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THE EUROPEAN PARLIAMENT **THE COUNCIL**

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2021/241 AS REGARDS REPOWEREU CHAPTERS IN RECOVERY AND RESILIENCE PLANS AND AMENDING REGULATIONS (EU) NO 1303/2013, (EU) 2021/1060 AND (EU) 2021/1755, AND DIRECTIVE 2003/87/EC

REGULATION (EU) 2023/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

27 February 2023

amending Regulation (EU) 2021/241
as regards REPowerEU chapters in recovery and resilience plans
and amending Regulations (EU) No 1303/2013, (EU) 2021/1060
and (EU) 2021/1755, and Directive 2003/87/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 175, third paragraph, Article 177, first paragraph, Article 192(1), Article 194(2) and Article 322(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

After consulting the Committee of the Regions,

Having regard to the opinion of the Court of Auditors[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 OJ C 486, 21.12.2022, p. 185.
2 OJ C 333, 1.9.2022, p. 5.
3 Position of the European Parliament of 14 February 2023 (not yet published in the Official Journal) and decision of the Council of 21 February 2023.

Whereas:

(1) Since the adoption of Regulation (EU) 2021/241 of the European Parliament and of the Council[1], which established the Recovery and Resilience Facility (the 'Facility'), unprecedented geopolitical events triggered by Russia's war of aggression against Ukraine and their direct and indirect aggravation of the consequences of the COVID-19 crisis have considerably affected the Union's society and economy, its people and its economic, social and territorial cohesion. In particular, it is clearer than ever that the Union's energy security and energy independence are indispensable for a successful, sustainable and inclusive recovery from the COVID-19 crisis, as they are also major factors contributing to the resilience of the Union's economy.

(2) Due to the direct links between a sustainable recovery, building the Union's resilience and energy security, reducing dependence on fossil fuels, in particular from Russia, and the Union's role in a just and inclusive transition, the Facility is an instrument well suited to contribute to the Union's response to those emerging challenges. This is also the case in light of Union climate and environmental legislation and of the Union's international commitments, and in particular the Paris Agreement adopted under the United Nations Framework Convention on Climate Change[2].

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1 Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

2 OJ L 282, 19.10.2016, p. 4.

(3) In the Versailles Declaration of 10 and 11 March 2022, the Heads of State and Government invited the Commission to propose by the end of May of the same year a REPowerEU plan to phase out the Union's dependency on Russian fossil fuel imports, which invitation was reiterated in the European Council Conclusions of 24 and 25 March 2022. That goal should be achieved well before 2030 in a way that is consistent with the European Green Deal, set out in the communication of the Commission of 11 December 2019, and with the climate objectives for 2030 and 2050 enshrined in Regulation (EU) 2021/1119 of the European Parliament and of the Council[1].

(4) The Facility's ability to support reforms and investments dedicated to diversifying energy supplies, in particular fossil fuels, as well as to increase the resilience, security and sustainability of the Union's energy system, thereby contributing to energy affordability and strengthening the strategic autonomy of the Union alongside an open economy, should be enhanced. To achieve those objectives, the Union needs to increase energy efficiency and the reliability and resilience of transmission and distribution networks, to promote system flexibility, to minimise congestions, including by means of increased grid and electricity storage capacity, to promote digitalisation, and to ensure resilient supply chains, cybersecurity and the protection and climate adaptation of all infrastructure, while reducing strategic energy dependencies.

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[1] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

(5) To maximise complementarity, consistency and coherence of policies and actions taken by the Union and Member States to foster independence, security and sustainability of the Union's energy supply, those energy-related reforms and investments should be established through a dedicated 'REPowerEU chapter' of the recovery and resilience plans.

(6) The effective transition towards green energy and the rapid reduction in dependency on fossil fuel energy in an inclusive way call for measures to boost energy efficiency and savings in buildings and related critical energy infrastructure and decarbonise industries faster. It is imperative to increase rapidly investment in energy efficiency measures, such as the uptake of sustainable and efficient heating and cooling solutions, which present an effective means to address some of the most pressing challenges of energy supply and energy cost. Therefore, support should also be given to reforms and investments increasing energy efficiency, decarbonising industry – including by the use of low-carbon fuels, such as low-carbon hydrogen, and by the uptake of renewable hydrogen and other renewable fuels of non-biological origin – and increasing energy savings of the Member States' economies, in line with the Union's energy and climate targets and legal framework. The Commission should, in particular, encourage Member States to include in their REPowerEU chapters measures supporting the decarbonisation of industry.

(7) The phasing out of the dependency on Russian fossil fuel imports is expected to lead to a reduction in the overall energy dependency of the Union. The REPowerEU chapters should contribute to increasing and strengthening the strategic autonomy of the Union without excessively increasing its dependency on imports of raw materials from third countries.

(8) In the preparation of the recovery and resilience plans as well as of the REPowerEU chapters, Member States should coordinate their economic policies in such a way as to attain the objectives on economic, social and territorial cohesion set out in Article 174 of the Treaty, aiming to reduce disparities between the levels of development of the various regions and the backwardness of the least favoured regions, paying particular attention to remote, peripheral and isolated areas and islands, which already experience additional constraints.

(9) To maximise the scope of the Union's response, all Member States which submit a recovery and resilience plan after the entry into force of this Regulation, requesting the use of additional funding in the form of loans, or, in accordance with new rules to be established under this amending Regulation, from auctioning of allowances from the emissions trading system under Directive 2003/87/EC of the European Parliament and of the Council[1] or from transfers from the Brexit Adjustment Reserve established by Regulation (EU) 2021/1755 of the European Parliament and of the Council[2], should be required to include a REPowerEU chapter in their recovery and resilience plan. In line with the existing possibility, under Regulation (EU) 2021/241, of submitting a draft recovery and resilience plan, and in order to ensure proper preparation of the REPowerEU chapters, Member States can submit a draft REPowerEU chapter before the submission of a modified recovery and resilience plan. Unnecessary administrative burden should be avoided.

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1 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

2 Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve (OJ L 357, 8.10.2021, p. 1).

(10) REPowerEU chapters should include new reforms and investments, starting from 1 February 2022, contributing to the REPowerEU objectives and tackling the crisis caused by recent geopolitical events. However, measures included in the already adopted Council implementing decision that contribute to the REPowerEU objectives can be included in the REPowerEU chapter if, following the update of the maximum financial contribution, the Member State concerned is subject to a decrease of its maximum financial contribution. In that case, the Member State should be able to include such measures in its REPowerEU chapter up to an amount of estimated costs equal to the decrease in the maximum financial contribution.

(11) A Member State should be able to include in its REPowerEU chapter the scaled-up part of measures included in the already adopted Council implementing decision, together with the corresponding milestones and targets. Such scale-up should introduce a substantive improvement in the level of ambition of the measures, as reflected in the design or level of the corresponding milestones and targets, while building on the measures included in the already adopted Council implementing decision.

(12) A Member State should submit its REPowerEU chapter in the form of an addendum to its recovery and resilience plan. A REPowerEU chapter should contain an explanation of how the measures included therein are coherent with the efforts of the Member State concerned to achieve the REPowerEU objectives, taking into account the measures included in the already adopted Council implementing decision, as well as an explanation of the overall contribution of those measures and other nationally funded and Union-funded complementary or accompanying measures to the REPowerEU objectives.

(13) REPowerEU chapters should inter alia contribute to increasing the share of sustainable and renewable energies in the energy mix and to addressing energy infrastructure bottlenecks. As regards natural gas infrastructure, the reforms and investments in the REPowerEU chapters to diversify supply away from Russia should build on the needs currently identified through the assessment conducted and agreed by the European Network of Transmission System Operators for Gas, established in the spirit of solidarity as regards security of supply, and take into account strategic energy security needs of the Member State concerned and the reinforced preparedness measures, including energy storage, taken to adapt to new geopolitical threats, without undermining the long-term contribution to the green transition.

(14) An appropriate assessment criterion should be added to serve as a basis for the Commission to assess reforms and investments in the REPowerEU chapters and to ensure that those reforms and investments are fit to achieve the specific REPowerEU objectives. An A rating should be required under that new assessment criterion for the relevant recovery and resilience plan to be positively assessed by the Commission.

(15) Investments in infrastructure and technologies alone are not sufficient to ensure a reduction in dependency on fossil fuels in view of existing labour and skill shortages. In that context, it is already possible to dedicate resources to the reskilling and upskilling of people, to further equipping the workforce with green skills as well as to the research and the development of innovative solutions linked to the green transition. Member States are encouraged to further invest in reskilling and upskilling, especially for green and related digital skills and technologies, to ensure that no one will be left behind throughout the green transition. Where a Member State includes in its REPowerEU chapter measures related to reskilling and upskilling of people, the Commission should consider whether such measures significantly contribute to supporting a requalification of the workforce towards green and related digital skills.

