

# **RECOVERY AND RESILIENCE FACILITY FINANCING AGREEMENT**

## **between the Commission and the Kingdom of Spain**

This Financing Agreement is made by and between  
the European Union, represented by the European Commission,  
hereinafter referred to as “**the Commission**”

and

the Kingdom of Spain, represented by the Minister of Finance and Public Administration,  
Hereinafter referred to as “**the Member State**”,

hereinafter jointly referred to as the “Parties” and each of them a “Party”.

### **PREAMBLE**

Whereas:

- (1) Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility<sup>1</sup> (‘RRF Regulation’) has the specific objective to provide Member States with financial support with a view to achieving the milestones and targets of reforms and investments as set out in their recovery and resilience plans. Such support is financed from the borrowing by the Union on the basis of Article 5 of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision

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<sup>1</sup> OJ L 57, 18.02.2021, p. 17.

2014/335/EU, Euratom<sup>2</sup> (“Decision (EU, Euratom) 2020/2053”), which is available for the financing of measures under Article 1(2)(b) of Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic<sup>3</sup> (‘EURI Regulation’);

- (2) Support is provided following the approval of the assessment of the RRP by the Council in accordance with Article 20(1) of the RRF Regulation, on the basis of an agreement to be concluded between the Commission and the Member State;
- (3) In accordance with Article 24 of the RRF Regulation, the disbursement of the Financial Contribution should be provided in instalments, based on the satisfactory fulfilment of milestones and targets laid down in the Council Implementing Decision. In line with Article 24(1) of the RRF Regulation, payments of Financial Contributions should be made in accordance with the budget appropriations and subject to the available funding;
- (4) On 30 April 2021, the Member State submitted a RRP to the Commission;
- (5) The Council Implementing Decision establishes a Financial Contribution of EUR 69 512 589 611 for the Member State, with EUR 46 592 869 727 available to be legally committed by 31 December 2022. A further amount of EUR 22 919 719 884 is available to be legally committed as of 1 January 2023 until 31 December 2023 subject to the update provided for in Article 11(2) of the RRF Regulation calculating an amount for the Member State equal to or less than this amount. In accordance with Article 13 of the RRF Regulation, that same decision establishes an amount of EUR 9 036 636 649 of the Financial Contribution, equal to 13% of the Financial Contribution, to be paid as pre-financing to the Member State within, to the extent possible, two months after the adoption by the Commission of the legal commitment referred to in Article 23 of the RRF Regulation;
- (6) Pursuant to Article 22(2) of the RRF Regulation, the agreement to be concluded between the Commission and the Member State shall provide for obligations of the Member State to regularly check that the financing provided has been properly used and that there has been a proper implementation of measures; to take appropriate measures to prevent, detect and correct fraud, corruption, and conflicts of interests and legal actions to recover funds that have been misappropriated; to accompany a request for payment with a management declaration and summary of the audits carried out; to collect and ensure access to the standardised categories of data; to authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights; to keep records;
- (7) According to Article 9 of the RRF Regulation, reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same costs; according to Article 22(2)(c)(i) of the RRF Regulation the agreement to be concluded with the Member State should set out that requests for payment should be accompanied by management declarations that the control systems put in place give the necessary assurances that the funds were managed in accordance with all applicable rules, including on double funding;
- (8) Article 34 of the RRF Regulation sets out Member State obligations with respect to communication and publicity;
- (9) The Conclusions on Next Generation EU Green Bonds 7817/21 approved by the Council on 23 April 2021 welcomed the Commission’s target that up to 30% of Next

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<sup>2</sup> OJ L 424, 15.12.2020, p. 1.

<sup>3</sup> OJ L 433 I, 22.12.2020, p. 23.

Generation EU proceeds should be mobilised through the issuance of NGEU Green bonds, agreed that the relevant information on eligible RRF expenditures should be made available by Member States to the Commission on a regular basis and welcomed the intention of the Commission to include relevant text in the financing and loan agreements.

