives of categories (including students who expressed their points of view about their expectations) with the aim to listen and deeply understand the country's concerns, needs and priorities' (Talani and de Bellis, 2023:174). Large-scale and independent empirical accounts of parliamentary involvement in the RRF in recipient States are still missing. A survey launched by the European Parliament in March 2022 (2022d) yielded a disappointing landscape – even more so because some parliaments did not respond (Bulgaria, France and Malta) and there was no independent check on parliaments' replies.

Inter-parliamentary coordination practices, well established over more than a decade in macroeconomic surveillance, were disappointing in the run-up to the RRF. National parliaments 'did not gather to voice their concerns during the

legislative process, and failed to raise at EU level their request for a role within the future governance of the RRF' (Dias-Pinheiro and Dias, 2022:338).

Box 8 How national parliaments scrutinise the RRF: the main shortcomings

- **Poor institutional adaptation.** Parliaments rely on traditional structures to cope with the novel RRF/NGEU challenges. Only Portugal created a designated parliamentary committee.
- **Lack of timely information on relevant issues,** such as the degree of achievement of milestones/targets (29%), potential risks of not achieving them (42%), coordination between the recovery plan and other EU funds (71%), other states' plans (79% respondents), the implications of the Commission's 2022 assessment in the framework of the European Semester for the national plan (53%).
- **Lack of reporting by national governments** on progress in RRF implementation (46% respondents). If true, this finding reveals a striking lack of preparedness, considering that the recovery plan of 20/24 states had been endorsed by the Commission by the time of the closure of the questionnaire.
- **Lack of willingness to scrutinise the contribution of the recovery plan to EU priorities** (e.g. fulfilment of the thresholds in climate and digital transitions) (42%); or progress in project implementation as per the national plan (62%).

Source: Author, based on European Parliament, 2022d.

Against this backdrop, *national parliaments emerge as reluctant forums, endowed with potential but unwilling to claim control power despite the high stakes of the RRF.*

3.3 Non-majoritarian bodies as forums

It is critical to endow financial watchdogs with sufficient powers and resources to prevent deviations in the RRF implementation. The RRF meets the two conditions for a 'perfect storm' of fraud and corruption in EU finances: huge amounts of additional funds and a very short time frame in which to spend them. It is also afflicted by a traditional shortcoming of structural funds affecting the main NGEU recipients (Italy and Spain): *insufficient funds absorption capacity.* Focusing on Italy, Sandulli (2022:2) has questioned the ability of the Italian government to spend EUR200 billion in four years when it only spent 38% of the 2014–2020 MFF in seven years.

An additional concern is that *RRF funds reserve a less straightforward position for final beneficiaries* than in regular EU structural funds. Beneficiaries under EU structural funds enter into direct commitments to protect the EU's financial interests, through bilateral agreements signed with the Commission, as a precondition to access funding. They acknowledge, with binding force, the investigating powers of financial control bodies (Article 129 FR). Conversely, the

RRF framework considers Member States as final recipients – the Commission implements the Facility under ‘direct management’. Granted, Member States make sure that the beneficiaries authorise the investigations of EU financial watchdogs (Article 22.2.e RRF) and non-compliance resulting in unaddressed fraud, corruption or conflict of interest, which may result in the proportional reduction of RRF support (22.5 RRF). Yet, substate-level beneficiaries do not enter into any direct legal agreement with the Commission and potential problems will only be tackled *ex post*.

Against this backdrop, this section focuses on the powers of the ECA, OLAF and the EPPO as watchdogs in the RRF.

3.3.1 The European Court of Auditors

The ECA audits EU finances. It can follow the money down to the final beneficiary with regard to the EU budget, as well as off-budgets created by EU institutions if the constitutive act so states. ECA audits form the technical basis of the EP’s own involvement in the democratic control of EU budget implementation through the discharge procedure; therefore, it is of utmost importance that the ECA’s information access rights are as broad as possible.

The rulebook governing the expenditure of the EU (the Financial Regulation, Regulation 2018/1046) *did not catch up with the legal architecture of NGEU, causing two innovative features of the RRF to weaken the role of the European Court of Auditors*. These shortcomings are being addressed within the revision of the Financial Regulation, currently pending adoption by the legislative authority (European Commission, 2022e). One of them concerns the ‘*external assigned revenue*’: the ‘lack of a comprehensive reporting on the implementation of the Commission’s debt-management strategy’ limits the ECA’s ability to monitor borrowing and lending operations, assets and liabilities (ECA, 2022c:31). The ECA’s remit on loan management under the RRF is limited due to its off-budget nature (ECA, 2023a:18). The other concern regards *information access rights regarding the final recipients of the RRF*. Since the Commission manages the RRF’s ‘direct management’, the baseline for reporting obligations takes Member States as beneficiaries instead of the actual recipients of RRF funds at substate level. Normally, all beneficiaries of EU funds would agree to future ECA audits prior to receiving the money, through the signature of the grant/loan agreement with the Commission; in this case, only States sign the operational agreements. Reaching final recipients is challenging: the lack of a single integrated IT system for data-mining and risk-scoring at EU level creates loopholes at Member State level, hindering proper oversight and the prevention of irregularities. The EP has complained that ‘Member States will only have to report to the Commission in broad strokes about progress on milestones, [making it] highly challenging for the European Court of Auditors to provide assurance on the legality and regularity of the spending’ (2021b:9). In its resolution of 4 April 2023, the EP’s Budgetary Control Committee of the EP finds that ‘a common data-mining and risk-scoring

tool is a key element in protecting the Union's financial interests and, more specifically, in preventing fraud, conflicts of interest and double funding, and in increasing transparency and accountability' (European Parliament, 2023a:12). The Commission had proposed introducing in the Financial Regulation the compulsory recording and storage by Member States of data on the final beneficiaries (2022e); however, the proposal falls short of expectations. As it stands, Member State obligations would not target the full range of recipients and would only apply as of 2028 (next MFF) (ECA, 2022c:11).

The ECA has made it a priority to audit the RRF, as reflected in its work programme (Box 9). The ECA would not stop at targeting the Commission's role in the RRF (how it endorses recovery plans, how it assesses milestones/targets and how it prevents deviations of RRF funds managed by Member States) but would also target Member States' use of RRF funds. Interestingly, the ECA would not only look for plain irregularities or deviations (compliance audit) but also assess the extent to which RRF funds achieve their stated goals through national plans (performance audit).

Box 9 How the ECA plans to audit the RRF governance and implementation

Forecast of ECA audits on the RRF

- Approval process of the plans (Special Report 21/2022)
- Coordination of ESIF-RRF regarding the funding of public investments (Review 1/2023)
- Commission's control systems in RRF (and PIF protection) (Special Report 7/2023)
- Member States' absorption of RRF funds (2023, Q4)
- Commission's system for monitoring the achievement of milestones/targets
- Member States' managing systems in RRF (and PIF protection)
- Performance audit on national plans (starting with sample, aimed at full coverage)
- Rule of law in the RRF (2024, Q1)

Source: Author, based on ECA (2021a, 2022a).

Over the last decade, the ECA has multiplied its performance audits, often presented in the form of special reports. Performance auditing grant the Court greater leeway to provide qualitative assessment of EU (and indirectly, national) policy decisions. Empirical accounts evidence that these types of report attract higher media and stakeholder attention (Johnsen et al., 2019:159; Tidå, 2022:700).

