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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (part 2)/Council
Subject:	Proposal for a 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 Regulation (EU) 2021/1060 , Regulation (EU) 2021/2115, Directive 2003/87/EC and Decision (EU) 2015/1814 - General Approach

Delegations will find in Annex a revised Presidency compromise proposal for a General Approach on the above-referred Commission proposal (2022/0164 (COD).

Annex

29 September 2022

Proposal for a

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 Regulation (EU) 2021/1060 , Regulation (EU) 2021/2115, Directive 2003/87/EC and Decision (EU) 2015/1814

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 43 (2),** 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],

Having regard to the opinion of the Committee of the Regions[2],

Having regard to the opinion of the Court of Auditors,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Since the adoption of Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility,[3] unprecedented geopolitical events and their direct and indirect socio-economic consequences have considerably affected the Union's society and economy. In particular, it has become clearer than ever that the Union's energy security is indispensable for a successful, sustainable and inclusive recovery

1 OJ C , , p. .

2 OJ C , , p. .

3 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).

from the COVID-19 crisis, as it is also a major factor contributing to the resilience of the European economy.

(2) Due to the direct links between a sustainable recovery, building the Union's resilience and the Union's energy security, and its role for a just and inclusive transition, the Recovery and Resilience Facility is a well-suited instrument to contribute to the Union's response to these newly emerging challenges.

(3) The Versailles Declaration of 10-11 March 2022 of the Heads of States and Governments invited the Commission to propose by the end of May a REPowerEU plan to phase out the dependency on Russian fossil fuel imports, which was subsequently reiterated in the European Council Conclusions of 24-25 March 2022. This should be done well before 2030 in a way that is consistent with the EU's Green Deal and the climate objectives for 2030 and 2050 enshrined in the European Climate Law. Regulation (EU) 2021/241 should therefore be amended to enhance its ability to support reforms and investments dedicated to diversifying energy supplies, in particular fossil fuels, thereby strengthening the strategic autonomy of the Union alongside an open economy. Support should also be given to reforms and investments increasing the energy efficiency of the Member States' economies.

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

(5) To maximise the scope of the Union's response, all Member States submitting a recovery and resilience plan after the entry into force of this Regulation **that requests the use of additional funding under Article 14, Article 21a or Article 21b of Regulation (EU) 2021/241** should be required to include a REPowerEU chapter in their plan **In accordance with Article 18 (3), and to ensure proper preparation of the REPowerEU chapters, Member States may submit a draft REPowerEU chapter before the submission of a modified recovery and resilience plan.~~This requirement should apply, in particular, to revised plans submitted by Member States from 30 June 2022 to take into account the updated maximum financial contribution.~~**

(6) The REPowerEU chapter should include **new** reforms and investments contributing to the REPowerEU aims, **meaning those that are not included in the already adopted Council Implementing Decision. However, other relevant measures contributing to the REPowerEU objectives can be included in the REPowerEU chapter, if the Member State concerned is subject to a downwards update of its maximum financial contribution.**

(6a) The scaled-up part of measures included in the already adopted Council Implementing Decision may be included in the REPowerEU chapter together with the corresponding milestones and targets. Such scale-up should introduce a substantive improvement in the level of ambition of the measure, 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.

(6b) Member States should submit the chapter in the form of an addendum to their consolidated plans. Furthermore, that chapter should provide an explanation on how the measures included in the chapter are coherent with the efforts of the Member State concerned to achieve the REPowerEU objectives, taking into account the measures in the already adopted Council Implementing Decision ~~contain an outline of other measures, financed from sources other than the Recovery and Resilience Facility, contributing to the energy-related objectives outlined in recital (3). The outline should cover measures whose implementation should take place between 1 February 2022 to 31 December 2026, the period during which the objectives set by this Regulation are to be achieved~~. As regards natural gas infrastructure, the investments and reforms of 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 (ENTSOG), established in the spirit of solidarity as regards security of supply and take into account the reinforced preparedness measures taken to adapt to new geopolitical threats. **~~Finally, the REPowerEU chapters should provide an explanation and a quantification of the effects of the combination of the reforms and investments financed by the Recovery and Resilience Facility and the other measures financed by other sources than the Recovery and Resilience Facility.~~**

(7) An appropriate assessment criterion should be added to serve as a basis for the Commission to assess reforms and investments included in the REPowerEU chapter and to ensure that reforms and investments are fit for achieving the specific REPowerEU-related objectives. An A rating should be required under this new assessment criterion for the relevant recovery and resilience plan to be positively assessed by the Commission.