The Parties have agreed as follows:

#### **Article 1 Subject of the agreement**

1. This Agreement sets out the rights and obligations of the Parties and terms and conditions applicable to the Financial Contribution provided with a view to the satisfactory fulfilment of the milestones and targets of reforms and investments by the Member State in the Council Implementing Decision.
2. Subject to the provisions of the RRF Regulation, the Council Implementing Decision and this Agreement, the Union makes available to the Member State a Financial Contribution of EUR 46 592 869 727.
3. This Agreement and, notably, the amount of the Financial Contribution available under paragraph 2 shall be amended by the Parties following the updated calculation provided for in Article 11(2) of the RRF Regulation and, if necessary, following an amendment of the Council Implementing Decision pursuant to Article 20(8) of the RRF Regulation, or an amendment or replacement of the Council Implementing Decision in line with Article 21 of the RRF Regulation.

#### **Article 2 Entry into force**

The Agreement shall enter into force on the date on which the last Party signs it.

#### **Article 3 Definitions**

In this Agreement (including its recitals), the following terms have the following meaning:

1. "**Agreement**" means this Financing Agreement.
2. "**Commission**" means the European Commission.
3. "**Conflict of Interests**" means a situation as defined in Article 61(2) and (3) of the Financial Regulation.
4. "**Corruption**" means corruption within the meaning of Article 136(1)(d) (ii) of the Financial Regulation.
5. "**Council Implementing Decision**" means Council Implementing Decision of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Spain (ST 10150/21; ST 10150/21 ADD 1 REV 2).

6. **"Double Funding"** means funding provided in violation of Article 9 of the RRF Regulation.
7. **"EU"** means the European Union.
8. **"Financial Contribution"** means the non-repayable financial support in the meaning of Article 2(2) of the RRF Regulation, as specified in Article 1(2) of the Agreement.
9. **"Financial Regulation"** means Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.
10. **"Fraud"** means fraud within the meaning of Article 136(1)(d)(i) of the Financial Regulation.
11. **"Instalment"** means a part of the Financial Contribution. An Instalment may be split into tranches.
12. **"Operational Arrangements"** means the operational arrangements agreed by the Member State and the Commission after the adoption of the Council Implementing Decision, as referred to in Article 20(6) of the RRF Regulation.
13. **"Request for Payment"** means the Member State's request for payment of an instalment of the Financial Contribution.
14. **"RRP"** means the Member State's recovery and resilience plan that was assessed by the Commission and whose assessment was approved by the Council through the adoption of the Commission proposal for a Council Implementing Decision by the Council.
15. **"Serious Breach of Obligations"** in the context of Article 22(5) of the RRF Regulation and of this Agreement means a breach by the Member State of the obligations incorporated in this Agreement that adversely affects, in a material or substantial manner, the rights of the Commission or the proper implementation of Union funds pursuant to this Agreement concerning Articles 4, 5, 10, 11 and 12 thereof.

#### **Article 4      Responsibility of the Member State**

1. The Member State shall be responsible for the implementation of the RRP, including for the satisfactory fulfilment of the milestones and targets set out in the Council Implementing Decision and further specified in the Operational Arrangements.
2. In accordance with Article 28 of the RRF Regulation, the Member State shall foster synergies and ensure effective coordination between the recovery and resilience facility established by the RRF Regulation and other Union programmes and instruments, and in particular with measures financed by the Union funds in a manner commensurate to its responsibilities. Pursuant to Article 9 of the RRF Regulation, the Member State shall ensure that no double funding takes place.

## **Article 5 Pre-financing**

1. In accordance with Article 2(2) of the Council Implementing Decision and Article 13 (1) of the RRF Regulation, the Commission shall pay an amount of EUR 9 036 636 649 of pre-financing as part of the Financial Contribution within, to the extent possible, two months from the entry into force of this Agreement. The pre-financing may be paid in tranches.
2. If the amount of pre-financing paid under paragraph 1 exceeds 13% of the updated financial contribution established in an amended Council Implementing Decision following the updated calculation in accordance with Article 11(2) of the RRF Regulation, the excess amount shall be deducted from the next payment authorized following this update in accordance with Article 24(5) of RRF Regulation, and if needed also from the following payments. In case the remaining payments are insufficient, the Member State shall return the excess amount to the Commission, in accordance with Article 13(3) of the RRF Regulation, by 28 February 2027 at the latest.
3. For pre-financing paid in accordance with paragraph 1 and decreased by any excess amount referred to in paragraph 2, an amount corresponding to the percentage equal to the ratio of the remaining uncleared pre-financing over remaining amounts of the Financial Contribution to be disbursed shall be deducted from each payment in order to clear the pre-financing until it has been fully cleared.
4. Paragraph 2 shall be applied before applying paragraph 3. Upon request of the Member State in its payment request, additional amounts may be deducted from each payment in order to clear the pre-financing earlier.
5. Amounts of pre-financing that have not been cleared by 31 December 2026 shall be recovered.
6. Any pre-financing shall be recovered in full following the termination of this Agreement in the case referred to in Article 24(9) of the RRF Regulation.