To date, the ECA has published its findings on the functioning of the RRF in several outputs. Audits on the RRF are now showcased in Chapter 10 of

the Annual Report, starting in 2021 (ECA, 2022b). Implementation delays limited the scope of that first audit on the RRF to the first payment disbursed to Spain in December 2021, which offered, however, the rare opportunity to watch the ECA assess just one Member State instead of drawing pan-European conclusions. More recently, the ECA has published a Special Report (07/2023) covering the design of the Commission's control system for the RRF, with a focus on the protection of the EU's financial interests (ECA, 2023a), and a Review comparing how EU funding operates through, respectively, cohesion policy and the RRF (ECA, 2023b).

3.3.2 The EU Antifraud Office

OLAF has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption, conflicts of interest or any other illegal activity affecting the financial interests of the Union. OLAF has experienced a profound transformation since the creation of the EPPO, which it now supports.

3.3.3 The European Public Prosecutor's Office

The EPPO started operations on 1 June 2021. Within its geographic scope, delegated prosecutors working at state level conduct investigations, may order national law enforcement agencies to carry out searches and seizures, and, once the case is ready, indict suspected criminals before the national courts. The EPPO is governed by Council Regulation 2017/1939 and its mandate is limited to criminal offences against EU finances, such as fraud, corruption and conflicts of interest. However, the EPPO's institutional design suffers from *two main drawbacks when considering the RRF*:

1. *The EPPO cannot pursue offences affecting RRF funds in all Member States.* All EU Member States benefit from the RRF, but the EPPO was set up as an enhanced cooperation without Denmark, Hungary, Ireland, Poland and Sweden. Prior to requesting these countries' police and judicial assistance (e.g. in interrogating a subject, requesting a bank statement, seizing proceeds from financial crime), the EPPO must conclude individual working arrangements with them. Until then, EU law does not oblige non-participating state authorities (law enforcement bodies, prosecutors and courts) to cooperate with the EPPO. Even afterwards, cross-border cooperation will not rest on stringent obligations but on a (soft) commitment to sincere cooperation in a spirit of mutual respect, whose non-compliance may hardly be evidenced or sanctioned. The EPPO's chances in non-participating countries will depend on the goodwill (political willingness, availability of resources and schedules) of national criminal justice systems. Thus far (to May 2022), the EPPO has signed working arrangements with one non-participating EU state (Hungary) and four third countries (the United States, Moldova, Ukraine and Albania). Even if the principle of 'sincere cooperation' acts as a boundary, the agreement provides for the 'widest possible range of assistance' between the partners. Cooperation is kept at the operational,

rather than political, level. The EPPO offers itself as host for seconded officials from Hungary.

2. *The power to adjudicate on EPPO-led cases and to recover misspent funds remains with national courts.* The scope of the criminal justice powers transferred to the EU covers the investigation and criminal prosecution of targeted offences (PIF crimes). This is undoubtedly a leap forward towards a better protection of the EU's financial interests. However, the lack of a federal criminal court (the Court of Justice of the EU lacks jurisdiction in criminal matters) naturally leads to diverging treatment of offences affecting EU finances across Member States. A lesser concern is that national courts adjudicate in accordance with national law in all matters not harmonised by EU law – this could be fixed by regulatory reform. More problematic is the risk that political corruption affecting RRF funds is reinforced by a captured judiciary in countries experiencing democratic backsliding. Corruption in the judiciary affecting EU funds is a tangible phenomenon and it would be naive to assume that it only afflicts certain Member States.

It is still too early to assess whether the EPPO will live up to the expectations (more indictments, more condemnations, more funds recovered) created by the Commission when it spearheaded this project in 2013. During its first year, the EPPO has indicted suspects in several participating states (Bulgaria, Croatia, Germany, Italy, Lithuania, Slovakia and Slovenia) but most cases are still pending. Two – successful – verdicts have been issued in Slovenia (4 July 2022) and Croatia (11 July 2022); both regard subsidy fraud, the former being in cohesion funds (EPPO, 2022a, 2022b, 2022c). Beyond these success stories, the broader picture is hindered by missing data on cases dropped by the EPPO/ national prosecutors or dismissed by national courts.

3.3.4 European Union Agency for Law Enforcement Cooperation or Europol

Europol is the European Union Agency for Law Enforcement Cooperation, under Regulation (EU) 2016/794 of the European Parliament and of the Council (amended by Regulation (EU) 2022/991 of 8 June 2022). It aims to support cooperation among law enforcement authorities in the Union. Europol carries out manifold activities (e.g. criminal intelligence analysis and joint investigation teams) and would thus be well placed to address the financial crime dimension of the recovery funds (grant fraud, corruption, money laundering, etc).

Since the start of NGEU, Europol has launched two main initiatives. On the one hand, it has added a dedicated chapter on NGEU to the *Law Enforcement Forum*, an informal meeting of law enforcement authorities at EU and national level to raise awareness of challenges and share best practices. The NGEU chapter focuses on organised crime threats against the RRF. So far, the LEF has met twice, in Rome (September 2021) and The Hague (April 2022). Europol

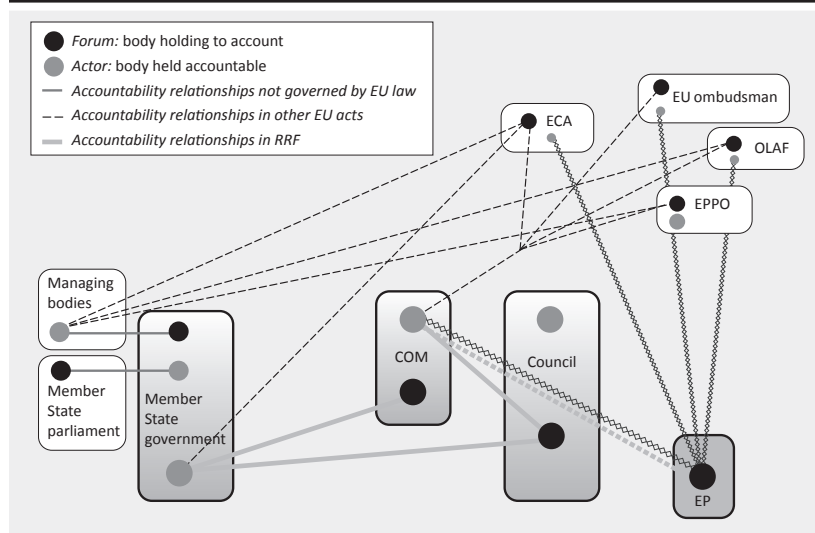
launched *Operation Sentinel* in October 2021 with the aim of anticipating the fraud wave against the recovery funds, focusing on PIF crimes. Four EU entities (Commission-RECOVER, OLAF, the EPPO and CEPOL) and authorities from all EU Member States participate in these endeavours.

Europol does not really count as a forum, for teleological and practical reasons. Europol is not a supranational EU police force but relies on cooperation among national law enforcement bodies. Therefore, Europol lacks an independent ability to scrutinise the RRF managing authorities or enforce EU law in Member States afflicted by corruption or executive capture facing non-cooperative or unwilling policing bodies. Besides, Europol's mandate is very broad, covering many other serious offences with transnational implications; therefore, its capacity to closely monitor the implementation of the RRF is limited.

3.4 Conclusion

The complex governance of NGEU features many actors intervening in different capacities across at least four levels: intra-state, cross-national, state-EU and EU-EU. As a result, multiple accountability relationships and arrangements emerge, governed by different regulatory frameworks. Behind the facade of a strong governance system aimed at ensuring accountability hides the challenge to achieve an all-encompassing assessment of its effectiveness.