(8) Investments in infrastructure and technologies alone are not sufficient to ensure a reduction of dependency from fossil fuels. Resources **~~should~~ can be also** be dedicated to the reskilling and upskilling of people, to further equip the workforce with green skills **as well as to the research and the development of innovative solutions linked to the green transition**. This is in line with the objective of the European Social Fund Plus, which aims at supporting Member States in achieving a skilled and resilient workforce ready for the future world of work. In light of this, resources transferred from the European Social Fund Plus should help support measures for the reskilling and upskilling of the workforce. **~~The Commission will assess whether the measures included in the REPowerEU chapters significantly contribute to supporting a requalification of the workforce towards green skills.~~**

(8a) In light of the current energy crisis, where high energy prices are aggravating the impact of the COVID-19 crisis, by further increasing the financial burden of consumers, in particular for households with low income or vulnerable companies, the REPowerEU chapters can also include measures to help structurally address situations of energy poverty, through long-lasting investments and reforms. Such reforms and investments should provide a higher level of financial support in energy efficiency

schemes, clean energy policies and schemes to reduce energy demand for those households and companies facing severe difficulties due to high energy bills. Energy demand-reduction measures taken by Member States should take into account the principles set by the Council Regulations on energy demand-reduction measures.

(9) The application of this regime should be without prejudice to all other legal requirements under Regulation (EU) 2021/241 unless this Regulation provides otherwise.

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

(11) An effective transition towards green energy and a reduction of 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 included in the REPowerEU chapter, are expected to contribute to the digital transition or the challenges resulting therefrom 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 included 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.

~~**(12) Pursuant to Article 18(4) point (q) of Regulation (EU) 2021/241, the Member States should also provide a summary of the consultation process of local and regional authorities and other relevant stakeholders, including, as relevant, from the agricultural sector, for reforms and investments included in the REPowerEU chapter. Such summaries should explain the outcome of those consultations and outline how the input received was reflected in REPowerEU chapters.**~~

(13) The application of the 'do no significant harm' principle is essential to ensure that the investments and reforms undertaken as part of the recovery from the pandemic are implemented in a sustainable manner. It should continue to apply to the reforms and investments supported by the Facility, with one targeted ~~**exemption**~~ **derogation** to safeguard the EU' immediate energy security concerns. Considering the objective of diversifying energy supplies away from Russian suppliers, the reforms and investments set out in those REPowerEU chapters which aim to improve energy infrastructure and facilities to meet immediate security of supply needs for oil and gas**, including storage facilities,** should not be required to comply with the principle of 'do no significant harm' and should therefore be exempted from such assessment. **When derogating from this principle, Member States should undertake best efforts to limit the adverse climate and environmental impact of the measures concerned. This targeted derogation should not hinder the overall progression towards the 2050 climate neutrality target.**

(14) Further incentives should be provided for Member States to request loans **~~, through the clarification of the loan allocation procedure~~** **to ensure the uptake of the available funds by Member States while complying with the principles of equal treatment, solidarity, proportionality and transparency. ~~In accordance with Regulation (EU) 2021/241, Member States may request loans until 31 August 2023. An intention to submit a loan request should be communicated~~**. **To this end, Member States should communicate** to the Commission **their intention to submit or not a loan request 45** days after the entry into force of this Regulation **~~so that the redistribution of the remaining funds can be conducted in an orderly manner~~**. **The Commission will present 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. This should by no means prejudice the ability of Member States to request loan support until 31 August 2023 in conformity with Article 14 of Regulation (EU) 2021/241.**

(15) 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.

(16) **~~While extending the current intake rate of allowances to the Market Stability Reserve is needed to prevent in long term a significant increase of the surplus of allowances in the greenhouse gas emission allowance trading within the Union~~**, **T**he current economical and geopolitical situation requires the Union to mobilise available resources to rapidly diversify Union's energy supply and reduce dependence on fossil fuels before 2030. In this context, Decision (EU) 2015/1814 of the European Parliament and of the Council[4] and Directive 2003/87/EC of the European Parliament and of the Council[5] should **~~be amended to extend the doubling of the 24% intake rate of the Market Stability Reserve until 2030, while~~** allow for an exceptional release and monetisation of a portion of allowances from the Market Stability Reserve **and from the Innovation Fund** and **to** direct revenues towards reforms and investments contributing to REPowerEU objectives, in the Recovery and Resilience Facility framework.