## **Article 6 Request for payments, verification of conditions and disbursement**

1. When submitting requests for payment in accordance with Article 24(2) of the RRF Regulation, the Member State shall duly justify that the milestones and targets for the respective instalment as set out in Section 2 of the Annex of the Council Implementing Decision have been satisfactorily fulfilled. The Operational Arrangements shall be signed by the Member State and the Commission before the first request for payment.
2. When submitting the requests for payment pursuant to Article 24 of the RRF Regulation, the Member State shall:
  - a) Provide due justification of the satisfactory fulfilment of the relevant milestones and targets set out in the Council Implementing Decision;
  - b) Request in relation to the respective instalment a maximum of the amount as set out in the Council Implementing Decision;
  - c) Use the model set out in Annex II of this agreement;
  - d) In order to comply with the obligation set in Article 22(2)(c) of the RRF Regulation;

- (i) Enclose a duly signed Management Declaration drawn up in accordance with the model set out in Annex III of this agreement; and
  - (ii) Enclose a summary of the audits carried out, including weaknesses identified and any corrective actions taken.
3. The Member State shall on a best effort basis seek to abide by the indicative payment request schedule set out in the Operational Arrangements. The final request for payment shall be submitted by 30 September 2026.
4. The preliminary assessment under Article 24(3) of the RRF Regulation shall be carried out by the Commission on the basis of the information provided by the Member State in accordance with paragraph 2. For the purpose of the assessment, the Operational Arrangements shall also be taken into account. The Commission may ask supplementary information and/or carry out checks and on-the-spot controls to verify the completion of milestones and targets, including on the non-reversibility of previously satisfactorily fulfilled milestones and targets. In case the Commission notifies the Member State of the need for major additional information or corrections of its payment request, the period between the date of the Commission request until the date of the submission of additional or corrected documents shall not be considered for the purposes of calculation of the deadline referred to in Article 24(3) of the RRF Regulation.
5. Where, as a result of the assessment under Article 24 of the RRF Regulation, the Commission establishes in accordance with Article 24(6) of the RRF Regulation that only a subset of the milestones and targets set out in the Council Implementing Decision have been satisfactorily fulfilled, the Commission shall determine the share of the instalment to be suspended following an observations procedure in accordance with Article 15.

In case a milestone and/or target related to the Member State's control system is not satisfactorily fulfilled, the Commission may suspend the entire payment and future payments, until such time as the relevant milestone and/or target is satisfactorily fulfilled.
6. Subject to the available funding, the Commission shall pay the amount of the authorised disbursement within 30 calendar days from the date of the communication of the decision adopted in accordance with Article 24(5) of the RRF Regulation.

## **Article 7 Ex-post reporting on climate change objectives**

1. The Member State, together with the submission of a request for payment, shall declare the total cumulative expenditure disbursed up to that moment by the Member State for the implementation of each reform and investment of the national recovery and resilience plan assigned a positive climate marker under the methodology in the RRF Regulation, as contributing to climate change objectives.
2. The information referred to in paragraph 1 shall not be taken into account by the Commission for the assessment of the achievement of the milestones and targets under the request for payment.

## **Article 8 Bank account for payments and currency**

1. Requests for payments and payments shall be made in euro.
2. The payments of the Financial Contribution shall be made to the following bank account held with the European System of Central Banks: [ ].
3. Payments to this bank account shall discharge the Commission from its payment obligation under this Agreement.

## **Article 9 Liability for damages**

The Commission shall not be held liable for any damage caused by the Member State or any third parties involved in the implementation of the RRP, as a consequence of the implementation of the Agreement.

