

RRF

SAMPLING BY THE COMMISSION

1. INTRODUCTION

In accordance with Article 24(3) of the RRF Regulation, following the submission of a payment request by a Member State, the Commission shall assess on a preliminary basis whether the relevant milestones and targets set out in the Council implementing decision have been satisfactorily fulfilled. The Commission shall conduct this assessment without undue delay, and at the latest within two months of receiving the request.

The RRF is a results-based instrument where the achievement of the milestones and targets of reforms and investments as defined in the relevant Council implementing decision are the results that the Union is paying for. At the point in time of a payment request, Member States themselves declare that milestones and targets are satisfactorily fulfilled. Along with providing a due justification for the satisfactory fulfilment of the milestones and targets, the Member State may provide results of control activities that it has undertaken supporting its assessment that the milestones and targets have been achieved.

The Commission is responsible for assessing whether the milestones and targets have been achieved. Nonetheless, for demand-driven schemes or other measures set up with a large number of units, it may not be practical for Member States to provide the supporting evidence for each and every unit and for the Commission to check this evidence. This is in particular due to the legally required time limit of a maximum of two months that the Commission has for its assessment, but also takes into account the cost-effectiveness of such checks¹. In these cases, which will be determined bilaterally between the Commission and the Member States in the context of the Operational Arrangements, the Member States should provide a report to the Commission explaining how the milestone or target is met, listing the evidence that it has available justifying the satisfactory fulfilment of the milestone or target. Such a report from the Member State can be complemented by a report by a third party (including for example the contractor) certifying that the required actions have taken place and that the underlying evidence has been provided to the authorities. Whilst this is not per se a requirement, to the extent that a Member State does not provide such a report, the Commission may consider this as a risk factor in the selection of milestones and targets for ex post auditing.

In order for the Commission to have reasonable assurance that the Member State's report and, if available, the report by the third-party, are correct, the Commission will select, collect and assess a sample of documents underpinning the achievement of the milestone or target. It is recalled that Article 12(2) of the RRF Financing Agreement and Article 21(2) of the RRF Loan Agreement obliges Member States to *"keep and provide adequate supporting documents proving, in particular, that the RRP has been implemented properly... and that the milestones and targets specified in the Council Implementing Decision have been satisfactorily fulfilled"*. Member States are required to retain this information for five years starting from the date of the final payment. The selection of a sample by the Commission at the period of ex ante assessment does not remove the obligation on Member States to retain all evidence but provides a method via which the Commission can obtain a given level of assurance that the authorities have such evidence available.

¹ See Article 74(5) of the Financial Regulation

2. DETERMINING SAMPLE SIZE

As part of the payment request, the Member State confirms that the milestone or target is satisfactorily fulfilled, as evidenced by having available the necessary documents underpinning the achievement of the milestone or target. The purpose of the sampling is to test the reliability of this statement of the Member State.

In the context of the RRF, where the Member State reports that the evidence in its possession demonstrates that the milestone or target is satisfactorily fulfilled and the Commission is to obtain reasonable assurance of this taking into account risk-based and cost-effectiveness considerations, a 95% minimum required compliance rate and 95% statistical power are considered as appropriate thresholds for determining sample size. This corresponds to a standard sampling approach for higher risk operations (commonly referred to as “95/95”).

In practice, and to simplify procedures, the following will be undertaken by the Commission:

- 1) For milestones and targets where the number of pieces of evidence is less than 60, all pieces of evidence should be requested. Furthermore, for milestones and targets where the number of pieces of evidence is between 60 and 80, in order to avoid the workload with determining and requesting the sample, all pieces of evidence will be requested.
- 2) For milestones and targets where the number of pieces of evidence is more than 80, a sample of 60 pieces of evidence will be identified and requested, unless there are reasons to consider that it is more efficient to ask for all the units even for populations above 80. These cases will be discussed bilaterally with each Member State, taking into account the complexity of the measure and the track record in previous situations.

In line with Article 74(5) of the Financial Regulation that the “*frequency and intensity of the ex ante controls shall be determined by the authorising officer responsible taking into account the results of prior controls*”, should controls (either ex ante or ex post) that the Commission undertakes for a Member State systematically identify a failure of the Member State to have such evidence available, an alternative approach would need to be considered in order to provide reasonable assurance to the Commission that such milestones and targets are satisfactorily fulfilled.

3. SELECTING THE SAMPLES

Along with the report provided by the Member State as due justification for the satisfactory fulfilment of the milestone or target, the Member State should provide a numbered list of the evidence with, as needed, the key parameter of that evidence that drives the satisfactory fulfilment of the target². This list will be used by the Commission to select the relevant samples that should be provided.

To ensure a representative sample, and given that all the evidence should have the same characteristics, random sampling will be used. For the selection of the random sample, Member States are invited to provide in an Excel format the list of evidence.

In cases justified by the nature of the milestone or target, notably its evidence and whether there are notably higher risk units, the random sampling may be complemented by non-random sampling. Such a nonstatistical approach will complement the statistical approach of random sampling, where professional judgement will be used to identify the sample size and selection based on the characteristics of the evidence. This will apply in particular to the milestones and targets where aggregation of various measures has taken place so that the identified indicator refers to different categories of beneficiaries.

² For example, if the target is to reduce greenhouse gas emissions by X million tonnes of CO₂, the Member State should provide the list of investments with the accompanying amount of CO₂ reduced by each individual investment.

In such cases of non-homogeneous population, the first step will be to establish clear categories. Examples:

- Target of 1000 referring to the number of projects in the fields of biodiversity, with the Council implementing decision listing the different categories of investments being undertaken under the label “biodiversity”
- Target of 400’000 of housing renovation bonuses granted, with the Council implementing decision specifying that bonuses can be granted to different categories of population for different renovation aims

In such examples, the Member States will be required in the operational arrangement to provide information about the characteristics of the indicators (e.g. by type of investment, by type of beneficiaries, by location) so that the Commission is in a position to sub-divide the numbered list of evidence in accordance to its key characteristics that are derived from the Council implementing decision. This will enable the Commission to determine whether it is needed to divide in more than one population size in view of determining the sampling characteristics.

To the extent that the sample is provided by the Member State within a maximum of 5 days, the Commission will not consider this a request for major additional information³. However, to the extent that Member States require a longer period of time to provide this information, the Commission would consider this a request for major additional information.

4. RESULTS OF THE SAMPLING

Once the Commission receives the sample, it will analyse the evidence to ensure it matches what the Member State reported and to assess whether the content demonstrates the milestone or target is satisfactorily fulfilled. The report provided by the Member State, if considered by the Commission as sufficient, and a successful sampling of the evidence is enough to consider a milestone or target satisfactorily fulfilled. However, should the sampling identify a case of the Member State not being able to provide the requested evidence, the Commission would not be in a position to have reasonable assurance that the specific milestone or target is satisfactorily fulfilled. In that case, the Commission would need to request that any errors are corrected and, depending on the population size, either all pieces of evidence are provided or a further sample takes place. For populations below 250, the entire population will be requested. For populations greater than 250, a further sample of 228 units will be requested unless the assessing team considers that it is more efficient to ask for all the units even for populations above 250. Should this check of all evidence or further sample continue to detect errors, the Commission would need to suspend (fully or partially) the payment.

³ See Article 6(4) of the Financing Agreement.