(17) Regulation (EU) 2021/1060 of the European Parliament and of the Council[6] should be amended to provide for the possibility, **at the request of the Member State concerned**, to transfer up to 7.5% of resources of shared management programmes governed by that Regulation to the Facility for the achievement of the REPowerEU objectives, in addition to

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4 Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC, OJ L 264/1

5 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 Community and amending Council Directive 96/61/EC

6 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).

the existing transfer possibility of up to 5%. Such a possibility is justified by the need to cover REPowerEU objectives, providing Member States with additional flexibility to address those urgent needs. Furthermore, the Facility allows for a fast disbursement of funds, making it particularly well suited for financing of urgent energy-related measures. Such transfers should be justified by a higher financial need linked to additional reforms and investments included in the REPowerEU chapter.

(18) Regulation (EU) 2021/2115 of the European Parliament and of the Council[7] should also be amended to allow for a possibility, **at the request of the Member State concerned**, to deliver up to 12.5% of the European Agricultural Fund for Rural Development through the Recovery and Resilience Facility. Such method of delivery is justified by complementarity and synergies between these instruments with regard to the objectives of reducing the use of synthetic fertilisers, or increasing production of sustainable biomethane or renewable energy, in accordance with the objectives of the Common Agricultural Policy set out in Article 39 of TFEU. The delivery via the Recovery and Resilience Facility should accelerate the disbursement of funds to beneficiaries from the agricultural sector which is vital considering the urgency of the energy-related objectives.

[7] Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

(18a) Regulation (EU) 2021/1755 of the European Parliament and of the Council should also be amended to allow for the possibility, at the request of the Member State concerned, to transfer all or part of its provisional allocation from the resources of the Brexit Adjustment Reserve to the Recovery and Resilience 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 the withdrawal. The measures to be funded under the Brexit Adjustment Reserve and the reforms and investments to be funded under the Recovery and Resilience Facility may serve similar purposes and have similar content. Both the Reserve and the Facility aim ultimately at mitigating the negative impacts on economic, social and territorial cohesion. In this context, whilst reforms and investments under the Facility must primarily aim at addressing the economic consequences of the pandemic, they may also contribute at countering unforeseen and adverse consequences in Member States and sectors that are worst affected by Brexit. Finally, commitments and payment appropriations under both the Reserve and the Facility are entered over and above the ceilings of the multiannual financial framework (MFF). Under this 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 Reserve to the Facility, which permit to cater for the objectives of both and ultimately bring about economic, social and territorial cohesion.

(19) Disbursements under REPowerEU shall be made following the rules of the Recovery and Resilience Facility until the end of 2026. Payments in relation to the resources transferred from shared management funds shall be subject to the availability of funds approved in the annual EU budget.

(20) A request for a dedicated funding for REPowerEU measures, including allocation from **auctioning of ETS allowances** ~~**the Market Stability Reserve**~~, transfers from the funds governed by Regulation (EU) 2021/1060 and allocated from European Agricultural Fund for Rural Development, submitted in a plan, should be justified by a higher financial need linked to ~~**additional**~~ reforms and investments included in the REPowerEU chapter.

(20a) To ensure that the financial support is frontloaded to better respond to the current energy crisis, 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 its REPowerEU chapter can be paid in the form of a pre-financing within, to the extent possible, two months after the adoption by the Commission of the legal commitment referred to in Article 23 of Regulation (EU) 2021/241, subject to available resources.

(20b) In order to comply with the multiannual financial framework payment ceilings, a capping should be established for payments corresponding to the pre-financing for

amounts transferred under the provisions of Regulation (EU) 2021/1060 and Regulation (EU) 2021/2115.

(21) The Commission should monitor the implementation of reforms and investments outlined in the REPowerEU chapter and their contribution to the REPowerEU objectives, as established in Regulation (EU) 2021/241.

(22) Recent geopolitical events have affected prices of energy and construction materials and have also caused shortages in the global supply chains. These developments may have a direct impact on the capacity to implement some investments included in the recovery and resilience plans. To the extent that Member States can demonstrate that such developments make a specific milestone or target, either totally or partially, no longer achievable, such situations may be invoked as objective circumstances under Article 21. These developments cannot constitute objective circumstances for revising reforms, as reforms are generally not cost dependent. In addition, no request for amendments should undermine the overall implementation of the recovery and resilience plans.