## **Article 10 Publication of information, visibility of Union funding and right of use**

1. Without prejudice to Article 34 of the RRF Regulation, Member State information, communication and publicity for funding in implementation of the RRP shall be at least of the same level as that required by the rules of the Member State for public funding without contributions from the Union budget.
2. In order to respect its obligations under Article 34(2) of the RRF Regulation, and in particular to ensure provision of coherent, effective and proportionate targeted information to multiple audiences, including the media and the public, the Member State shall:
  - a. Have a strategy at Member State level to raise awareness and ensure recognition of the RRF's contribution to Europe's recovery and, in particular, the twin green and digital transitions.
  - b. Where applicable, correctly and prominently display in all communication activities at project and Member State level the EU emblem with an appropriate funding statement that reads (translated into local languages where appropriate) "funded by the European Union – NextGenerationEU".
  - c. Establish and maintain a single web space providing information on the RRP and related projects and communicate the dedicated web link to the Commission.
  - d. Ensure that the final recipients of Union funding under the RRF acknowledge the origin and ensure the visibility of the Union funding.
3. When displayed in association with another logo, the European Union emblem must be displayed at least as prominently and visibly as the other logos. The emblem must remain distinct and separate and cannot be modified by adding other visual marks, brands or text. Apart from the emblem, no other visual identity or logo may be used to highlight the EU support.
4. Any communication or dissemination activity that relates to the RRP and is made by the Member State in any form and using any means shall use factually accurate information.

5. Where applicable, the Member State shall indicate the following disclaimer (translated into local languages where appropriate): *“Funded by the European Union – NextGenerationEU. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or European Commission. Neither the European Union nor the European Commission can be held responsible for them.”*
6. The Member State grants the Commission the right to use free of charge the communication materials relating to the RRP.

## **Article 11 Protection of the financial interests of the Union**

1. The Member State shall:
  - a. regularly check that the financing provided has been properly used in accordance with all applicable rules and that any measure for the implementation of reforms and investment projects under the RRP has been properly implemented in accordance with all applicable rules in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests;
  - b. take appropriate measures to prevent, detect and correct fraud, corruption, and conflicts of interests as defined in Article 61(2) and (3) of the Financial Regulation affecting the financial interests of the Union and to take legal actions to recover funds that have been misappropriated, including in relation to any measure for the implementation of reforms and investment projects under the RRP;
  - c. for the purpose of audit and control and to provide for comparable information on the use of funds in relation to measures for the implementation of reforms and investment projects under the RRP, to collect and ensure access to the following standardised categories of data:
    - i. name of the final recipient of funds;
    - ii. name of the contractor and sub-contractor, where the final recipient of funds is a contracting authority in accordance with Union or national law on public procurement;
    - iii. first name(s), last name(s) and date of birth of beneficial owner(s) of the recipient of funds or contractor, as defined in Article 3(6) of Directive (EU) 2015/849 of the European Parliament and of the Council;
    - iv. a list of any measures for the implementation of reforms and investment projects under the RRP with the total amount of public funding of those measures and indicating the amount of funds paid under this Agreement and under other Union funds.
  - d. keep records in accordance with Article 132 of the Financial Regulation.

2. For the purpose of fulfilling the obligations under paragraph 1, Article 4(2) and Article 12 of this Agreement, the Member State shall ensure that the control system referred to in Article 22(1) of the RRF Regulation complies with the key requirements listed in Annex I.
3. Any amendments to the Member State's internal control system that was included in the RRP concerning elements that were assessed by the Commission shall be duly communicated to the Commission without delay.
4. The Commission shall be sufficiently assured that the Member State's internal control system fulfils the key requirements provided in paragraph 1. The Commission may request supplementary information and perform on-the-spot system audits. These system audits may be carried out on a risk basis. If needed, the Commission may be assisted by independent outside experts or external audit firms.

**Article 12 Verifications and checks by the Commission, the European Anti-Fraud Office (OLAF) the European Court of Auditors (ECA) and the European Public Prosecutor's Office (EPPO)**

1. In addition to controls under Article 6(4) and audits under Article 11(4) of this Agreement, the Commission may exert its rights as provided for in Article 129(1) of the Financial Regulation and may carry out verifications, reviews, checks and audits for the implementation of the RRP regarding:
  - a) the prevention, detection and correction of fraud, corruption and conflicts of interests affecting the financial interests of the Union, including the application of Article 11;
  - b) the application of Article 4(2);
  - c) the information and justification regarding the satisfactory fulfilment of milestones and targets in a payment request.