Box 10 How diffuse accountability arrangements intertwine in the RRF



Source: Author's own elaboration.

4 The Four Accountability Layers

This section assesses the accountability arrangements within the RRF in the light of the four-stage theoretical framework introduced in Section 1.3 above. A systematic analysis would exceed the boundaries of this study; thus, attention is limited to gaps in, and shortcomings of, the arrangements.

4.1 Transparency

Accountability cannot thrive in the dark, therefore, a sound legal framework must impose strong transparency obligations upon actors endowed with executive power. With regard to RRF funds, this would imply the right to know how grants and loans are distributed and disbursed (the process), but also their destination, in terms of eligible projects and beneficiaries. Access to these aspects should not be limited to control institutions but equally allow for societal accountability through watchdog NGOs and investigative journalists.

4.1.1 Access to information on the RRF by the general public

At the EU level, information on the implementation of the RRF and the national recovery plans may be assessed as a benchmark in transparency. The RRF regulation required the Commission to set up a Scoreboard (Article 30 RRF), which was launched in December 2021². It offers public access to the recovery plans submitted by national governments, Commission proposals and Council implementing decisions. The reporting documents (scoreboard, guidance, review report, annual report and evaluation report) are also made public in the Recovery and Resilience Facility online hub³, which also includes a dedicated page for each Member State where key information regarding the implementation of their recovery plan is available. The Commission also publishes there the bilateral Operational Arrangement signed with the Member State, going beyond the RRF Regulation transparency requirements (25 RRF).

The national level represents the weak leg in transparency. The RRF Regulation failed to enshrine binding standards for Member States on the disclosure of the (process leading to the adoption of their) national plan or the subsequent implementation of the latter. The Commission assumes the role of ‘encouraging’ transparency in its exchanges with national representatives but claims that there is ‘no legal base to oblige all Member States to follow a common approach’ (European Commission, 2022b:4). Key transparency choices remained in the

² https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html

³ https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en#scoreboard

hands of national governments, resulting in interstate differences, hindering independent control from a cross-national perspective.

Surveys conducted by the Economic and Social Committee reflect civil society perceptions as regards the lack of proper involvement in the run-up to the submission of the recovery plan. Where consultations were launched, independent organisations were not listened to or their views did not meaningfully contribute to the final output (EESC, 2021, 2022a, 2022b).

Harmonised rules missing, the transparency of recovery plans (both in their drafting and implementing stages) is governed by national law. The ‘recovery plan’ available on the RRF Scoreboard is the one resulting from bilateral discussions/negotiations with the Commission, not the original one submitted. Citizens do not have information on bilateral contacts prior to the approval of the recovery plan. In less open states, the ‘right to know’ is only satisfied in a suboptimal and indirect way, through the information embedded in the Council implementing decision approving the recovery plan (including references to milestones and targets of the proposed reforms) and the Operational Arrangements between the Commission and the Member State (disclosed by the Commission, as advanced earlier).

For other documents, a top-down approach to publicity is missing in the legal framework, forcing investigative journalists to flood the Commission with ‘freedom-of-information’ requests for document access. Such a bottom-up strategy has been tried in a coordinated way in several Member States, but results are far from satisfactory. The independent civil society watchdog ‘Follow the Money’ initiative reports shortages in the Commission staff’s capacities, which are insufficient to process large-scale requests for access to documents linked to the adoption and implementation of recovery plans (Tillack and Teffer, 2022). This arguably causes delays in replies, which hinder timely accountability on the part of external stakeholders.

Moreover, the Commission comfortably sits on Article 4 of Regulation 1049/2001 on access to documents. That provision shuns the general openness principle in two cases that are relevant here. One is where ongoing negotiations could be jeopardised if preliminary documents were disclosed – thereby discarding the transparency of documents linked to the approval of the recovery plan. The other exception allows a Member State to object to the disclosure by, for instance, the Commission of documents likely to impair ‘the public interest as regards the financial, monetary or economic policy of [that] Member State’. In both cases, Regulation 1049/2001 acknowledges that the exception yields to ‘an overriding public interest’. External observers have argued that the unprecedented scale of RRF funding and the corresponding debt obligations incurred by the EU represent ‘an overriding public interest’ calling for the strengthening of openness as the general principle instead of stretching the boundaries of exceptions (Tillack and Teffer, 2022).

Unfortunately, the Commission does not consider that the huge size of the RRF represents an 'overriding public interest' worthy of tougher transparency standards at the expense of exceptions, and the Court of Justice supports this restrictive view. The case law interpreting exceptions to access to documents acknowledges that the Commission has limited power to overrule Member States' objections to disclosure. Notably, the Commission cannot carry out an exhaustive assessment going beyond a prima facie verification that the reasons supporting the state objection are well founded. The Court of Justice also views its own role in reviewing refusals to disclose documents as limited to verifying whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers. The Court reasserted these arguments in a judgement of 15 February 2023 (*Asesores Comunitarios S.L.*, ECLI:EU:T:2023:69) that dismissed the action brought by a Spanish consultant seeking access to the documents leading to the approval of the Spanish recovery plan (notably the pensions component).

That transparency concerns are a real issue in the RRF is also evidenced by the 12 cases opened by the European Ombudsman since the entry into force of the Regulation. Our research on the institutional database shows that most of these cases involve a Commission's refusal to give access to documents on the national recovery plans requested by individuals⁴. While most cases are pending, those closed have ended with the finding that the Commission was guilty of maladministration of a certain nature. A broader inquiry into the transparency and accountability practices of the RRF was opened in June 2022 and remains pending at the drafting of this study.

The general public cannot check the process leading to the Commission's endorsement of a national recovery plan. When several commissioners informally disclosed their discontent as regards the endorsement of the Polish plan, the Commission refused access to internal correspondence to journalist Peter Teffer (@peterteffe, tweet from 1 August 2022).

Additionally, the Commission interprets the disclosure of documents related to the drafting and assessment of the plans in too strict a way. However justified secrecy might seem *during* the decision-making procedure, the Commission extends it well beyond approval (as evidenced in the cases of Germany and Slovenia) without justifying how disclosure would undermine a closed decision-making procedure or balancing secrecy against 'an overriding public interest' in knowing.

With regard to national documents at its disposal, the Commission applies an equally restrictive interpretation. It does not disclose them without prior

⁴ The states involved are Denmark, France (two cases), Germany (two cases), the Netherlands (three cases), Poland (two cases), Spain and Sweden.

consultation with the state concerned and tends to deny requests whenever it fears that disclosure will undermine mutual trust in bilateral negotiations on recovery plans (Tillack and Teffer, 2022).

A second source of concern regards the *identity of the final recipients of RRF funds*. Under the RRF regulation, Member States must only disclose the identity of the beneficiaries to EU audit and control bodies (Article 22.2 RRF). Accordingly, EU law does not enshrine open-access obligations to provide standardised data on RRF recipients. Leaving that choice to Member States means that, in practice, watchdog NGOs and investigative journalists will only enjoy uneven (case-by-case) access to information from a cross-national perspective. In this sense, the RRF departs from general ‘direct management’ rules ensuring the transparency of EU public spending through the Financial Transparency System (Article 38 FR). Since states feature as final recipients of the RRF, they become a ‘black box’ shielded from public scrutiny unless they willingly decide to disclose that information. The weak EU legal framework increases the risk that cronyism and clientelism remain undetected and immune at substate level. Transparency watchdogs have not only called for broader publicity of information on final in-country recipients (such as registered name and address, amounts received and the purpose of the measure subject to funding), *ex ante* consultations and public procurement procedures, but that information is provided in an open and comparable format too (OpenSpendingCoalitionEU, 2022).