(16) In light of the economic and social impact of the current energy crisis, where persistently high and volatile energy prices are aggravating the impact of the COVID-19 crisis by further increasing the financial burden for consumers, in particular for the most vulnerable, including households with low income, and for vulnerable companies including micro-, small and medium enterprises, and in recognition of the principles of the European Pillar of Social Rights, it should be possible to include, in the REPowerEU chapters, measures to help structurally address situations of energy poverty, through long-lasting reforms and investments. Reforms and investments that aim to tackle energy poverty should provide a higher level of financial support to energy efficiency schemes, including via dedicated financial instruments, clean energy policies and schemes to reduce energy demand for those households and companies including micro-, small and medium enterprises facing severe difficulties due to high energy bills.

(17) Energy-demand reduction measures taken by Member States should incentivise investments in energy savings.

(18) The application of a new regime on REPowerEU chapters should be without prejudice to all other legal requirements under Regulation (EU) 2021/241, unless otherwise provided.

(19) The recovery and resilience plan, including the REPowerEU chapter, should contribute effectively to addressing all or a significant subset of the challenges identified in the relevant country-specific recommendations, including the country-specific recommendations adopted under the 2022 European Semester cycle which refer inter alia to the energy challenges that Member States are facing.

(20) An effective transition to green energy and a reduction in energy dependency involves significant digital investments. In light of Regulation (EU) 2021/241, Member States should provide an explanation of how the measures in the recovery and resilience plan, including those in the REPowerEU chapter, are expected to contribute to the digital transition and to addressing the resulting challenges and whether they account for an amount contributing to the digital target based on the methodology for digital tagging. However, given the unprecedented urgency and importance of energy challenges faced by the Union, reforms and investments in the REPowerEU chapter should not be taken into account when calculating the plan's total allocation for the purpose of applying the digital target requirement set by Regulation (EU) 2021/241. Nevertheless, Member States should endeavour to include in the REPowerEU chapters, to the maximum extent possible, measures that contribute to the digital target based on the methodology for digital tagging.

(21) Lengthy administrative procedures are some of the main obstacles to the deployment of renewable energy. Those barriers include the complexity of the applicable rules for site selection and administrative authorisations for projects, the complexity and duration of the assessment of the environmental impact of the projects, grid connection issues, and staffing constraints of the permit-granting authorities or grid operators. Further simplification and speeding up of the administrative permit-granting processes for renewables and related power grid infrastructure is necessary to ensure that the Union achieves its energy and climate targets. Recommendations were made to Member States in the context of the 2022 European Semester to accelerate the deployment of renewable energy. As announced in the communication of the Commission of 18 May 2022 entitled 'REPowerEU Plan', the Commission has proposed to amend Directive (EU) 2018/2001 of the European Parliament and of the Council[1] on energy from renewable sources, aiming to establish a faster permit-granting process for renewables. In addition, Council Regulation (EU) 2022/2577[2], which lays down a framework to accelerate the deployment of renewable energy, has introduced temporary emergency rules.

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[1] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

[2] Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy (OJ L 335, 29.12.2022, p. 36).

(22) Pursuant to Article 18(4), point (q), of Regulation (EU) 2021/241, the Member States should provide a summary of the consultation process, conducted in accordance with national legal frameworks, of local and regional authorities, social partners and other relevant stakeholders concerned with the implementation of their recovery and resilience plans. That consultation should be complemented to address reforms and investments to be included in a potential REPowerEU chapter, in a way that allows stakeholders sufficient time to react while ensuring a speedy finalisation of the REPowerEU chapter by the Member State concerned. The updated summary should set out the stakeholders consulted, explain the outcome of the complementary consultation and outline how the input received from the stakeholders was reflected in the REPowerEU chapters.

(23) The application of the principle of 'do no significant harm' within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council[1] (the principle of 'do no significant harm') is essential to ensure that the reforms and investments undertaken as part of the recovery from the COVID-19 crisis are implemented in a sustainable manner. It should continue to apply to the reforms and investments supported by the Facility, with one targeted exemption to safeguard the Union's immediate energy security concerns. Considering the objective of diversifying energy supplies away from Russian suppliers, the reforms and investments set out in the REPowerEU chapters which are necessary to improve energy infrastructure and facilities to meet immediate security of supply needs for gas should be eligible for financial support under the Facility even if they do not comply with the principle of 'do no significant harm'. As a rule, oil infrastructure and facilities are excluded from the REPowerEU chapter. By derogation, a Member State that has been subject to the exceptional temporary derogation in Article 3m(4) of Council Regulation (EU) No 833/2014[2] until the entry into force of this amending Regulation, due to its specific dependence on crude oil and geographical situation, should be able to include in the REPowerEU chapter oil infrastructure and facilities necessary to meet immediate security of supply needs.

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1 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

2 Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

The Commission should assess whether measures expected to address immediate security of energy supply needs are eligible for the derogation from the principle of 'do no significant harm'. For the purpose of that assessment, the Commission should consider, among other conditions, the risk of lock-in effects and the unavailability of cleaner, technologically and economically feasible alternatives that could be deployed within a comparable timeline. Such assessment should be proportionate, taking into account the urgency of achieving the REPowerEU objectives. In case of doubts, the Commission should be able to request Member States to provide relevant information to support the assessment. The evaluation of cleaner alternatives should be performed within reasonable limits.

(24) All measures in the recovery and resilience plans should be undertaken in compliance with the applicable Union and national environmental *acquis*, in particular relating to environmental impact assessment and nature protection. For measures benefitting from the derogation from the principle of 'do no significant harm', Member States should undertake satisfactory efforts to limit the potential harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852, where feasible, and to mitigate the harm through other measures, including measures in the REPowerEU chapters.

(25) The REPowerEU chapters should be consistent with the national energy and climate plans of Member States and with the Union climate targets set out in Regulation (EU) 2021/1119.

(26) Reflecting the European Green Deal as Europe's sustainable growth strategy and the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, the Facility is to contribute to the mainstreaming of climate action and environmental sustainability and to the achievement of an overall target of 30 % of Union budget expenditure supporting climate objectives. To that end, the measures supported by the Facility and included in recovery and resilience plans of Member States should contribute to the green transition, including biodiversity, or to addressing the challenges resulting therefrom, and should account for an amount that represents at least 37 % of the recovery and resilience plan's total allocation and for at least 37 % of the total estimated costs of the measures in the REPowerEU chapter based on the methodology for climate tracking set out in Annex VI to Regulation (EU) 2021/241. That methodology should be used accordingly for measures that cannot be directly assigned to an intervention field listed in that Annex. If the Member State concerned and the Commission agree, it should be possible to increase the coefficients for support for the climate objectives to 40 % or 100 % for individual investments, as explained in the recovery and resilience plan, to take account of accompanying reform measures that credibly increase their impact on the climate objectives. To that end, it should be possible to increase the coefficients for support for the climate objectives up to a total amount of 3 % of the allocation of the recovery and resilience plan for individual investments. The Facility should support activities that fully respect the climate and environmental standards and priorities of the Union and the principle of 'do no significant harm'.

(27) Member States should, where relevant, include in REPowerEU chapters measures having a cross-border or multi-country dimension or effect, as identified in the Commission's most recent needs assessment, contributing, among other things, to generating European added value. It should also be taken into account that measures carried out in one Member State could have spill-over effects in other Member States. The Commission should facilitate co-operation between Member States as early as possible with a view to developing measures having a cross-border or multi-country dimension or effect to be included in the REPowerEU chapters. Member States should strive to ensure those measures account for an amount that represents at least 30 % of the estimated costs of the measures in the REPowerEU chapter. In addition to measures having a cross-border or multi-country dimension or effect, measures at national level that contribute to securing energy supply in the Union as a whole, in line with the REPowerEU objectives, in particular as regards addressing existing bottlenecks in terms of energy transmission, distribution and storage, as identified in the Commission's most recent needs assessment, thereby increasing the potential for cross-border flows between Member States, should be considered as having a cross-border or multi-country dimension or effect. Measures reducing dependency on fossil fuels and reducing energy demand should also be considered as having a positive cross-border effect as they free up further capacity or supply for other Member States.

(28) An appropriate assessment criterion should be added to serve as a basis for the Commission to assess the cross-border or multi-country dimension or effect of the reforms and investments in the REPowerEU chapters.