Such verifications, reviews, checks and audits may be carried out during the implementation of the RRP and until five years starting from the date of the final payment and may cover the information system used by Member States to collect and provide data that is used to justify the completion of milestones and targets. These procedures shall be formally notified to the Member State. If needed, the Commission may be assisted by independent outside experts or external audit firms.

2. The Member State shall keep and provide adequate supporting documents proving, in particular, that the RRP has been implemented properly, that its implementation complies with the obligations listed in Article 11(1) of this Agreement and that the milestones and targets specified in the Council Implementing Decision have been satisfactorily fulfilled, if requested to do so in the context of the checks or audits described in this Article.
3. The following bodies may exert their rights as provided for in Article 129(1) of the Financial Regulation and carry out reviews, checks, audits and investigations:

- the European Anti-Fraud Office (OLAF) under Regulations No 883/2013<sup>4</sup> and No 2185/96<sup>5</sup>,
  - the European Public Prosecutor's Office (EPPO) under Regulation 2017/1939, to the extent that the EPPO is competent, and
  - the European Court of Auditors (ECA) under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 257 of the Financial Regulation.
4. The Member State shall agree to and cooperate in view of the above mentioned verifications, reviews, checks, audits and investigations as well as controls under Article 6(4) and audits under Article 11(4) and provide any information and documents as requested for their purpose.
  5. The Member State shall grant officials of the Commission, OLAF, the ECA and, to the extent that it is competent, EPPO, and their authorised representatives access to sites and premises at which investments and reforms financed under this Agreement are carried out, and to any documents and computerised data concerning the management of those investments and reforms, and to take every appropriate measure to facilitate their work. Access by authorised agents of the Commission, OLAF, the ECA and, to the extent the Member State is participating enhanced cooperation on its establishment, EPPO shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject.
  6. In order to comply with point (e) of Article 22(2) of the RRF Regulation, the Member State shall impose obligations on all final recipients of funds paid for the measures for the implementation of reforms and investment projects included in the RRP, or to all other persons or entities involved in their implementation to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation and to impose similar obligations on all final recipients of funds disbursed, to ensure that any third party involved in the implementation of the RRP grants the rights and access in accordance with paragraphs (1) to (4) above.
  7. In case of audits or reviews by the Commission, on the basis of the findings made during the audit or review, a provisional report shall be drawn up. The Commission or the auditors shall formally notify the report to the Member State and an observations procedure shall take place in accordance with Article 15. The final report must be sent to the Member State within 60 calendar days of expiry of the time limit for submission of observations.
  8. On the basis of the final findings, the Commission may take the measures it considers necessary, including, in cases of fraud, corruption, conflict of interest or a serious breach of obligations in this Agreement, reduction of the Financial Contribution, as provided

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<sup>4</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18/09/2013, p. 1).

<sup>5</sup> Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15/11/1996, p. 2).

for in Article 19 of this Agreement, and recovery of all or part of the payments made by it, as provided for in Article 20 of this Agreement.

### **Article 13 Administrative sanctions and other measures**

Nothing in this Agreement may be construed as preventing the adoption of administrative sanctions (such as financial penalties) or other public law measures, in addition or as an alternative to the measures provided under this Agreement (see, for instance, Articles 135 to 145 of the Financial Regulation and Articles 4 and 7 of Regulation 2988/95<sup>6</sup>).

### **Article 14 Communication between parties**

1. All notices in relation to this Agreement shall be validly given in writing, including via email, and sent to the addressees listed in Annex IV to this Agreement. Each Party shall update addressees and notify it to the other Party hereto upon the same being amended from time to time.
2. Notices become effective on the date of receipt of the e-mail or letter by which they are delivered.
3. Each Party to this Agreement shall notify to the other Party the list and specimen signatures of the persons authorised to act on its behalf under this Agreement, promptly upon signature of this Agreement. Likewise, each Party shall update such list and notify the other Party hereto upon the same being amended from time to time.

### **Article 15 Observations procedure**

Where Article 6 and Article 12 of this Agreement refers to the observations procedure in this Article, the Member State shall be given the opportunity to submit observations within a period of one month.