Sharing that concern, the European Parliament and the Commission issued a joint statement in the run-up to the adoption of the 2021 RRF regulation, underscoring the importance that ‘Member States collect and record data on final recipients and beneficiaries of Union funding in an electronic standardised and interoperable format and use the single data mining tool to be provided by the Commission’ (European Parliament, 2021a:152). The EP has also complained of the disparate degree of information disclosed by Member States, with some of them providing granular information down to the final beneficiaries whilst others merely display the relevant documents. The ownership of RRF implementation hinged on further harmonisation in this regard, stated the EP (2022b:7–8).

The EP took advantage of the ‘RePowerEU’ amendment of the RRF regulation in late February 2023 to spearhead the insertion of a new provision (Article 25a RRF), which now requires Member States to ‘create an easy-to-use public portal’ with biannually updated ‘data on the 100 final recipients receiving the highest amount of funding’ under the Facility.

4.1.2 Information rights of watchdog institutions in the EU

The unprecedented scale of funding raises doubts as to the Commission’s staffing capacity to process the avalanche of documents joined to draft recovery plans, as evidence supporting the claims therein (Tillack and Teffer, 2022).

The Commission is required to provide the Council and the Parliament with the same level of information, simultaneously, without undue delay (25 RRF). This notably involves the following items:

- Relevant outcomes of discussions held in Council preparatory bodies.
- Preliminary Commission findings on the fulfilment of the milestones and targets by Member States.
- Referral to the European Council in the case of disagreement among Member States as to the satisfactory fulfilment of the relevant milestones and targets (by Member States).
- Decisions on commitment and payment suspensions linked to sound economic governance (excessive imbalance procedure) (Article 10.7 RRF).

Information access to relevant documents and information may be constrained by the need for clearance of sensitive or confidential information, including appropriate confidentiality arrangements. A Member State ‘may request the Commission to redact sensitive or confidential information, the disclosure of which would jeopardise public interests of the Member State. In such a case, the Commission shall liaise with the European Parliament and the Council regarding how the redacted information can be made available to them in a confidential manner in accordance with the applicable rules’ (25.3 RRF).

Beyond the specific transparency obligations enshrined in the RRF regulation, the EP may apply to the Facility its information access rights under interlinked frameworks such as the European Semester, the EU budget adoption and discharge procedures (notably under the Financial Regulation), as well as written or oral questions. For instance, the EP has asked the Commission for access to the list of final beneficiaries of projects funded under the RRF, and for the ECA to enjoy better access to IT tools allowing it to audit the final beneficiaries (2023a).

4.2 Reporting

The RRF regulation requires the Commission to produce several reports:

- Article 10 Report, on the implementation of suspensions linked to non-compliance by Member States with macroeconomic governance (excessive imbalance procedure), by December 2024, 10.8 RRF.
- Article 16 Report, a Review Report on the implementation of the RRF (by 31 July 2022):
 - assessment of the extent to which the implementation of the recovery and resilience plans is in line with the scope and contributes to the general objective of this Regulation in line with the six pillars referred to in Article 3, including how the recovery and resilience plans tackle the inequalities between women and men;
 - specific contribution of the RRF to the climate and digital targets, common indicators and expenditure financed under the six pillars;
 - implementation progress of the plan by Member States (before their update under 18.2 RRF).

- Article 27 Reports: produced by Member States, these reports address the link between the RRF and the European Semester. They are issued twice a year, in April and October, during the implementation of the RRF.
- Additionally, Member States must report on common indicators for the six RRF pillars, twice a year (end of February and August), based on the 14 common indicators agreed by the EP and the Council (Annex of Commission Delegated Regulation EU 2021/2106).
- Article 31 Report: an annual report by the Commission to the European Parliament and to the Council on the RRF implementation, including:
 - implementation of milestones and targets, payments and suspensions;
 - review on the implementation of the suspension mechanism of Article 10 RRF (link between the RRF and macroeconomic governance);
 - the RRF contribution to the climate and digital targets;
 - the RRF performance based on the common indicators (Article 29.4);
 - the RRF expenditure under the six pillars (Article 3).
- An independent evaluation on the RRF (Article 32) by 20 February 2024, assessing the degree of, and proposing amendments to, the items below:
 - achievement of the RRF objectives;
 - efficiency in the allocation of the resources;
 - European added value of the RRF.

The above list allows the conclusion to be drawn that the RRF succeeds in enshrining reporting obligations that target the Commission and the Member States as main executive actors. *From a formal perspective, the reporting framework is comprehensive and thorough.* The sole exception is the Council. *Featuring as a forum despite its executive powers (taking key implementing decisions), the Council escapes reporting obligations;* it is thus not obliged to explain its activity or choices within the EU legal framework, although its members may be individually held to account under national accountability arrangements.

At the same time, *this reporting framework places the forums under the pressure of an endless flow of information and data they must process and scrutinise.* As shown in Box 8, this research considers primary forums to be the Commission and the Council (with regard to Member States) and the European Parliament (with regard to the Commission), and secondary ones to be the EU administrative watchdogs (the ECA, OLAF, the EPPO and the Ombudsman, with regard to both the Member States and the Commission). Forums are called on to scrutinise the continuous reports produced by the actors on very technical matters of policy evaluation across a range of areas and issues of know-how that may arise, pushing for staff reinforcement (see Schramm et al. (2022:6) on the Commission and the Council). Likewise, the forum needs to revisit its internal work programme and schedule to ensure that it processes incoming reports in a timely manner and, in turn, it produces meaningful feedback.

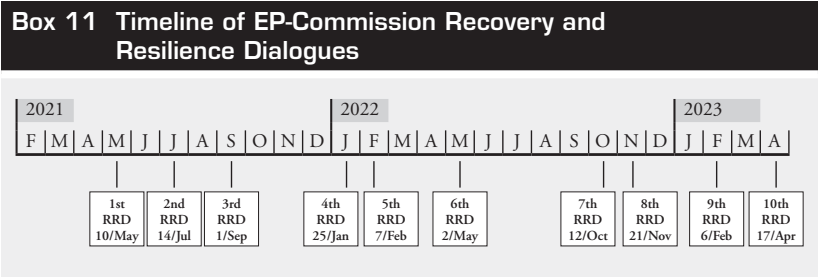
4.3 Scrutiny

This section develops practices allowing the European Parliament to perform scrutiny, as the main forum in the EU democratic system. The RRF regulation enshrines autonomous scrutiny practices in the form of the so-called ‘Recovery and Resilience Dialogues’, a soft accountability mechanism that has not, however, prevented the EP from applying well-established scrutiny practices in related policy areas (general political control, budget discharge, European Semester) to the RRF.