(29) Further incentives should be provided for Member States to request loan support to ensure the uptake of the available funds by Member States while complying with the principles of equal treatment, solidarity, proportionality and transparency. To that end, Member States should communicate as clearly as possible to the Commission, at the latest 30 days after the entry into force of this Regulation, whether they intend to submit a request for loan support. The Commission should present to the European Parliament and the Council, simultaneously, on equal terms and without undue delay, an overview of the intentions expressed by the Member States and the proposed way forward for the distribution of the available resources. The communication of an intention should not prejudice the ability of Member States to request loan support until 31 August 2023 in accordance with Article 14 of Regulation (EU) 2021/241, including in the case of requests exceeding 6,8 % of their gross national income (GNI) where the relevant conditions apply. It should also not prejudice the entering into of the corresponding loan agreement by the Commission after the adoption of the relevant Council implementing decision.

(30) Member States are encouraged to submit the REPowerEU chapters as soon as possible and preferably by two months of the entry into force of this amending Regulation. In line with Article 19(1) of Regulation (EU) 2021/241, the Commission should assess the modified recovery and resilience plan submitted by the Member State within two months and make a proposal for a Council implementing decision. Given the urgency of the challenges that the Member States are facing, the Commission should strive to conclude the assessment of the modified recovery and resilience plans without undue delay.

(31) In addition, to incentivise a high level of ambition for reforms and investments to be included in the REPowerEU chapter, new dedicated funding sources should be provided.

(32) Council Regulation (EU) 2022/1854[1] introduces a temporary solidarity contribution for Union companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors applicable in all Member States. Member States are invited to use a proportion of the proceeds generated by that temporary contribution to foster synergies and complementarities with the reforms and investments in their REPowerEU chapters in a coherent manner, for the funding of measures to be implemented at national level in accordance with the REPowerEU objectives.

(33) The current economic and geopolitical situation requires the Union to mobilise available resources to rapidly diversify the Union's energy supply and reduce dependence on fossil fuels before 2030. In that context, Directive 2003/87/EC should allow for an exceptional monetisation by auctioning of a portion of allowances from the innovation fund and of allowances allocated to Member States, except allowances distributed for the purposes of solidarity, growth and interconnections, and should direct revenues towards reforms and investments contributing to the REPowerEU objectives, in the Facility framework. The auctioning of allowances from the innovation fund and of allowances allocated to Member States should also be frontloaded. A portion of allowances from the market stability reserve that would otherwise be invalidated should be used to replenish the innovation fund.

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[1] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261 I, 7.10.2022, p. 1).

(34) In the context of the Union emergency intervention to address high energy prices resulting from the impact of Russia's war of aggression against Ukraine, targeted exceptional temporary measures under the 2014-2020 cohesion policy framework set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council[1], through a flexible use of resources from the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund, should help small and medium enterprises (SMEs) particularly affected by energy price increases, as well as vulnerable households, cover energy costs incurred and paid as from 1 February 2022. Such support is fully in line with the REPowerEU objectives.

[1] Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

(35) In particular, the ERDF should exceptionally be used to provide working capital support to SMEs particularly affected by energy price increases. Support to SMEs particularly affected by energy price increases should be proportionate and respect applicable State aid rules. Moreover, the ESF should exceptionally be used to provide support to vulnerable households, as defined in national rules, to help them meet their energy consumption costs even in the absence of measures increasing the employability of the people supported, i.e., active measures. Those are exceptional measures strictly necessary to address the energy crisis resulting from the impact of Russia's war of aggression against Ukraine. They ensure that people supported have access to essential services, thereby also contributing to the conditions conducive to good health necessary to participate in the labour market. Support may be provided by the ERDF, the ESF and the Cohesion Fund interchangeably. Furthermore, in addition to the ESF, it should be possible to use the ERDF and the Cohesion Fund to support job retention measures through short-time work and equivalent schemes, including support to the self-employed. Such schemes aim to protect employees and the self-employed against the risk of unemployment. The resources allocated to such schemes are to be used exclusively to support workers and self-employed. Union support to such short-time work and equivalent schemes should be limited in time. It should also be possible to use REACT-EU resources set out in Article 92a of Regulation (EU) No 1303/2013 for those three types of support in order to reinforce the ongoing efforts of Member States towards the resilient recovery of their economies following the COVID-19 crisis.

(36) Specific programming arrangements should allow resources to be exclusively programmed within dedicated priority axes and contribute to specific investment priorities. In order to offer significant support to Member States in their efforts to contain the fall-out of the energy crisis, Member States should exceptionally benefit from a co-financing rate of 100 % to be applied to the dedicated priority axes of operational programmes providing exclusively such support until the end of the 2014-2020 programming period. Those limited and targeted measures should complement the structural interventions in the cohesion policy supporting the production of clean energy and promotion of energy efficiency. In order to take account of Union budgetary constraints, payments by the Commission to such operations under the dedicated priorities should be capped at EUR 5 000 000 000 in 2023.

(37) In order to provide Member States and regions with sufficient flexibility in addressing the newly emerging challenges, Regulation (EU) 2021/1060 of the European Parliament and of the Council[1] should provide Member States with the possibility to request up to 7,5 % of resources under the ERDF, the European Social Fund Plus and the Cohesion Fund to contribute to the REPowerEU objectives. It should be possible that those Funds provide support to the REPowerEU objectives where such support falls within the scope of the Fund concerned, contributes to its specific objectives and complies with the rules set out in Regulation (EU) 2021/1060 and the relevant Fund-specific Regulation, including the principle of 'do no significant harm'.

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1 Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

(38) Member States should have the possibility to transfer all or part of their provisional allocation from the resources of the Brexit Adjustment Reserve to the Facility. The COVID-19 crisis, aggravated by the threat to the Union's energy security, has exacerbated the negative repercussions of the withdrawal of the United Kingdom from the Union in Member States, including their regions and local communities, and sectors, in particular in those that are most adversely affected by that withdrawal. The measures to be funded under the Brexit Adjustment Reserve and the reforms and investments to be funded under the Facility can serve similar purposes and have similar content. Both the Brexit Adjustment Reserve and the Facility aim ultimately at mitigating the negative impacts on economic, social and territorial cohesion. In that context, whilst reforms and investments under the Facility primarily aim to address the economic consequences of the pandemic, they can also contribute to countering unforeseen and adverse consequences in the Member States and sectors that are worst affected by Brexit. Finally, commitments and payment appropriations under both the Brexit Adjustment Reserve and the Facility are entered over and above the ceilings of the multiannual financial framework. Under that scenario, and bearing in mind the global energy market disruption caused by the more recent geopolitical developments, it is appropriate to provide flexibility to Member States by allowing transfers from the Brexit Adjustment Reserve to the Facility, which will permit catering for the objectives of both, and ultimately to bring about economic, social and territorial cohesion.

(39) Disbursements of additional funding to Member States which include a REPowerEU chapter in their recovery and resilience plan should be made following the rules of the Facility until the end of 2026.

(40) A request, submitted in a recovery and resilience plan, for dedicated funding, including an allocation from the auctioning of allowances of the emissions trading system under Directive 2003/87/EC, transfers of resources from the ERDF, the European Social Fund Plus or the Cohesion Fund governed by Article 26 of Regulation (EU) 2021/1060 and transfers of resources from the Brexit Adjustment Reserve, for measures contained in a REPowerEU chapter should reflect a higher financial need linked to reforms and investments included in that chapter.

(41) To ensure that financial support is frontloaded to better respond to the current energy crisis, it should be possible that, upon request of a Member State to be submitted together with the REPowerEU chapter in a modified recovery and resilience plan, an amount of the additional funding required to finance measures of the REPowerEU chapter be paid in the form of two pre-financing payments.

The Commission should make, to the extent possible, the first pre-financing payment within two months of it entering into the legal commitment for the purposes of Regulation (EU) 2021/241, and the second pre-financing payment within 12 months of the entry into force of the Council implementing decision approving the assessment of the recovery and resilience plan including a REPowerEU chapter. Those payments should be subject to available resources, in particular the availability of funds from the NextGenerationEU account, of funds approved in the Union annual budget and of the revenue obtained from the auctioning of allowances of the emissions trading system under Directive 2003/87/EC, and to the effective prior transfer of resources under shared management programmes, if requested.

(42) In order to comply with the payment ceilings of the multiannual financial framework, a cap should be established for payments corresponding to the pre-financing for amounts transferred under Regulation (EU) 2021/1060.

(43) The Commission should monitor the implementation of the reforms and investments outlined in the REPowerEU chapter and their contribution to the REPowerEU objectives and provide information in relation thereto in particular through exchanges during the recovery and resilience dialogue, through reporting in the recovery and resilience scoreboard, and through a dedicated section in the annual report to be submitted to the European Parliament and to the Council.