HAVE ADOPTED THIS REGULATION:

Article 1

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**~~,and~~** by complying with the objective of EU climate neutrality by 2050 and of the digital transition, **by increasing the resilience of the Union energy system through a decrease of dependence on fossil fuels and diversification of energy supplies at Union level ('REPowerEU objectives')** 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) Article 14 is amended as follows:

(a) In paragraph 3, the following point is inserted after point (b):

'(ba) where applicable, the reforms and investments in line with Article 21c**~~(1)~~**;';

(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, where relevant, resources from shared management programmes to support REPowerEU objectives referred to in Article 21b.'**

(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 these principles, Member States shall communicate to the Commission within 45 days after [the entry into force of this amending Regulation], whether or not they intend to request loan support. This shall not prejudice the ability of Member States to request loan support until 31 August 2023. The Commission shall present 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.'

(3) ~~**In Article 18 (4) (q) the following sentence is inserted:**~~

~~'(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; **in particular, the summary of the consultation process shall explain the outcome of the consultations with local and regional authorities and other relevant stakeholders on reforms and investments included in the REPowerEU chapter and outline how the input received was reflected in the REPowerEU chapter;'**~~

(4) In Article 19(3), the following point is inserted:

'(da) whether the reforms and investments referred to in Article 21c~~**(1)**~~ effectively contribute towards the diversification of the Union's energy supply or reduction of dependence on fossil fuels before 2030.';

(5) In Article 23, paragraph 1 is replayed by the following:

'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)**.'

(6) The following Chapter is inserted after Chapter III:

‘CHAPTER IIIa

REPowerEU

Article 21a

New revenue

(1) EUR 20 000 000 000 in current prices shall be available **as additional non-repayable financial support under the Facility**, in **accordance** with Article 10e of Directive 2003/87/EC **and Article 1(6) of Decision (EU) 2015/1814**, for implementation under this Regulation to increase the resilience of the Union energy system through a decrease of dependence on fossil fuels and diversification of energy supplies at Union level. That amount shall be made available in the form of external assigned revenue within the meaning of Article 21(5) of the Financial Regulation.

(2) The share of the resources referred to in paragraph 1 available for each Member State shall be calculated on the basis of the indicators ~~**defined for the maximum financial contribution, as**~~ set out in the methodology in Annex ~~**II**~~ **IVa** ~~**for 70% of the amount and methodology set out in Annex III for 30% of the amount**~~.

(3) The amount referred to in paragraph 1 shall be allocated exclusively to measures referred to in Article 21c. **It may also cover expenses referred to in Article 6 (2) of this Regulation.**

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

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

(6) The Council implementing decision adopted pursuant to Article 20(1) following a proposal from the Commission shall lay down the amount of the revenue referred to in Article 10e (1) of Directive 2003/87/EC allocated to the Member State following the application of paragraph 2, to be paid in instalments, subject to available funding, in accordance with Article 24 of this Regulation, once the Member State has satisfactorily fulfilled the milestones and targets identified in relation to the implementation of the measures referred to in Article 21c~~(1)~~.

Article 21b

Resources from shared management programmes to support REPowerEU objectives

(1) Resources allocated to Member States under shared management may, at their request, be transferred or allocated to the Facility subject to the conditions set out in Article 26a of Regulation (EU) 2021/1060, ~~and~~ Article 81a of Regulation (EU) 2021/2115 **and Article 4a of Regulation (EU) 2021/1755**. Those resources shall be used exclusively for the benefit of the Member State concerned.

(a) Resources may be transferred under Article 26a of Regulation (EU) 2021/1060 to support measures referred to in Article 21c of this Regulation, provided that the Member State has already requested transfers from a given Fund up to the ceiling of 5% in accordance with the first and second sub-paragraphs of Article 26(1).

(b) Resources allocated under Article 81a of Regulation (EU) 2021/2115 shall support measures in Article 21c(1**b**)(b) of this Regulation for farm investments for the benefit of farmers or groups of farmers, in particular to contribute reducing the use of synthetic fertilisers, increasing production of renewable energy and sustainable biomethane, and boosting energy efficiency.

(ba) Resources may be transfrerred under Article 4a of Regulation (EU) 2021/1755 to support measures referred to in Article 21c of this Regulation.

(2) Payments shall be made in accordance with Article 24 of this Regulation and subject to available funding.

(3) The Commission shall implement those resources directly in accordance with Article 62(1), first subparagraph, point (a) of the Financial Regulation.