4.3.1 Recovery and Resilience Dialogues

The European Parliament has a specific role to play in scrutinising the RRF and, through the Interinstitutional Agreement negotiated with the Council and the Commission, borrowing activities under the EURI. Notably, the EP can launch the Recovery and Resilience Dialogues with the Commission and will receive information from the Commission on national recovery plans, on the Commission assessments and on Member States meeting the agreed milestones and targets. *Member States do not participate in the Dialogues, despite their essential role in fostering recovery and resilience.*

Recovery and Resilience Dialogues take place ‘every two months’. Frequency is a relevant dimension in accountability mechanisms, and here, *the recurring dialogues enable the EP (as watchdog) to put continuous political pressure on the Commission as primary manager of the RRF.* Earlier accounts reported that Dialogues were held back (Fromage and Markakis, 2022:8) but longer reference periods suggest overall respect for the schedule, delays being explained by the suspension of institutional activity during the winter and the summer (Box 11).



Source: Author, based on European Parliament (2022e).

The venue is also relevant. *Committee level allows for better focused discussions than the plenary.* The competent EP committee is the standing working group on the RRF. The legal framework does not shape this accountability arrangement from a neutral perspective in the actor-forum relationship, but leans towards, and grants vantage to, the EP as watchdog. It enshrines obligations for the Commission, which cannot refuse to attend EP meetings or can hardly circumvent information requests within the framework of RRDs, but forgoes

any corresponding responsibility for the EP. Dialogues are framed as an EP power or right, not an obligation; therefore, *the responsibility for steering the Dialogues towards effectiveness lies with the EP.*

Recovery and Resilience Dialogues address a rather broad and open-ended list of subject matters (Article 26 RRF), which, however, omits Member States' reports on the RRF and the European Semester (Article 27 Reports):

- the state of recovery, resilience and adjustment capacity in the Union;
- the assessment of national recovery plans: submission by the Member States, content, assessment by the Commission and subsequent status of fulfilment of the milestones and targets;
- the main findings of the Commission's Review Report (Article 16.2 RRF);
- payment, suspension and termination procedures taken as regards Member States;
- any other relevant information and documentation provided by the Commission to the competent EP committee, e.g. the Commission guidance for the plans (European Commission, 2020, 2021).

Up until May 2023, ten Dialogues have been held. The relevant documents and the recording of the session are available through the RRF Scoreboard.

Article 26.3 RRF states that the EP may adopt resolutions following the RRDs, which seems odd and redundant as a statement. The EP does enjoy the power to adopt its own initiative resolutions (INI) under the Treaty and any contrary view would encroach upon it. INI resolutions are addressed below in Section 4.3.3.

4.3.2 Fact-finding missions

The Budgetary Control committee of the EP has developed a practice of undertaking fact-finding missions to obtain first-hand information on the sound financial management and the performance of EU funds implemented at national level. National authorities are bound by the duty of sincere cooperation (4.3 TEU) to assist EU institutions (here, the EP) in the fulfilment of their tasks (here, financial accountability). Yet, the absence in the treaties of formal investigating powers for the EP creates a need for coordination with national bodies in a spirit of mutual respect. The EP delegation is often joined by representatives of the Commission or the ECA. At the national level, the average agenda of the mission would include meetings with representatives of public institutions, the media and civil society organisations. Upon their return, participant MEPs discuss their findings in session, with the data obtained informing ulterior EP resolutions.

Since the entry into force of the RRF in February 2021, the CONT committee has launched fact-finding missions in Italy and Poland (European Parliament, 2022a), arguably relevant within this context:

- *In Italy there is a risk of mafia infiltration in the implementation of the RRF.* The Ministry of Finances representatives provided information on the complex architecture and governance of the RRF in Italy, with particular focus on the multilayered monitoring and controlling structure. MEPs met the Italian Senate Anti-Mafia Commission, the National Anti-Mafia Prosecutor and several law enforcement authorities (Carabinieri, Guardia di Finanza, Polizia di Stato). All of them confirmed the ‘great interest’ of organised crime organizations in the unprecedented amount of resources deployed in the RRF.
- *In Poland, the financial watchdogs suffer from a shocking lack of independence.* CONT chair Holmeier revealed, in an interview, that the EP representatives were ‘shocked’ to learn of the ‘restrictions in place on Poland’s national court of auditors’. She added ‘[i]t is crucial that the audit authorities are independent, and that they are protected and empowered to do all audits as they deem appropriate. We are very concerned about the ongoing political pressure on members of the court, the prohibition on nominations of court members, the refusal of their access to necessary documents’.

4.3.3 Scrutiny resolutions

The EP adopts its own initiative resolutions outside the legislative process, where it reflects its views on the reports produced by targeted actors. Scrutiny resolutions embody the EP’s views and findings at any given moment; they include requests for further information, demands addressed to actors and criticism⁵.

Overall, INI resolutions display several advantages:

- They enshrine in writing the political commitments obtained from the actors during hearings or meetings, thereby giving a lasting touch to what could have otherwise passed as an irrelevant statement.
- The EP often includes data or findings verbally shared by the actors, thereby broadening access to relevant information by civil society organisations.
- Issues reflected in resolutions also represent a checklist the EP may return to at a later stage, to verify the extent to which the targeted actor has considered and addressed the EP’s views.
- Lastly, they may attempt to influence the Commission ahead of regulatory change. Within the RRF, two examples are noteworthy. First, the Resolution of 9 June 2022 tried to delay the approval of Poland’s plan by the Council due to rule of law concerns. The EP acknowledged the legal requirements for the disbursement of funds and concluded that ‘no payments can be made to Poland under the RRF until the full implementation of all relevant judgments of the CJEU and the ECtHR’; it recalled as well that ‘the Commission and

⁵ To that extent, they do not easily fit in Auel’s (2007:500) justification vs contestation dyad.

the Council are politically accountable to Parliament for their actions' (European Parliament, 2022f). Second, the EP Resolution on the RRF of 23 June 2022 tried to influence the Commission before the adoption of the RRF Review Report of 31 July.

The soft spot of INI resolutions as accountability tools is the lack of diffusion and teeth outside the EU institutional framework. If not echoed by other intermediaries (e.g. media outlets), these declarations devoid of punitive effect risk going largely unnoticed.

4.3.4 Follow-up resolutions

The Recovery and Resilience Dialogues feature a soft nature, even if their core discussion points are reflected in a scrutiny EP resolution. Hence the importance of enshrining in the RRF the Commission's obligation to take into account elements arising from the dialogue, including the EP resolutions if provided (26.3 RRF). The EP has repeatedly recalled this Commission's obligation (European Parliament, 2021a: E, 2022c: J). As evidenced in the discharge procedure (Sánchez-Barrueco, 2021), follow-up resolutions harden the soft character of the Dialogues, offering the EP a useful tool to clamp down on the Commission if it turns a blind eye to its recommendations.

4.3.5 Budgetary discharge

Although it is not explicitly foreseen in the RRF regulation, the EP is entitled to scrutinise all Facility funds that enter the EU budget, through its power to annually decide on granting budget discharge to the Commission (319 TFEU). Upon a non-binding recommendation of the Council, the EP will adopt a resolution, assorted with observations on areas that should be improved. The resolution may also be postponed or even refused, the latter case entailing a profound disregard of the Commission. The yearly nature of discharge allows the Commission to be subjected to a more sustained pressure than in, for instance, the motion of censure. Similarly, the weight attached to the discharge resolution is greater than that of INI resolutions. Discharge thus allows the EP to embed its observations derived from Recovery and Resilience Dialogues in a stronger resolution. This accountability mechanism excludes, however, the loan component of the RRF, given that these amounts do not enter into the EU budget. Member States are not directly scrutinised during the discharge procedure but, indirectly, the EP may clamp down on the Commission to carry out a more effective monitoring of fund implementation at state level.