(44) Recent geopolitical events have considerably affected prices of energy, food and construction materials and have also caused shortages in the global supply chains, resulted in increased inflation and generated new challenges, including a risk of energy poverty and higher costs of living. A response to those challenges might be required. It could be that those developments have a direct impact on the capacity to implement the measures in recovery and resilience plans. To the extent that Member States can demonstrate that such developments make a specific milestone or target no longer achievable, either totally or partially, such situations could be invoked as objective circumstances under Regulation (EU) 2021/241. Moreover, to the extent that Member States can demonstrate that the achievement of a specific milestone or target conflicts with the achievement of the REPowerEU objectives, such situations could also be invoked as objective circumstances under that Regulation. In addition, no request for amendments should undermine the overall implementation of recovery and resilience plans, including the reform and investment efforts of the Member States.

(45) Regulations (EU) 2021/241, (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC should therefore be amended accordingly.

(46) In order to allow for the prompt application of the measures provided for in this Regulation, it should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2021/241

Regulation (EU) 2021/241 is amended as follows:

(1) in Article 4, paragraph 1 is replaced by the following:

‘1. In line with the six pillars referred in Article 3 of this Regulation, the coherence and synergies they generate, and in the context of the COVID-19 crisis, the general objective of the Facility shall be to promote the Union’s economic, social and territorial cohesion by improving the resilience, crisis preparedness, adjustment capacity and growth potential of the Member States, by mitigating the social and economic impact of that crisis, in particular on women, by contributing to the implementation of the European Pillar of Social Rights, by supporting the green transition, by contributing to the achievement of the Union’s 2030 climate targets set out in point (11) of Article 2 of Regulation (EU) 2018/1999, by complying with the objective of EU climate neutrality by 2050 and of the digital transition, and by increasing the resilience, security and sustainability of the Union’s energy system through the necessary reduction in dependence on fossil fuels and diversification of energy supplies at Union level, including by means of an increase in the uptake of renewables, in energy efficiency and in energy storage capacity, thereby contributing to the upward economic and social convergence, restoring and promoting sustainable growth and the integration of the economies of the Union, fostering high quality employment creation, and contributing to the strategic autonomy of the Union alongside an open economy and generating European added value.’;

(2) in Article 5, paragraph 2 is replaced by the following:

‘2. The Facility shall only support measures respecting the principle of ‘do no significant harm’, which shall also apply to the measures in the REPowerEU chapters, unless otherwise specified in this Regulation.’;

(3) Article 14 is amended as follows:

(a) in paragraph 3, the following point is added:

‘(d) where applicable, the reforms and investments in line with Article 21c.’;

(b) paragraph 4 is replaced by the following:

‘4. The loan support to the recovery and resilience plan of the Member State concerned shall not be higher than the difference between the total costs of the recovery and resilience plan, as revised where relevant, and the maximum financial contribution referred to in Article 11, including, where relevant, the revenue referred to in Article 21a as well as resources transferred from shared management programmes.’;

(c) paragraph 6 is replaced by the following:

‘6. By derogation from paragraph 5, subject to the availability of resources, in exceptional circumstances the amount of the loan support may be increased, considering the needs of the requesting Member State, as well as requests for loan support already submitted or planned to be submitted by other Member States, while applying the principles of equal treatment, solidarity, proportionality and transparency. To facilitate the application of those principles, Member States shall communicate to the Commission by ... [30 days following the entry into force of this amending Regulation], whether they intend to request loan support. The Commission shall present to the European Parliament and to the Council, simultaneously, on equal terms and without undue delay, an overview of the intentions expressed by the Member States and the proposed way forward for the distribution of the available resources. That communication of the intention to request loan support shall not prejudice the ability of Member States to request loan support until 31 August 2023, including in the case of requests exceeding 6,8 % GNI, where the relevant conditions apply. It shall also not prejudice the entering into of the corresponding loan agreement after the adoption of the relevant Council implementing decision.’;

(4) in Article 17, paragraph 2 is replaced by the following:

‘2. Measures started from 1 February 2020 onwards shall be eligible provided that they comply with the requirements set out in this Regulation.

However, the new reforms and investments referred to in Article 21c(1) shall only be eligible where they start from 1 February 2022 onwards.’;

(5) Article 18(4) is amended as follows:

(a) the following point is inserted:

‘(ca) an explanation of how the REPowerEU chapter contributes to addressing energy poverty, including, where relevant, giving adequate priority to the needs of those affected by energy poverty, as well as to the reduction of vulnerabilities during the coming winter seasons;’;

(b) point (e) is replaced by the following:

‘(e) a qualitative explanation of how the measures in the recovery and resilience plan are expected to contribute to the green transition, including biodiversity, or to addressing the challenges resulting therefrom, whether they account for an amount that represents at least 37 % of the recovery and resilience plan’s total allocation and whether measures of that type in the REPowerEU chapter account for an amount that represents at least 37 % of the total estimated costs of measures included in that chapter, based on the methodology for climate tracking set out in Annex VI; that methodology shall be used accordingly for measures that cannot be directly assigned to an intervention field listed in Annex VI; the coefficients for support for the climate objectives may be increased up to a total amount of 3 % of the allocation of the recovery and resilience plan for individual investments to take account of accompanying reform measures that credibly increase their impact on the climate objectives as explained in the recovery and resilience plan;’;

(c) point (h) is replaced by the following:

‘(h) an indication of whether the measures included in the recovery and resilience plan comprise cross-border or multi-country projects, an explanation as to how the relevant measures in the REPowerEU chapter, including the measures addressing challenges identified in the Commission’s most recent needs assessment, have a cross-border or multi-country dimension or effect, and an indication of whether the total costs of those measures account for an amount that represents at least 30 % of the estimated costs of the REPowerEU chapter;’;

(d) point (q) is replaced by the following:

‘(q) for the preparation and, where available, for the implementation of the recovery and resilience plan, a summary of the consultation process, conducted in accordance with the national legal framework, of local and regional authorities, social partners, civil society organisations, youth organisations and other relevant stakeholders, and how the input of the stakeholders is reflected in the recovery and resilience plan, with that summary to be complemented, where a REPowerEU chapter has been included, by setting out the stakeholders consulted, by a description of the outcome of the consultation process as regards that chapter, and by an outline as to how the input received was reflected therein;’;

(6) Article 19(3) is amended as follows:

(a) the following points are inserted:

‘(da) whether the REPowerEU chapter contains reforms and investments referred to in Article 21c that contribute effectively to energy security, the diversification of the Union’s energy supply, an increase in the uptake of renewables and energy efficiency, an increase of energy storage capacities or the necessary reduction of dependence on fossil fuels before 2030;

(db) whether the REPowerEU chapter contains reforms and investments referred to in Article 21c which are expected to have a cross-border or multi-country dimension or effect;’;

(b) point (e) is replaced by the following:

‘(e) whether the recovery and resilience plan contains measures that effectively contribute to the green transition, including biodiversity, or to addressing the challenges resulting therefrom, whether they account for an amount which represents at least 37 % of the recovery and resilience plan’s total allocation and whether such measures in the REPowerEU chapter account for an amount which represents at least 37 % of the total estimated costs of the measures included in that chapter, based on the methodology for climate tracking set out in Annex VI; that methodology shall be used accordingly for measures that cannot be directly assigned to an intervention field listed in Annex VI; the coefficients for support for the climate objectives may be increased up to a total amount of 3 % of the allocation of the recovery and resilience plan for individual investments to take account of accompanying reform measures that credibly increase their impact on the climate objectives, subject to the agreement of the Commission;’;

(7) in Article 20(5), the following point is inserted:

‘(ca) a summary of the measures proposed in the REPowerEU chapter which have a cross-border or multi-country dimension or effect, including those measures addressing challenges identified in the Commission’s most recent needs assessment; where the estimated costs of those measures account for an amount that represents less than 30 % of the estimated costs of all measures included in the REPowerEU chapter, an explanation of the reasons therefor, in particular a demonstration that other measures included in the REPowerEU chapter better address the objectives set out in Article 21c(3) or that there are not enough realistic projects available which have cross-border or multi-country dimension or effect, in particular considering the lifetime of the Facility;’;

(8) the following Chapter is inserted after Chapter III:

‘Chapter IIIa

REPower EU

Article 21a

Revenue from the emission trading system under Directive 2003/87/EC

1. EUR 20 000 000 000 in current prices, obtained in accordance with Article 10e of Directive 2003/87/EC of the European Parliament and of the Council*, shall be made available as additional non-repayable financial support under the Facility for implementation under this Regulation to increase the resilience of the Union’s energy system through a decrease of dependence on fossil fuels and diversifying energy supplies at Union level. As provided for in Article 10e of Directive 2003/87/EC, those amounts shall constitute external assigned revenue in accordance with Article 21(5) of the Financial Regulation.