Where Article 19 of this Agreement refers to the observations procedure in this Article, the Member State shall be given the opportunity to submit observations within a period of two months.

The Commission may extend the deadline for submitting observations.

### **Article 16 Amendments**

Any amendment agreed by the Parties shall be in writing and shall form part of this Agreement.

### **Article 17 Governing law and jurisdiction**

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<sup>6</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (*OJ L 312, 23.12.1995, p. 1*).

1. This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed in accordance with European Union law, supplemented if necessary by the Luxembourgish law.
2. The Parties undertake to submit any dispute that may arise relating to the legality, validity, interpretation or performance of this Agreement to the exclusive jurisdiction of the Court of Justice of the European Union in accordance with Article 272 of the TFEU.

#### **Article 18 Partial invalidity and unintentional gaps**

1. If one or more of the provisions contained in this Agreement should be or become fully or in part invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby. Provisions that are fully or in part invalid, illegal or unenforceable shall be interpreted and thus implemented according to the spirit and purpose of this Agreement.
2. The Preamble and the Annexes to this Agreement do and shall hereafter form an integral part of this Agreement.

#### **Article 19 Reduction of support**

1. In accordance with the second subparagraph of Article 22(5) of the RRF Regulation, the Commission may reduce proportionately the non-repayable support under the RRF and, where applicable, recover any amount due to the Union budget, in cases of fraud, corruption, and conflict of interests 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 this Agreement. Where applicable, such reductions shall be implemented through recovery following an observations procedure in accordance with Article 15.
2. In order to respect the principle of proportionality and to take into account the seriousness of the fraud, corruption, conflict of interests affecting the financial interests of the Union that has not been corrected by the Member State, or of the serious breach of obligation, the Commission shall reduce the non-repayable support under the RRF and where applicable recover any amount due to the Union budget as follows:
  - (a) In case of fraud, corruption or conflict of interest not corrected by the Member State, a serious breach of Article 4(2) or the information and justification underlying a payment request is found to be incorrect, the amount of the reduction shall correspond to the amount affected.
  - (b) In case of a serious breach of obligation of this Agreement, other than of Article 4(2), the amount of the reduction shall be established taking into account the frequency and extent of the serious breach of obligations.

In the specific case of a deficiency in a Member State control system that leads to a serious breach of an obligation under Article 11(1), the amount of the reduction shall be established as follows:

- a. where the deficiency is so fundamental, frequent or widespread that it represents a complete failure of the system that puts at risk the proper use of all expenditure, a flat rate reduction of 100 % of the Financial Contribution shall be applied;
- b. where the deficiency is so frequent and widespread that it represents an extremely serious failure of the system that puts at risk the proper use of a very high proportion of the expenditure, a flat rate reduction of 25 % of the Financial Contribution shall be applied;
- c. where the deficiency is due to the system not fully functioning or functioning so poorly or so infrequently that it puts at risk the proper use of a high proportion of the expenditure, a flat rate reduction of 10 % of the Financial Contribution shall be applied;
- d. where the deficiency is due to the system which is functioning but not with the consistency, frequency, or depth required so that it puts at risk the proper use of a high proportion of the expenditure, a flat rate reduction of 5 % of the Financial Contribution shall be applied.

## **Article 20 Recovery**

1. Where an amount is to be recovered, the Member State shall repay the Commission the amount in question.
2. The Commission shall confirm the amount to be recovered by notifying the Member State in a form of a debit note, specifying the terms and the date for payment, which shall be at least 30 calendar days after the date of the debit note. The provisions of the Financial Regulation concerning the recovery shall apply, in particular its Articles 101 to 103. Recovery should, where possible, be ensured by way of offsetting against outstanding disbursements under the RRF.
3. If payment is not made by the date specified in the debit note, the amount to be recovered shall be increased by late-payment interest at the rate applied by the European Central Bank for its main refinancing operations in euros ('the reference rate'), plus three and a half points, from the day following the date for payment in the debit note up to and including the date the Commission receives full payment of the amount. The reference rate is the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the European Union.
4. Partial payments must first be credited against expenses, charges and late-payment interest and then against the principal.
5. Bank charges incurred in the recovery process must be borne by the Member State, unless Directive 2015/2366<sup>7</sup> applies.