The discharge procedure concludes in May (October, if postponed) of the second year (n+2) following the end of the budgetary year (n), meaning that budget management activities and their appraisal by the European Parliament are distant in time from one another. The RRF has applied since February 2021, we recall, but the first discharge procedure addressing it will only be completed at the 9 May 2023 plenary sitting. The Budgetary Control Committee, the leading

committee in this procedure, adopted a motion for a resolution on 3 April 2023 (European Parliament, 2023a). Chapter II of that resolution is entirely devoted to the Recovery and Resilience Facility and contains a very long list of requests to the Commission (Box 12), some of which will oblige Member States to take measures or make amends.

Box 12 How the EP scrutinises the RRF through the 2023 Discharge Procedure

The Commission is requested:

- to provide access to the list of all final recipients and projects of RRF funding;
- to ensure that Member States effectively publish the 100 final recipients receiving the highest amount of RRF funding in a reliable, integral and complete way; and take the necessary measures in the case of non-compliance;
- to explain in depth the methodology behind the assessment of milestones and targets, as well as payment suspensions;
- to assess Member States' fulfilment of the Rule of Law milestones in their recovery plans, on the basis of a clear methodology going beyond political negotiations, considering the CJEU case law and focusing not just on measures formally taken by states but also on their actual impact;
- not to approve any payment request unless all Rule of Law milestones have been fully met;
- to increase the transparency and accountability of appointment procedures for management positions in the RRF;
- to verify, in cooperation with the Member States, the real benefits of projects allegedly contributing to the 'inclusive' pillar of the RRF, particularly in the fields of protection for unemployment, health and long-term care;
- to provide in-depth justification of the lack of internal audits on the RRF;
- to improve the communication of results to reflect better the outputs actually achieved instead of the projected ones;
- to introduce a methodology to detect and prevent Member States from replacing recurring national expenditure with RRF funds;
- to report to the discharge authority on the destiny of prefinancing funds that were not allocated – as foreseen – to investments by recipient Member States;
- to assess Member States' audit and control arrangements, covering not only formal features but also their actual functioning;
- to report on measures taken to curb conflicts of interest at state level, particularly regarding the resort to consultants.

Source: Author, based on European Parliament (2023a).

4.4 Sanction

The word 'sanction' here refers to any measure that translates, in practical and restrictive terms, the margin of discretion or behaviour of the actor. Sanction measures may feature a political, legal, administrative and financial nature. The boundaries of this research hinder an all-encompassing assessment of

the multiple accountability arrangements affecting the RRF, such as the preventive and sanction tools foreseen in the Financial Regulation or the more general arrangements to ensure compliance with the EU legal framework (e.g. infringement proceedings). Therefore, this section focuses on three specific mechanisms foreseen in, or directly linked to, the RRF regulation.

4.4.1 Corrective measures adopted by the Commission

The RRF places the primary responsibility to comply with Union and national law when implementing those measures on Member States (22.1 RRF), whereas the Commission can proceed to corrective measures *ex post* in cases of fraud, corruption and conflicts of interest affecting the financial interests of the Union that have not been corrected by the Member State, or a serious breach of an obligation resulting from a loan agreement or a financing agreement (22.5 RRF).

4.4.2 Preventive measures involving the European Council – the ‘emergency clause’

The ‘emergency clause’ was oddly enshrined in Recital 52 of the Regulation, not in a provision. Accordingly, its binding force is only political, not legal. The emergency clause is activated by one or more national representatives on the Economic and Financial Committee, during debate on the approval of the disbursement of the financial contribution or of the loan. The approval presupposes that the Commission and other Member States broadly agree that the applicant state has satisfactorily fulfilled the relevant milestones and targets reflected in its recovery plan. Should any of the other national representatives consider that ‘there are serious deviations’ from those goals, it may ‘request the President of the European Council to refer the matter to the next European Council’. Importantly, the decision on the payment will be suspended ‘until the next European Council has exhaustively discussed the matter’. Accordingly, this accountability mechanism involves an individual state as the actor and, through the intermediary of another Member State or group of Member States, the European Council as the forum (both the Council and the Parliament are informed of the payment suspension). According to Schramm et al. (2022:4), this mechanism will hardly ever be triggered, not only because it would escalate interstate struggles in the RRF implementation but also because actors have so far prioritised coordination and negotiation.

4.4.3 Suspension of funds linked to rule of law deficiencies

Following a controversial legislative process, the European Parliament and the Council approved Regulation 2020/2092 ‘on a general regime of conditionality for the protection of the Union budget’ on 16 December 2020, although its practical implementation was delayed until the CJEU resolved two annulment proceedings brought forward by Hungary and Poland (Judgements of 14 March 2022, dismissing both actions).

The new rule of law conditionality mechanism is a transversal instrument applicable across all spending programmes in the EU budget, not specifically the RRF. It is a subsidiary mechanism, insofar as it complements other *ex ante* and *ex post* mechanisms enshrined in the Financial Regulation.

It is generally presented as a conditionality mechanism for the protection of the EU's financial interests, following a decade-long trend 'to use EU spending powers to achieve a wide range of policy and enforcement objectives' (Baraggia and Bonelli, 2022:141). Yet, its practical implementation and the features of EU budget management bring it close to a sanction mechanism, given that it puts pressure on the targeted state to adopt legislative changes almost impossible to achieve within the short lifetime of spending programmes, meaning that the state might eventually lose access to funds that had already been promised to it (Sánchez-Barrueco, 2021).

Under relentless EP pressure, the Commission has promised to make effective use of the rule of law conditionality mechanism, starting with Hungary. At the same time, its resort to the mechanism is significantly slower than the EP wishes. Pursuant to Article 6.1 of the regulation, the Commission first notified Hungary, in late April 2022, of several concerns damaging EU budget implementation. The Commission considered 'systematic irregularities and deficiencies and weaknesses in public procurement' (a surprisingly high number of contracts awarded to a single bidder), conflicts of interests, weaknesses in prosecution of PIF offences and gaps in the anti-corruption framework (Hahn, 2022). Hungary submitted belated observations and committed to 17 remedial measures, which the Commission in turn considered insufficient (European Commission, 2022d). In the September 2022 State of the Union address, Commission President von der Leyen showed a firm stance ('we will protect our budget through the conditionality mechanism'), eventually reflected in a proposal for a Council Implementing Decision put forward on 18 September 2022, not yet adopted (European Commission, 2022d).

Following a thorough justification, the Commission thereby acknowledges the fulfilment of conditions to apply the rule of law conditionality mechanism and proposes the suspension of 65% of budgetary commitments under several cohesion programmes (implemented in shared management). Furthermore, without explicitly referring to the RRF, the Commission proposes that the Union does not enter into further legal commitments benefitting public interest trusts in Hungary, and this includes the recovery funds.

Beyond the EU, and behind the scenes, it appears that several Member States and the Commission have spearheaded the extraordinary decision of the Parliamentary Assembly of the Council of Europe, adopted on 2 October 2022, to place Poland – and Hungary – under the full monitoring procedure due to

rule of law concerns, the only two EU Member States targeted by such a measure thus far. Furthermore, the CONT committee of the EP warned Commissioner for Budget Hahn ‘to not only go halfway with Hungary’ on its 4 October meeting. The Council failed to decide on the Commission’s proposal within the one-month deadline established in Regulation 2020/2092; in contrast, Hungary sought – and unanimously obtained – a two-month extension until 19 December at the Coreper II meeting of 10 October.