2. The allocation share of the amount referred to in paragraph 1 available for each Member State shall be calculated on the basis of the indicators set out in the methodology in Annex IVa.

3. The amount referred to in paragraph 1 shall be allocated exclusively to measures referred to in Article 21c, with the exception of measures referred to in Article 21c(3), point (a). It may also cover expenses referred to in Article 6(2).

4. Commitment appropriations covering the amount referred to in paragraph 1 shall be made available automatically for that amount as of … [the date of entry into force of this amending Regulation].

5. Each Member State may submit to the Commission a request for the allocation of an amount not exceeding its share by including in its plan the reforms and investments referred to in Article 21c and indicating their estimated costs.

6. The Council implementing decision adopted pursuant to Article 20(1) shall lay down the amount of the revenue referred to in paragraph 1 of this Articleallocated to the Member State following the submission of a request pursuant to paragraph 5 of this Article. The corresponding amount shall be paid in instalments, subject to available funding, in accordance with Article 24, once the Member State concerned has satisfactorily fulfilled the milestones and targets identified in relation to the implementation of the measures referred to in Article 21c.

Article 21b

Resources from shared management programmes to support the REPowerEU objectives

1. Within the resources allocated to them, Member States may request under the Common Provisions Regulation for 2021-2027 support for the objectives set out in Article 21c(3) of this Regulation from programmes supported by the European Regional Development Fund, the European Social Fund Plus and the Cohesion Fund, subject to the conditions set out in Article 26a of the Common Provisions Regulation for 2021-2027 and the Fund-specific Regulations. Such support shall be implemented in accordance with the Common Provisions Regulation for 2021-2027 and the Fund-specific Regulations.

2. Resources may be transferred under Article 4a of Regulation (EU) 2021/1755 of the European Parliament and of the Council** to support measures referred to in Article 21c of this Regulation.

Article 21c

REPowerEU chapters in recovery and resilience plans

1. Recovery and resilience plans submitted to the Commission after … [the date of the entry into force of this amending Regulation] that require the use of additional funding under Articles 14, 21a or 21b, shall include a REPowerEU chapter containing measures and their corresponding milestones and targets. The measures in the REPowerEU chapter shall be either new reforms and investments, started from 1 February 2022 onwards, or the scaled-up part of reforms and investments included in the already adopted Council implementing decision for the Member State concerned.

2. By derogation from paragraph 1, Member States that are subject to a decrease in the maximum financial contribution in accordance with Article 11(2) may also include in the REPowerEU chapters measures included in the already adopted Council implementing decisions without having them scaled-up, up to an amount of estimated costs equal to that decrease.

3. Reforms and investments in the REPowerEU chapter shall aim to contribute to at least one of the following objectives:

(a) improving energy infrastructure and facilities to meet immediate security of supply needs for gas, including liquified natural gas, notably to enable diversification of supply in the interest of the Union as a whole; measures concerning the oil infrastructure and facilities necessary to meet immediate security of supply needs may be included in the REPowerEU chapter of a Member State only where that Member State has been subject to the exceptional temporary derogation in Article 3m(4) of Regulation (EU) No 833/2014 by ... [the date of entry into force of this amending Regulation], due to its specific dependence on crude oil and its geographical situation;

(b) boosting energy efficiency in buildings and critical energy infrastructure, decarbonising industry, increasing the production and uptake of sustainable biomethane and of renewable or fossil-free hydrogen, and increasing the share and accelerating the deployment of renewable energy;

(c) addressing energy poverty;

(d) incentivising reduction of energy demand;

(e) addressing internal and cross-border energy transmission and distribution bottlenecks, supporting electricity storage and accelerating the integration of renewable energy sources, and supporting zero-emission transport and its infrastructure, including railways;

(f) supporting the objectives set out in points (a) to (e) through an accelerated requalification of the workforce towards green and related digital skills, as well as through support of the value chains in critical raw materials and technologies linked to the green transition.

4. The REPowerEU chapter shall also contain an explanation as to how the measures in that chapter are coherent with the efforts of the Member State concerned to achieve the objectives set out in paragraph 3, taking into account the measures included in the already adopted Council implementing decision, as well as an explanation of the overall contribution of those measures and other nationally funded and Union-funded complementary or accompanying measures to those objectives.

5. The estimated costs of the reforms and investments in the REPowerEU chapter shall not be taken into account for the calculation of the recovery and resilience plan's total allocation under Article 18(4), point (f), and Article 19(3), point (f).

6. By derogation from Article 5(2), Article 17(4), Article 18(4), point (d), and Article 19(3), point (d), the principle of "do no significant harm" shall not apply to the reforms and investments under paragraph 3, point (a), of this Article, subject to a positive assessment by the Commission that the following requirements are met:

   (a) the measure is necessary and proportionate to meet immediate security of supply needs in accordance with paragraph 3, point (a), of this Article taking into account cleaner feasible alternatives and the risk of lock-in effects;

   (b) the Member State concerned has undertaken satisfactory efforts to limit the potential harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852, where feasible, and to mitigate harm through other measures, including the measures in the REPowerEU chapter;

   (c) the measure does not jeopardise the achievement of the Union's 2030 climate targets and the objective of EU climate neutrality by 2050, based on qualitative considerations;

   (d) the measure is planned to be in operation by 31 December 2026.

7. When carrying out the assessment referred to in paragraph 6, the Commission shall act in close cooperation with the Member State concerned. The Commission may make observations or request additional information. The Member State concerned shall provide the requested additional information.

8. The revenue made available in accordance with Article 21a shall not contribute to reforms and investments under paragraph 3, point (a), of this Article.

9. The total estimated costs of the measures subject to a positive assessment by the Commission under paragraph 6 shall not exceed 30 % of the total estimated costs of the measures included in the REPowerEU chapter.

Article 21d
REPowerEU pre-financing

1. The recovery and resilience plan containing a REPowerEU chapter may be accompanied by a request for pre-financing. Subject to the adoption by the Council of the implementing decision referred to in Article 20(1) and Article 21(2) by 31 December 2023, the Commission shall make up to two pre-financing payments for a total amount of up to 20 % of the additional funding requested by the Member State concerned to finance its REPowerEU chapter, under Articles 7, 12, 14, 21a and 21b, while complying with the principles of equal treatment among Member States and proportionality.

2. With regard to resources transferred under the conditions set out in Article 26 of Regulation (EU) 2021/1060, each of the two sets of pre-financing payments shall not exceed EUR 1 000 000 000.

3. By derogation from Article 116(1) of the Financial Regulation, the Commission shall make the pre-financing payments, to the extent possible and subject to available resources, as follows:

   (a) as regards the first pre-financing payment, within two months of the conclusion, by the Commission and the Member State concerned, of the agreement constituting a legal commitment as referred to in Article 23;

   (b) as regards the second pre-financing payment, within 12 months of the entry into force of the Council implementing decision approving the assessment of the recovery and resilience plan including a REPowerEU chapter.

4. A pre-financing payment in respect of resources referred to in paragraph 2 shall be made following the receipt of information from all Member States on whether they intend to request pre-financing of such resources, and, where necessary, on a pro-rata basis to respect the total ceiling of EUR 1 000 000 000.

5. In cases of pre-financing under paragraph 1, the financial contribution referred to in Article 20(5), point (a), and, where applicable, the amount of the loan to be paid as referred to in Article 20(5), point (h), shall be adjusted proportionally.

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* Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

** Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve (OJ L 357, 8.10.2021, p. 1).';

(9) in Article 23, paragraph 1 is replaced by the following:

'1. Once the Council has adopted an implementing decision as referred to in Article 20(1), the Commission shall conclude an agreement with the Member State concerned constituting an individual legal commitment within the meaning of the Financial Regulation. For each Member State the legal commitment shall not exceed the total of the financial contribution referred to in point (a) of Article 11(1) for 2021 and 2022, the updated financial contribution referred to in Article 11(2) for 2023 and the amount calculated under Article 21a(2).';

(10) the following Article is inserted:

'*Article 25a*

Transparency with regard to final recipients

1. Each Member State shall create an easy-to-use public portal containing data on the 100 final recipients receiving the highest amount of funding for the implementation of measures under the Facility. Member States shall update those data twice a year.