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<sup>7</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

**Article 21 Annexes**

The Annexes to this Agreement shall constitute an integral part thereof:

- Annex I: Key requirements of the Member State's control system
- Annex II: Model request for payment
- Annex III: Management Declaration Template
- Annex IV: List of Contacts

Done in Madrid on 29 JUL 2021 and in Brussels on 6.08.2021. Done in duplicate, both being equally authentic, each of which shall constitute an original instrument.

KINGDOM OF SPAIN

EUROPEAN UNION

represented by

EUROPEAN COMMISSION

Represented by

Represented by

- *signed* -

- *signed* -

María Jesús Montero Cuadrado

Paolo Gentiloni

Minister of Finance and Public Administration

Commissioner for Economy

## ANNEX I

### Key requirements of the Member State's control system

- 1) In compliance with Article 22(1) of the RRF Regulation, the Member State shall provide an effective and efficient internal control system, including separation of functions and reporting and monitoring arrangements. Member States may rely on their regular national budget management systems.

This includes:

- the nomination of an authority as “coordinator” having the overall responsibility for monitoring the implementation of the RRP on behalf of the Member State and being the single point of contact for the Commission;
  - that the coordinator has the (i) administrative capacity in terms of human resources (staff numbers and profiles), institutional experience and expertise, and (ii) the mandate and authority to exercise all relevant tasks, including reporting and monitoring responsibilities;
  - the identification of the authorities entrusted with the implementation of the RRP measures;
  - the identification of the authority responsible for signing the management declaration accompanying the payment requests with procedures ensuring that this authority will get assurance about the satisfactory fulfilment of the milestones and targets set in the RRP, that the funds were managed in accordance with all applicable rules, in particular rules on avoidance of conflicts of interests, fraud prevention, corruption and double funding;
  - an appropriate separation between implementation and audit functions.
- 2) In compliance with Article 22(2)(a) of the RRF Regulation, the Member State shall conduct an effective implementation of proportionate anti-fraud and anti-corruption measures, as well as any necessary measure to effectively avoid conflict of interests.

This includes:

- appropriate measures related to the prevention, detection and correction of fraud, corruption and conflict of interest, as well as avoidance of double funding and to take legal actions to recover funds that have been misappropriated;
  - a fraud risk assessment and the definition of appropriate anti-fraud mitigating measures.
- 3) In compliance with Article 22(2)(c) of the RRF Regulation, the Member State shall maintain appropriate procedures for drawing up the management declaration and summary of the audits carried out at national level.

This includes:

- An effective procedure for drawing up the Management Declaration, documenting the summary of audits and keeping the underlying information for audit trail;
- Effective procedures to ensure that all cases of fraud, corruption and conflict of interests are properly reported and corrected through recoveries.

- 4) To provide the information necessary for Article 22(2)(c)(i) of the RRF Regulation, the Member State shall ensure appropriate measures, including procedures for checking the fulfilment of milestones and targets and compliance with horizontal principles of sound financial management.

This includes:

- appropriate measures through which authorities entrusted with the implementation of the RRP measures will check the fulfilment of milestones and targets (e.g. desk reviews, on-the-spot checks);
  - appropriate measures through which the authorities entrusted with the implementation of the RRP measures will check the absence of serious irregularities (fraud, corruption and conflict of interest) and double funding (e.g. desk reviews, on-the-spot checks).
- 5) In compliance with Article 22(1) of the RRF Regulation and to provide the information necessary for Article 22(2)(c)(ii) of the RRF Regulation, the Member State shall conduct adequate and independent audits of systems and cases of support to investments and reforms.

This includes:

- The identification of the body/ies which will carry out the audits of systems and cases of support to investments and reforms and how its/their functional independence is ensured;
  - The allocation of sufficient the resources to this body/ies for the purpose of the RRF;
  - The effective tackling by the audit body/ies of the risk of fraud, corruption, conflict of interest and double funding both through system audits and audits of cases of support to investments and reforms.
- 6) In compliance with Article 22(2)(d) and (e) of the RRF Regulation, the Member State shall maintain an effective system to ensure that all information and documents necessary for audit trail purposes are held.

This includes:

- effective collection and storage of data on the final recipients of funds;
- access for the Commission, OLAF, ECA and EPPO (where applicable) to the data on final recipients, contractors, subcontractors and beneficial owners for the purpose of audit and control.