Any assessment of the budget conditionality mechanism as an accountability mechanism will only draw early conclusions in the absence of longer institutional practice; yet, its current implementation confirms the Commission’s sensitive position and the fact that the mechanism has fuelled both interstate and interinstitutional struggles.

5 Conclusions

This research has assessed the governance and accountability frameworks of the Recovery and Resilience Facility (RRF), the main instrument for fund distribution to Member States under Next Generation EU, drawing on both the regulatory instruments and insights from its practical implementation between February 2021 and early October 2022.

Our findings align with earlier accounts on a now well-documented trend towards strengthening executive dominance in the aftermath of existential crises threatening the EU.

A key conclusion is that the RRF governance framework has strengthened executive power in the EU, without a commensurate increase in democratic accountability. This is not trumped by the ‘solidarity’ feature mirrored in the RRF, which clearly departs from supranational solutions to earlier crisis, and represents an element of institutional learning. On the contrary, the need to accommodate states’ wishes to provide for a swift adoption of the recovery package pushed for the insertion of a varying array of conditionalities that have increased the complexity of the RRF governance and, in turn, stretched the capabilities of parliamentary and administrative watchdogs to live up to the demands of proper accountability.

Indeed, the governance system of the RRF is complex and intricate. The RRF is implemented under direct management by the Commission but displays features that do not match the spirit of that budget management modality. The Commission’s margin of discretion in touching upon the financial contribution allocated to each Member State is small. Its qualitative assessment may lead to delays in fund disbursement but will rarely lead to a quantitative reduction in these funds. Besides, RRF funds do not support EU-led projects but rather bottom-up initiatives shaped at national level. The European added value is achieved through the varying array of conditionalities that link the RRF (as a cohesion fund) to objectives and priorities established within other EU policy areas (environment, macroeconomic governance, social policy, etc.).

The RRF is indeed an innovative instrument, but it is by no means new. Under the pressure to provide quick and effective solutions to a fast-deteriorating economic outlook, EU institutions lacked the necessary time to devise this instrument from scratch. They thus combined templates from, at least, two failed projects in the economic governance framework, the BICC and the RSP. Departing from official documents, this paper has proposed isomorphism (or plain spillover) instead of innovation as a defining feature of the Facility. The RRF does not represent an expansion of former cohesion funds but rather an example of cross-

pollination between economic coordination and cohesion policy. The question, for which no answer is provided here, is whether the present experiment in cross-‘species’ isomorphism will prove effective in the end. As discussed later on, it has at least led to weaker accountability arrangements.

The RRF brings executive dominance to the next level. At the decision-making stage, national governments used the European Council to shape key details of the RRF, leaving little margin to the legislative powers of the Commission and the European Parliament. The resulting framework is one affording leadership to the Commission and the Council, next to Member States’ governments.

The Commission has gained power under NGEU; it now raises resources through bond issuance and steers a supranational economic policy within the RRF. From an intra-institutional perspective, the creation of the RECOVER task force, embedded in the Secretariat, strengthens presidentialism in the Commission. Next, national governments remain the main actors in the early stages of the RRF implementation. Cross-national studies on the participation of stakeholders in the drafting of the plans, perhaps not comprehensive or strong enough yet, suggest a less-than-meaningful input legitimacy of the process. Finally, the Council’s managing role emerges stronger too, with blurred boundaries between its ‘actor’ and ‘forum’ roles.

The EP has succeeded in shaping the regulatory framework, using its powers to bolster the various sources of conditionality, as well as the reporting obligations of the Commission. It has been less effective in securing a meaningful role in the RRF governance and accountability frameworks through dedicated arrangements. From an intra-institutional perspective, the EP has addressed the inter-committee coordination challenges created by the broad (cross-policy) scope of the RRF head on, by means of a standing committee composed of members of related committees. Overall, the EP’s scrutiny powers over the revenue dimension and the loan component of NGEU are modest, mirroring its involvement in EU economic governance. The RRF features the EP as an *ex post* bystander to key decisions, such as the approval of recovery plans, the evaluation of implementation progress, payment decisions and their suspension. Although the Recovery and Resilience Dialogues with the Commission every two months represent a welcome development allowing the EP to exert continuous oversight of programme implementation, the EP enjoys little leverage on the Commission and none on Member States within the Recovery and Resilience Dialogues. Soft accountability will hardly guarantee the much-needed democratic legitimacy of this once-in-a-generation initiative. National parliaments have filled in this gap in an uneven manner, despite the high stakes of NGEU for European societies. As a result of the failure to insert minimum national thresholds in democratic oversight in the RRF regulation, national parliaments emerge as reluctant forums.

Furthermore, this research shed light on the role of financial watchdogs in the RRF, considering that the Facility meets the two conditions for a ‘perfect storm’ of fraud and corruption in EU finances: huge amounts of additional funds and a very short time frame in which to spend them. To start with, we highlighted risks associated with the implementation of the RRF under a unique form of direct management where the final beneficiary remains largely non-identified and within the remit of national control bodies, compared with regular spending programmes under shared management, where beneficiaries must sign a grant agreement enshrining accountability obligations and arrangements. In the RRF, the Commission signs delegation agreements with Member States alone, a feature likely to result in delays in the identification and redress of financial irregularities. Our observation of administrative watchdogs shows that they have both seized the chance to add the RRF to their work programmes and introduced institutional adaptation strategies to cope with the significant requirements (and subsequent overload) created by the Facility. However, their performance in the audit or monitoring of the RRF implementation has inherited the same weaknesses of their regular mandates, powers and resources.

Lastly, this research addressed accountability arrangements under the RRF, around a four-stage assessment that considered issues of transparency, scrutiny, criticism and sanction. We found that the regulatory framework enshrines an ‘explosion’ of transparency and reporting requirements, which can only be assessed in a positive light. However, red flags were raised as to the challenges faced by parliamentary and administrative watchdogs confronted with ever-increasing piles of data and reports of a very technical nature. In the absence of highly skilled staff, it is uncertain whether the relevant forums (that is, the Commission as regards Member States, the Council as regards the Commission, the Parliament as regards both of them and administrative watchdogs as regards all of the above) can catch up with the need to hold the RRF to account. Proper accountability would require a meaningful assessment of the fulfilment (by national authorities) of the milestones, targets and general obligations under the RRF; and the criteria and decision-making process within the Commission (and the Council) when assessing the alignment of national implementation with RRF goals and conditionalities.

Our analysis finally shows that the true accountability of the RRF lies far beyond the specific arrangements set out in the Regulation. Institutional practice evidences that EU institutions and national authorities involved in the RRF implementation have prioritised dialogue and negotiation over confrontation and rejection. So far, the Commission has exploited its gatekeeping role in a soft manner, playing with the time dimension of accountability arrangements within the RRF to delay access to approvals or payment disbursements, but has not issued straightforward rejection decisions targeting any Member State. This increases the need for the EP to put its powers under linked frameworks at the service of the

accountability of the RRF. Of particular relevance will be – we believe – the EP resorting to the discharge procedure within general budgetary control, because in addition to its frequency, this accountability mechanism has the teeth missing in the Recovery and Resilience Dialogues. Our opinion is more prudent when it comes to the expected performance of the rule of law conditionality mechanism, which, despite the huge political energy invested by the EP in its adoption, has thus far yielded interstate and interinstitutional struggles but better scores in neither financial accountability nor rule of law standards.