2. For the final recipients referred to in paragraph 1, the following information shall be published:

   (a) in the case of a legal person, the recipient's full legal name and VAT identification number or tax identification number, where available, or another unique identifier established at the national level,

   (b) in the case of a natural person, the first and last name of the recipient;

   (c) the amount received by each recipient, as well as the associated measures for which a Member State has received funding under the Facility.

3. The information referred to in Article 38(3) of the Financial Regulation shall not be published.

4. Where personal data are published, the information referred to in paragraph 2 shall be removed by the Member State concerned two years after the end of the financial year in which the funding has been paid to the final recipient.

5. The Commission shall centralise the Member States' public portals and publish the data referred to in paragraph 1 in the recovery and resilience scoreboard referred to in Article 30.';

(11) in Article 26(1), the following point is added:

'(h) the progress of the implementation of the reforms and investments in the REPowerEU chapters.';

(12) in Article 29, paragraph 1 is replaced by the following:

'1. The Commission shall monitor the implementation of the Facility and measure the achievement of the objectives set out in Article 4, including the implementation of the reforms and investments in the REPowerEU chapters and their contribution to the objectives set out in Article 21c(3). The monitoring of implementation shall be targeted and proportionate to the activities carried out under the Facility.';

(13) in Article 30, paragraph 3 is replaced by the following:

‘3. The Scoreboard shall also display the progress of the implementation of the recovery and resilience plans in relation to the common indicators referred to in Article 29(4). It shall also include the progress of the implementation of the measures in the REPowerEU chapters and their contribution to the objectives set out in Article 21c(3), and display information on the reduction of the Union imports of fossil fuels and the diversification of energy supplies.’;

(14) Article 31 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) the introductory sentence is replaced by the following:

‘3. The annual report shall also include the following information:’;

(ii) the following points are added:

‘(d) an overview of measures having a cross-border or multi-country dimension or effect included in all REPowerEU chapters, their total estimated costs and an indication of whether the total costs of those measures account for an amount that represents at least 30 % of the total estimated costs of measures included in all REPowerEU chapters;

(e) the number of measures falling under Article 21c(3), point (a), included in all REPowerEU chapters, and their total estimated costs;

(f) the progress of the implementation of the reforms and investments in the REPowerEU chapter, through a dedicated section which includes lessons learned after analysing the data available on final recipients and examples of best practices.';

(b) the following paragraph is inserted:

'3a. The information referred to in points (d) and (e) of paragraph 3 shall only be included in the annual report following the approval of the assessment of all the recovery and resilience plans containing a REPowerEU chapter.';

(15) in Article 32, paragraph 2 is replaced by the following:

'2. The evaluation report shall, in particular, assess to which extent the objectives have been achieved, the efficiency of the use of the resources and the European added value. It shall also consider the continued relevance of all objectives and actions as well as assess the implementation of the REPowerEU chapters and their contributions to the objectives set out in Article 21c(3).';

(16) the text set out in Annex I to this Regulation is inserted as Annex IVa;

(17) Annex V is amended in accordance with Annex II to this Regulation.

Article 2

Amendments to Regulation (EU) No 1303/2013

The following Article is inserted in Regulation (EU) No 1303/2013:

‘*Article 25b*

Exceptional measures for the use of the Funds to support SMEs particularly affected by energy price increases, vulnerable households, and short-time work and equivalent schemes

1. As an exceptional measure strictly necessary to address the energy crisis resulting from the impact of Russia's war of aggression against Ukraine, the ERDF may support the financing of working capital in the form of grants to SMEs particularly affected by energy price increases, under the investment priority referred to in Article 5(3), point (d), of Regulation (EU) No 1301/2013. SMEs particularly affected by energy price increases are those eligible to receive aid for additional costs due to exceptionally severe increases in natural gas and electricity prices under the temporary crisis framework for State-aid measures.

   As a further exceptional measure strictly necessary to address the energy crisis resulting from the impact of Russia's war of aggression against Ukraine, the ESF may support vulnerable households to help them meet their energy consumption costs, even without any corresponding active measures, under the investment priority referred to in Article 3(1), point (b)(iv), of Regulation (EU) No 1304/2013.

2. Operations providing the support referred to in paragraph 1 may be financed either by the ERDF or the ESF on the basis of the rules applicable to the other Fund. In addition, where such operations contribute to one of the investment priorities referred to in paragraph 1, they may be financed by the Cohesion Fund on the basis of the rules applicable either to the ERDF or the ESF. Furthermore, the ERDF and the Cohesion Fund may also finance access to the labour market by maintaining the jobs of employees and the self-employed through short-time work and equivalent schemes, on the basis of the rules applicable to the ESF under the investment priority referred to in Article 3(1), point (a)(v), of Regulation (EU) No 1304/2013.

3. Operations providing the support referred to in paragraphs 1 and 2 shall be programmed exclusively under a new dedicated priority axis. The dedicated priority axis may comprise funding from the ERDF and the ESF from different categories of regions and from the Cohesion Fund. Support provided by REACT-EU resources, within the meaning of Article 92a, shall be programmed under a separate dedicated priority axis contributing to the investment priority referred to in Article 92b(9), third subparagraph.

The amounts allocated to the dedicated priority axes referred to in the first subparagraph of this paragraph shall not exceed 10 % of the total ERDF, ESF and Cohesion Fund resources, including REACT-EU resources under the Investment for growth and jobs goal, allocated to the Member State concerned for the 2014-2020 programming period, as laid down in the relevant Commission implementing acts. By way of derogation from the first and second subparagraphs of Article 120(3), a co-financing rate of 100 % shall be applied to the dedicated priority axis or axes.

4. Requests for the amendment of an existing operational programme submitted by a Member State aiming at introducing a dedicated priority axis or axes referred to in paragraph 3 shall be duly justified and accompanied by the revised programme. The elements listed in Article 96(2), point (b)(v) and (vii), shall not be required in the description of the priority axis or axes in the revised operational programme.

5. By way of derogation from Article 65(9), expenditure for operations supporting the financing of working capital in the form of grants in SMEs particularly affected by energy price increases, for operations providing support to vulnerable households to help them meet their energy consumption costs, and for short-time work and equivalent schemes shall be eligible from 1 February 2022. Article 65(6) shall not apply in respect of such operations and schemes.

6. By way of derogation from Article 125(3), point (b), operations supporting the financing of working capital in the form of grants to SMEs particularly affected by energy price increases, operations providing support to vulnerable households to help them meet their energy consumption costs, and short-time work and equivalent schemes may be selected for support by the ERDF, the ESF or the Cohesion Fund prior to the approval of the revised programme.

7. For operations supporting the financing of working capital in the form of grants to SMEs particularly affected by energy price increases implemented outside the programme area but within the Member State, only point (d) of Article 70(2), first subparagraph, shall apply. By way of derogation from Article 70(4), to operations supported by the ESF providing support to vulnerable households to help them meet their energy consumption costs and to short-time work and equivalent schemes implemented outside the programme area but within the Member State, Article 70(2), first subparagraph, point (d), shall also apply.

8. The total payments by the Commission to Member States from the ERDF, the ESF, and the Cohesion Fund, excluding REACT-EU resources, for the dedicated priorities referred to in paragraph 3 shall not exceed EUR 5 000 000 000 in 2023. Amounts shall be paid subject to available funding under the ceilings of the multiannual financial framework 2014-2020.

9. This Article shall not apply to programmes under the European territorial cooperation goal.’.

Article 3

Amendments to Regulation (EU) 2021/1060

Regulation (EU) 2021/1060 is amended as follows:

(1) in Article 22(3), point (g), point (i) is replaced by the following:

‘(i) a table specifying the total financial allocations for each of the Funds and, where applicable, for each category of region for the whole programming period and by year, including any amounts transferred pursuant to Article 26 or 27, and the Member State’s request for supporting measures contributing to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241 of the European Parliament and of the Council*;

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* Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).’;

(2) in Article 24, the following paragraph is added:

‘8. For programmes supported by the ERDF, the ESF+ or the Cohesion Fund the Member State may submit an amendment of a programme, in accordance with this Article, requesting that measures contributing to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241 are included in a programme, where such support contributes to the specific objectives of the Fund concerned as set out in Fund-specific Regulations. The amounts requested for such measures shall be programmed under a specific objective in accordance with the Fund-specific Regulations and included in a priority. Those amounts overall shall not exceed the limit of 7,5 % of the initial national allocation for each Fund.’;

(3) the following Article is inserted:

‘*Article 26a*
Support for the objectives in Article 21c(3) of Regulation (EU) 2021/241

1. Member States submitting to the Commission, in accordance with Regulation (EU) 2021/241, recovery and resilience plans which contain a REPowerEU chapter may request through an amendment of a programme under Article 24 of this Regulation that up to 7,5 % of their initial national allocation under the ERDF, the ESF+ and the Cohesion Fund be included in priorities contributing to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241, provided that such support contributes to the specific objectives of the Fund concerned as set out in the Fund-specific Regulations. The possibility of such a request shall be without prejudice to the possibility of transfer of resources envisaged under Article 26 of this Regulation.