# ANNEX II

## REQUEST FOR PAYMENT

[on letterhead of the Member State]

[date]

European Commission

[ ]

**Subject: RRF – Request for Payment**

Dear Sir/Madam,

We refer to Regulation (EU) 2021/241, notably Article 24 thereof, and the Financing Agreement dated [insert date] between the European Union, represented by the European Commission (the "**Commission**"), and [insert Member State]. Terms defined in the Financing Agreement shall have the same meaning herein.

We confirm that the relevant milestones and targets referred to under the [first/second/third/etc.] instalment for non-repayable support as specified in Section 2: Financial Support of the Annex to Council Implementing Decision (EU) [XXX/XXX] have been satisfactorily fulfilled and we hereby request the disbursement of EUR [a maximum of the amount as set out in the Council Implementing Decision].

We have uploaded the due justification for this payment request to the relevant tool as provided by the Commission. Furthermore, we have declared the total cumulative expenditure disbursed up to that moment for the implementation of each reform and investment of the national recovery and resilience plan assigned a positive climate marker under the methodology in Regulation (EU) 2021/241, as contributing to climate change objectives. We confirm that measures related to previously satisfactorily fulfilled milestones and targets have not been reversed<sup>8</sup>.

A duly signed Management Declaration and summary of audits carried out are annexed to this letter.

We request the payment to be made to the account referred to in Article 8(2) of the Financing Agreement.

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<sup>8</sup> For the first payment request, please delete this sentence.

[Signature]

Annexes

- Management Declaration
- Summary of Audits

Copy to:

- European Central Bank

## ANNEX III

### MANAGEMENT DECLARATION – TEMPLATE

I, the undersigned, [First Name, Surname], in my capacity as [Function] of [Member State Responsible authority]

Declare that, in relation to the implementation of the Recovery and Resilience Plan (RRP) approved by the Council Implementing Decision of [date] on the approval of the assessment of the recovery and resilience plan for [Member State] ([reference]), based on my own judgement and on the information at my disposal, in particular the results from the national control and audit systems described in the RRP:

1. The funds were used for their intended purpose as defined in Article 1(1) of the Financing Agreement Recovery and Resilience Plan between the Commission and [Member State] (the 'Agreement').
2. The information submitted with the request for payment is complete, accurate and reliable; duly justifying that the milestones and/or targets concerned have been satisfactorily fulfilled and that the audit trail demonstrating the achievement of these milestones and targets is in place.
3. The control systems in place give the necessary assurances that the funds were managed in accordance with all applicable rules, in particular rules on avoidance of conflicts of interests, fraud prevention and corruption in accordance with the principle of sound financial management;
4. The activities implemented to achieve the milestones and targets under the RRP as declared in the request for payment are not financed by any other Union programme or instrument or, where applicable, the other Union programmes and instruments do not cover the same cost.

A summary of the national audits carried out in relation to § 1 to 4 above, with an analysis of the related weaknesses found and the corrective actions taken or planned, is complementing this management declaration. [In the accompanying summary of the audits, no breaches in terms of fraud, corruption or conflict of interests have been detected.][ In the accompanying summary of the audits, the following breaches in terms of fraud, corruption or conflicts of interests have been detected: *(identify and specify remedial action taken)*]

I confirm that the irregularities identified during final audit or control reports in relation to the implementation of the RRP have been appropriately corrected and recovered from final recipients or are in the course of being corrected and recovered. Where necessary, adequate follow-up was given to deficiencies in the control system reported in those reports or is on-going as regards the following required remedial actions: (if appropriate indicate which remedial actions are still on-going, at the date of signing the declaration).

I confirm that I am not aware of any undisclosed matter, which could harm the interests of the European Union.

[However, the following reservations should be noted: .....] (delete this sentence if not applicable)

[With reference to the reservation made in the previous Management Declaration – [Reference] – [follow-up given].] (delete this sentence if not applicable)

Place ....., date .....

.....

(signature)

[Name and Function of the signatory]

# ANNEX IV

## LIST OF CONTACTS

### **For the Commission:**

European Commission

[ ]

With copy to:

European Central Bank

[ ]

### **For the Member State:**

[ ]

With copy to:

Banco de España[ ]