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Svensk sammanfattning

I den här rapporten ses styrningsstrukturen i faciliteten för återhämtning och resiliens (återhämningsfaciliteten) som en korsbefruktning av EU:s makroekonomiska samordningspolitik och sammanhållningspolitiken. Återhämningsfaciliteten togs fram som en nödgärd, vilket har lett till en hög grad av komplexitet i styrningen och en stark roll för den verkställande makten. Rapporten visar också på bristerna i de arrangemang för ansvarsutkrävande som fastställs i den relevanta rättsliga förordningen (rådets och parlamentets förordning (EU) 2020/241) samt erbjuder en omfattande genomlysning av tidigare praxis och strategier – införda av EU:s väktare av ansvarsutkrävande – för att få bukt med dessa begränsningar.

Återhämningsfaciliteten fördelar 80 procent av medlen från Next Generation EU till medlemsstaterna, och är uppdelad i två komponenter: 385,8 miljarder euro i lån och 338 miljarder euro i bidrag, i 2022 års priser. Återhämningsfaciliteten ingår i sammanhållningspolitiken, men avviker i flera avseenden från gängse praxis inom detta politikområde. Formellt sett innebär förordningen om återhämningsfaciliteten att medel förvaltas ”direkt” av kommissionen. Medel betalas dock ut på plan-, snarare än projektbasis. Kommissionen förvaltar mycket stora betalningar utan makt att bestämma var medlen ska användas. Prioriteringar och villkor beslutas på EU-nivå (uppifrån och ned), men konkreta reformer och investeringar föreslås av medlemsstaterna i deras nationella planer för återhämtning och resiliens (nedifrån och upp). Kommissionen spelar en mellanhandsroll genom att erbjuda en teknisk bedömning av delmål och tröskelvärden – vilka föreslås eller genomförs av nationella myndigheter – och förbereder viktiga genomförandebeslut som ska antas av rådet.

Återhämningsfaciliteten stärker den verkställande makten i EU genom dess överstatliga (kommissionen), sammanslagna (rådet och Europeiska rådet) och nationella (centrala) dimensioner, till nackdel för de olika institutionerna för demokratiskt ansvarsutkrävande och för lokala aktörer. De nationella regeringarna använde Europeiska rådet för att utforma viktiga detaljer i återhämningsfaciliteten, vilket innebar att utrymmet för kommissionens och Europaparlamentets befogenheter begränsades.

När det gäller uppdelningen av förvaltnings- och övervakningsrollerna, föreslås i förordningen om återhämningsfaciliteten att alla beslut som fattas på en nivå ska övervakas av övriga nivåer. De många och breda kriterier som ligger till grund för det beslutet – och avsaknaden av mätindikatorer som kan tillämpas konsekvent på alla nivåer – ökar dock risken för att de kontroller som ingår i förordningen i praktiken leder till ett halvautomatiskt godkännande (i kommissionens fall) eller att politiska skäl prioriteras före innehåll (i rådets fall).

Styrningsramen är huvudsakligen av förvaltande karaktär. Den är därför inte anpassad till återhämtningsfacilitetens betydelse som EU:s största utgiftsprogram under programperioden 2021–2027, och den unika möjlighet den skulle kunna erbjuda för att modernisera EU:s medlemsstater. Återhämtningsfaciliteten innebär också att EU har en gemensam skuld som framtida generationer måste betala tillbaka (åren 2028–2058).

I rapporten undersöks återhämtningsfacilitetens styrnings- och ansvarsutkrävandestruktur ur ett så kallat ansvarsteoriperspektiv, med utgångspunkt i Mark Bovens definition av ansvarsskyldighet som ett "social relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, [in which] the forum can pose questions and pass judgement, and the actor may face consequences". Mot bakgrund av det tryck som föreligger på grund av att återhämtningsfaciliteten är en nödåtgärd, suddas ansvarsförhållandena ut när flera olika fora och aktörer ingår.

Med fokus på väktarna för ansvarsutkrävande undersöker rapporten den roll som de nationella parlamenten och Europaparlamentet spelar i processen. De nationella parlamenten framställs som motvilliga aktörer på budgetområdet, där gemensamma finanspolitiska regler som har antagits på EU-nivå begränsar deras röst i den nationella budgeten. Deras roll som kontrollinstanser för EU:s finansieringskällor begränsas av snäva tidsramar och yttre påtryckningar. Avsaknaden av betydande befogenheter i både besluts- och kontrollfaserna av policycykeln förklarar dock inte varför vissa nationella parlament aktivt övervakar EU-frågor medan andra inte gör det.

Den rättsliga ramen för återhämtningsfaciliteten efterlyste de nationella parlamentens deltagande i utformningen och antagandet av nationella planer för återhämtning och resiliens, men resultaten har enligt tidiga undersökningar varit nedslående. Den genomsnittliga nationella regeringen har inte förlitat sig på det egna parlamentet för demokratisk förankring, förmodligen på grund av tidsbrist. Det genomsnittliga parlamentet har inte deltagit aktivt i att förankra planen inför sociala aktörer (utom i Italien), ej heller i att internt anpassa sig till den komplexa styrningen av återhämtningsfaciliteten (utom i Portugal) eller att granska återhämtningsplanens bidrag till EU:s prioriteringar. De nationella parlamenten har potential men verkar ovilliga att göra anspråk på kontrollmakten, trots de höga insatserna i återhämtningsfaciliteten.

Europaparlamentet deltog som medlagstiftare i antagandet av återhämtningsfaciliteten men lyckades inte inta en meningsfull roll under facilitetens genomförandefas. Det påverkade den demokratiska legitimiteten i beslutsfattandet och därmed också ansvarsutkrävandet, vilket inte är optimalt för ett finansieringsinstrument av den storleken. Valet av granskningsförfarande för genomförandebeslut ledde till att Europaparlamentet åsidosattes i viktiga skeden i genomförandet av återhämtningsfaciliteten, såsom godkännandet av

planerna, förhandlingarna om de operativa arrangemangen och betalningarna. Här är orsaken inte riktigt kopplad till tidspress eller nödåtgärdsaspekten. Medlemsstaterna har inte velat att Europaparlamentet ska lägga sig i den politiska styrningen under genomförandet, som huvudsakligen är inriktad på nationell nivå. Europaparlamentets budgetbefogenheter är kopplade till EU:s budget och därmed utelämnas de nationella budgetarna.

Den ständigt närvarande dynamiken i den europeiska planeringsterminen – där Europaparlamentets deltagande är otillräckligt – har begränsat den rättsliga ramen för återhämtningsfaciliteten och hindrat Europaparlamentets möjligheter att övervaka olika skeden av genomförandet. Europaparlamentet får endast övervaka medel som ingår i återhämtningsfaciliteten om de förs in i EU:s budget, vilket utesluter de nationella budgetarna och återhämtningsfacilitetens lånedel (som uppgår till 52 procent av programmets totala anslag). Europaparlamentets befogenheter enligt de relevanta rättsakterna är blygsamma och dåligt lämpade för att hålla befattningshavare på armlängds avstånd. Europaparlamentet har dock utnyttjat sina befogenheter inom budgetkontrollen (det årliga förfarandet för beviljande av ansvarsfrihet) för att slå ned på kommissionen som förvaltare av återhämtningsfaciliteten och även utfärdat genomförbara krav som också indirekt kommer att tvinga medlemsstaterna att förbättra ansvarsskyldigheten.

‘The RRF brings executive dominance
to the next level.’

Maria-Luisa Sánchez-Barrueco



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