2. Resources requested by Member States under this Article shall be implemented in accordance with this Regulation and the Fund-specific Regulations.

3. Requests for an amendment of a programme shall set out the total amount of the resources contributing to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241 for each year by Fund and by category of region, where applicable.';

(4) Annex V is amended in accordance with Annex III to this Regulation.

Article 4

Amendments to Regulation (EU) 2021/1755

In Regulation (EU) 2021/1755, the following Article is inserted:

'*Article 4a*

Transfer to the Recovery and Resilience Facility

1. By 1 March 2023, Member States may submit to the Commission a reasoned request to transfer to the Recovery and Resilience Facility established by Regulation (EU) 2021/241 of the European and of the Council* all or part of the amounts of their provisional allocation set out in the implementing act of the Commission referred to in Article 4(5). If the transfer request is approved, the Commission shall amend the implementing act in order to reflect the adjusted amounts following the transfer.

2. Where the transfer affects the instalments already paid or to be paid as pre-financing, the Commission shall amend the implementing act referred to in Article 9(1) accordingly for the Member State concerned. Where appropriate, the Commission shall recover, in accordance with the Financial Regulation, all or part of the 2021 and 2022 instalments paid to that Member State as pre-financing. In that case the recovered amounts shall be transferred to the Recovery and Resilience Facility for the exclusive benefit of the Member State concerned.

3. Where a Member State chooses to transfer all or part of its provisional allocation to the Recovery and Resilience Facility in accordance with this Article, the amounts to be spent for the purposes of Article 4(4), first subparagraph, shall be proportionately reduced.

4. Where a Member State chooses to transfer all of its provisional allocation to the Recovery and Resilience Facility, Article 10(1) shall not apply.

5. Article 10(2) shall not apply to the amounts transferred to the Recovery and Resilience Facility.

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* Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing a Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).'.

Article 5

Amendments to Directive 2003/87/EC

In Directive 2003/87/EC, the following Article is inserted:

'*Article 10e*

Recovery and Resilience Facility

1. As an extraordinary and one-time measure, until 31 August 2026, the allowances auctioned pursuant to paragraphs 2 and 3 of this Article shall be auctioned until the total amount of revenue obtained from such auctioning has reached EUR 20 billion. That revenue shall be made available to the Recovery and Resilience Facility established by Regulation (EU) 2021/241 of the Parliament and of the Council* and shall be implemented in accordance with the provisions of that Regulation.

2. By way of derogation from Article 10a(8), until 31 August 2026, a part of the allowances referred to in that paragraph shall be auctioned to support the objectives set out in Article 21c(3), points (b) to (f), of Regulation (EU) 2021/241, until the amount of revenue obtained from such auctioning has reached EUR 12 billion.

3. Until 31 August 2026, a number of allowances from the quantity which would otherwise be auctioned from 1 January 2027 to 31 December 2030 by the Member States under Article 10(2), point (a), shall be auctioned to support the objectives set out in Article 21c(3), points (b) to (f), of Regulation (EU) 2021/241 until the amount of revenue obtained from such auctioning has reached EUR 8 billion. Those allowances shall, in principle, be auctioned in equal annual volumes over the relevant period.

4. By way of derogation from Article 1(5a) of Decision (EU) 2015/1814, until 31 December 2030, 27 million unallocated allowances in the market stability reserve from the total quantity which would otherwise be invalidated over that period shall be used to support innovation, as referred to in Article 10a(8), first subparagraph, of this Directive.

5. The Commission shall ensure that the allowances to be auctioned under paragraphs 2 and 3, including, where appropriate, for pre-financing payments in accordance with Article 21d of Regulation (EU) 2021/241, are auctioned in accordance with the principles and modalities laid down in Article 10(4) of this Directive and in accordance with Article 24 of Commission Regulation (EU) No 1031/2010[**] to ensure an adequate amount of innovation fund resources in the period from 2023 to 2026. The period for auctioning referred to in this Article shall be reviewed one year after its start in the light of the impact of the auctioning provided for in this Article on the carbon market and price.

6. The EIB shall be the auctioneer for the allowances to be auctioned pursuant to this Article on the auction platform appointed pursuant to Article 26(1) of Regulation (EU) No 1031/2010 and shall provide the revenues generated from the auctioning to the Commission.

7. The revenues generated from the auctioning of allowances shall constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[***].

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[*] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing a Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

[**] Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a system for greenhouse gas emission allowances trading within the Union (OJ L 302, 18.11.2010, p. 1).

[***] 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 (OJ L 193, 30.7.2018, p. 1).'.

Article 6

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

In Regulation (EU) 2021/241, the following Annex is inserted:

‘ANNEX IVa

This Annex sets out the methodology for calculating the allocation share of the resources in the form of additional non-repayable financial support under the Facility referred to in Article 21a(1) available for each Member State. The method takes into account, with regard to each Member State:

– the population;

– the inverse of the GDP per capita;

– the gross fixed capital formation price deflator;

– the share of fossil fuels in gross inland energy consumption.

To avoid excessive concentration of resources:

– the inverse of the GDP per capita is capped at a maximum of 160 % of the Union weighted average;

– the inverse of the GDP per capita is capped at a maximum of 55 % of the Union weighted average if the GDP per capita of the Member State concerned is above 130 % of EU-27 average;

– a minimum allocation share is set at 0,15 %;

– a maximum allocation share is set at 13,80 %.

The allocation key applied to the amount referred to in Article 21a(1), ρ_i is defined as follows:

$$\boldsymbol{\rho_i} = \begin{cases} \mathbf{0,0015} & \boldsymbol{\omega_i \leq 0,0015} \\ \mathbf{0,138} & \boldsymbol{\omega_i \geq 0,138} \\ \boldsymbol{\omega_i - \frac{\omega_i}{\sum_i^{27-z-q} \omega_i} \left[\sum_{i=i}^{z} (0,0015 - \omega_i) - \sum_{i=i}^{q} (\omega_i - 0,138) \right]} & \boldsymbol{0,0015 < \omega_i < 0,138} \end{cases}$$

where Member States i to z are the Member States benefitting from a minimum allocation share and Member States i to q are the Member States benefitting from a maximum allocation share.

where $\boldsymbol{\omega_i = \frac{\tau_i + \mu_i + \psi_i}{3}}$

where $\boldsymbol{\tau_i = \frac{\sigma_{i,2021}}{\sum_{i=1}^{27} \sigma_{i,2021}}}$ and $\boldsymbol{\mu_i = \frac{\sigma_{i,2021} \times \frac{FFGIC_{i,2020}}{FFGIC_{EU,2020}}}{\sum_{i=1}^{27} \sigma_{i,2021} \times \frac{FFGIC_{i,2020}}{FFGIC_{EU,2020}}}}$ and $\boldsymbol{\psi_i = \frac{\sigma_{i,2021} \times \frac{GFCF_{i,2022Q2/2021Q2}}{GFCF_{EU,2022Q2/2021Q2}}}{\sum_{i=1}^{27} \sigma_{i,2021} \times \frac{GFCF_{i,2022Q2/2021Q2}}{GFCF_{EU,2022Q2/2021Q2}}}}$,

where $\boldsymbol{\sigma_{i,2021} = \frac{pop_{i,2021}}{pop_{EU,2021}} \times \min \left\{ \frac{GDP^{PC}_{EU,2021}}{GDP^{PC}_{i,2021}}; 1,6 \right\}}$ for Member States i with $\boldsymbol{\frac{GDP^{PC}_{i,2021}}{GDP^{PC}_{EU,2021}} \leq 1,3}$ and

$\boldsymbol{\sigma_{i,2021} = \frac{pop_{i,2021}}{pop_{EU,2021}} \times \min \left\{ \frac{GDP^{PC}_{EU,2021}}{GDP^{PC}_{i,2021}}; 0,55 \right\}}$ for Member States i with $\boldsymbol{\frac{GDP^{PC}_{i,2021}}{GDP^{PC}_{EU,2021}} > 1,3}$

Defining[1]:

– $\mathbf{pop_{i,2021}}$ as the 2021 total population in Member State i;

– $\mathbf{pop_{EU,2021}}$ as the 2021 total population in the EU-27 Member States;

– $\mathbf{GDP^{PC}_{EU,2021}}$ as the 2021 weighted average of the nominal GDP per capita of the EU-27 Member States;

– $\mathbf{GDP^{PC}_{i,2021}}$ as the 2021 nominal GDP per capita of Member State i;

– $\mathbf{FFGIC_{i,2020}}$ as the 2020 share of fossil fuels in gross inland energy consumption of Member State i;

– $\mathbf{FFGIC_{EU,2020}}$ as the 2020 weighted average share of fossil fuels in gross inland energy consumption of the EU-27 Member States;

[1] All data in this Regulation is from Eurostat. Cut-off date 20 September 2022 for historical data used for the application of the allocation key in this annex. Fossil fuels include solid fossil fuels, manufactured gases, peat and peat products, oil shale and oil sands, oil and petroleum products (excluding biofuel portion), natural gas and non-renewable waste.

– $\mathbf{GFCF_{i,2022Q2/2021Q2}}$ as the ratio of 2022 Q2 gross fixed capital formation price index (implicit deflator, 2015=100, national currency, seasonally and calendar adjusted data) of Member State i and 2021 Q2 Gross fixed capital formation price index (implicit deflator, 2015=100, national currency, seasonally and calendar adjusted data) of Member State i;

– $\mathbf{GFCF_{EU,2022Q2/2021Q2}}$ as the ratio of 2022 Q2 gross fixed capital formation price index (implicit deflator, 2015=100, national currency, seasonally and calendar adjusted data) of the EU-27 aggregate and 2021 Q2 gross fixed capital formation price index (implicit deflator, 2015=100, national currency, seasonally and calendar adjusted data) of the EU-27 aggregate.

The application of the methodology to the amount referred to in Article 21a(1) will result in the following share and amount per Member State:

Member State	Share as % of total	Amount (in EUR 1 000, current prices)
Belgium	1,41 %	282 139
Bulgaria	2,40 %	480 047
Czechia	3,41 %	681 565
Denmark	0,65 %	130 911
Germany	10,45 %	2 089 555
Estonia	0,42 %	83 423
Ireland	0,45 %	89 598
Greece	3,85 %	769 222
Spain	12,93 %	2 586 147
France	11,60 %	2 320 955
Croatia	1,35 %	269 441
Italy	13,80 %	2 760 000
Cyprus	0,26 %	52 487
Latvia	0,62 %	123 983
Lithuania	0,97 %	194 020
Luxembourg	0,15 %	30 000
Hungary	3,51 %	701 565
Malta	0,15 %	30 000

Member State	Share as % of total	Amount (in EUR 1 000, current prices)
Netherlands	2,28 %	455 042
Austria	1,05 %	210 620
Poland	13,80 %	2 760 000
Portugal	3,52 %	704 420
Romania	7,00 %	1 399 326
Slovenia	0,58 %	116 910
Slovakia	1,83 %	366 959
Finland	0,56 %	112 936
Sweden	0,99 %	198 727
EU27	100,00 %	20 000 000

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ANNEX II

Annex V of Regulation (EU) 2021/241 is amended as follows:

(1) In section 2, point 2.5, the first subparagraph is replaced by the following:

‘2.5. The recovery and resilience plan contains measures that effectively contribute to the green transition, including biodiversity, or to addressing the challenges resulting therefrom, that account for an amount which represents at least 37 % of the recovery and resilience plan’s total allocation and such measures in the REPowerEU chapter account for an amount which represents at least 37 % of the total estimated costs of the measures in the REPowerEU chapter, based on the methodology for climate tracking set out in Annex VI; that methodology shall be used accordingly for measures that cannot be directly assigned to an intervention field listed in Annex VI; the coefficients for support for the climate objectives may be increased up to a total amount of 3 % of the allocation of the recovery and resilience plan for individual investments to take account of accompanying reform measures that credibly increase their impact on the climate objectives, subject to the agreement of the Commission.’;

(2) in section 2, the following points are added:

‘2.12. The measures referred to in Article 21c are expected to effectively contribute to energy security, the diversification of the Union’s energy supply, an increase in the uptake of renewables and in energy efficiency, an increase of energy storage capacities or the necessary reduction of dependence on fossil fuels before 2030.

When assessing the measures referred to in Article 21c under this criterion, the Commission shall take into account the specific challenges and the additional funding under the Facility available to the Member State concerned. The Commission shall also take into account the following elements:

Scope

– the implementation of the envisaged measures is expected to effectively contribute to the improvement of energy infrastructure and facilities to meet immediate security of supply needs for gas, including liquified natural gas, or oil where the derogation under Article 21c(3), point (a), applies, notably to enable diversification of supply in the interest of the Union as a whole;

or

– the implementation of the envisaged measures is expected to effectively contribute to boosting energy efficiency in buildings and critical energy infrastructure, decarbonising industry, increasing production and uptake of sustainable biomethane and of renewable or fossil-free hydrogen, and increasing the share and accelerating the deployment of renewable energy;

or

– the implementation of the envisaged measures is expected to effectively contribute to addressing energy poverty and, where relevant, give adequate priority to the needs of those affected by energy poverty as well as to the reduction of vulnerabilities during the coming winter seasons;

or

– the implementation of the envisaged measures is expected to effectively contribute to incentivising reduction of energy demand;

or

– the implementation of the envisaged measures is expected to address internal and cross-border energy transmission and distribution bottlenecks, supporting electricity storage and accelerating the integration of renewable energy sources, and supporting zero emission transport and its infrastructure, including railways;

or

– the implementation of the envisaged measures is expected to effectively contribute to supporting the objectives set out in Article 21c(3), points (a) to (e), through an accelerated requalification of the workforce towards green and related digital skills, as well as support of the value chains in critical raw materials and technologies linked to the green transition;

and

– the envisaged measures are coherent with the efforts of the Member State concerned to achieve the objectives set out in Article 21c(3), taking into account the measures included in the already adopted Council implementing decision, as well as other nationally funded and Union-funded complementary or accompanying measures to the objectives set out in Article 21c(3).

Rating

A – to a large extent

B – to a moderate extent

C – to a small extent

2.13. The measures referred to in Article 21c are expected to have a cross-border or multi-country dimension or effect.

The Commission shall take into account the following elements for the assessment under this criterion:

Scope

– the implementation at the national level of the envisaged measures is expected to contribute to securing energy supply in the Union as a whole, including by addressing challenges identified in the Commission's most recent needs assessment, in line with the objectives set out in Article 21c(3), taking into account the financial contribution available to the Member State concerned and its geographical position;

or

– the implementation of the envisaged measures is expected to contribute to reducing dependency on fossil fuels and to reducing energy demand.

Rating

A – to a large extent

B – to a moderate extent

C – to a small extent’;

(3) Section 3 is amended as follows:

(a) the indent that reads ‘— an A for criteria 2.2, 2.3, 2.5 and 2.6’ is replaced by ‘— an A for criteria 2.2, 2.3, 2.5, 2.6 and 2.12’;

(b) the indent that reads ‘— not an A in criteria 2.2, 2.3, 2.5 and 2.6’ is replaced by ‘— not an A in criteria 2.2, 2.3, 2.5, 2.6 and 2.12’.

ANNEX III

Annex V of Regulation (EU) 2021/1060 is amended as follows:

(1) the text under point 3 is replaced by the following:

‘Reference: points (g)(i), (ii) and (iii) of Article 22(3), Article 112(1), (2) and (3), and Articles 14, 26 and 26a CPR’;

(2) point 3.1 is amended as follows:

(a) The first paragraph and unnumbered table are replaced by the following:

‘3.1 Transfers and contributions (*)

Reference: Articles 14, 26, 26a and 27 CPR

Programme amendment related to	☐ contribution to InvestEU
	☐ transfer to instruments under direct or indirect management
	☐ transfer between ERDF, ESF+, Cohesion Fund or to another Fund or Funds
	☐ Funds contributing to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241 (**)

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* Applicable only to programme amendments in accordance with Articles 14, 26 and 26a, except for complementary transfers to the JTF in accordance with Article 27 CPR. Transfers shall not affect the annual breakdown of financial appropriations at the MFF level for a Member State.

** Indicate if the programme amendment contributes, in accordance with Article 26a of this Regulation, to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241. If yes, indicate the additional amount by Fund, year and category of region at programme level in Table 21.’;

(b) the following table is inserted after table 17B:

‘Table 21: Resources contributing to the objectives set out in Article 21c(3) of Regulation (EU) 2021/241

Fund	Category of region	2022	2023	2024	2025	2026	2027	Total
ERDF	More developed							
	Transition							
	Less developed							
Total								
ESF+	More developed							
	Transition							
	Less developed							
Total								
Cohesion Fund	N/A							
Total								

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