Article 21c

The REPowerEU chapter in the recovery and resilience plans

(1) **Any** ~~**The**~~ recovery and resilience plan submitted to the Commission after [the entry into force of this amending Regulation] **that requires the use of additional funding under Article 14, Article 21a or Article 21b of this Regulation**, shall contain a REPowerEU chapter. The REPowerEU chapter shall outline reforms and investments **to be funded by the Facility**, with their corresponding milestones and targets, other than **those** referred **to** in ~~**paragraph 2 (a), the already adopted Council Implementing Decision,**~~ **unless the measures are scaled-up**.

(1a) By way of derogation from paragraph 1, measures referred to in the already adopted Council Implementing Decision of the Member State concerned contributing to the REPowerEU objectives may be included in the REPowerEU chapter, if the Member State concerned is subject to a decrease of the maximum financial contribution in accordance with Article 11 (2).

(1b) Reforms and investments in the REPowerEU chapter shall aim to contribute to the REPowerEU objectives, **by at least one of the following**:

(a) improving energy infrastructure and facilities to meet immediate security of supply needs for oil and gas, notably to enable diversification of supply in the interest of the Union as a whole,

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

(c) addressing internal and cross-border energy transmission **and distribution** bottlenecks and supporting zero emission transport and its infrastructure, including railways,

(d) supporting the objectives in points (a), (b) and (c) through an accelerated requalification of the workforce towards green skills, as well as support of the value chains in key materials and technologies linked to the green transition**,** ~~**.**~~

(e) addressing energy poverty and incentivising reduction of energy demand.

(2) The REPowerEU chapter shall also contain

~~(a) Where applicable, a description of reforms and investments in the already adopted Council implementing decisions that are expected to contribute to the REPowerEU objectives;~~

~~(b) an outline of other measures contributing to the REPowerEU objectives with a corresponding calendar, to be implemented from 1 February 2022 until 31 December 2026 without financial support under the Facility;~~

~~(c)~~ an explanation on how ~~the combination of~~ the measures **of the REPowerEU chapter** ~~and points (a) and (b) of this paragraph is~~ **are** coherent~~, effective and expected to contribute to the REPowerEU objectives, including a quantification of the energy savings~~ **with the efforts of the Member State concerned to achieve the REPowerEU objectives, taking into account the measures in the already adopted Council Implementing Decision**.

(3) The estimated costs of the reforms and investments of the REPowerEU chapter ~~under paragraph 1~~ shall not be taken into account for the calculation of the plan's total allocation under Article 18(4), point (f) and Article 19(3), point (f).

(4) By way of derogation from Articles 5(2), 17(4), 18(4) point (d) and 19(3) points (d), the principle of "do no significant harm" within the meaning of Article 17 of Regulation (EU) 2020/852 shall not apply, **where a justification is provided by the Member State concerned to the Commission**, to the reforms and investments expected to contribute to the REPowerEU objectives under paragraph 1**b**, point (a) of this Article.

(5) The provisions of this Regulation shall be applicable mutatis mutandis to the reforms and investments of the REPowerEU chapter, unless provided otherwise.

Article 21ca

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 Articles 20(1) and 21(2) by 31 December 2023, the Commission shall make a pre-financing payment of an amount of up to 15% of the additional funding requested to finance its REPowerEU chapter, under Article 12, Article 14, Article 21a and Article 21b.

(2) The total pre-financing payments for resources transferred under the conditions set out in Regulation (EU) 2021/1060 and Regulation (EU) 2021/2115 shall not exceed EUR 1 billion.

(3) By derogation from Article 116 (1) of the Financial Regulation, the Commission shall make the corresponding payment within, to the extent possible, two months after the adoption by the Commission of the legal commitment

referred to in Article 23, subject to available resources, in particular the availability of funds from the NGEU account, funds approved in the annual EU budget, the revenues under article 21a, and the effective prior transfer of funds from shared management programmes, if requested in accordance with Article 21b.

(4) The payment of pre-financing for resources referred in paragraph 2 shall be made following receipt of information from all Member States on whether or not 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 billion.

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

Article 21d

Monitoring implementation of REPowerEU chapters

(1) **In accordance with Article 29, ~~The~~ the** Commission shall monitor the implementation of the measures outlined in the REPowerEU chapter and their contribution to the REPowerEU **objectives using already existing monitoring tools in the context of RRF**.

The Commission shall provide information on the progress of implementation of the REPowerEU chapter in the annual report to the European Parliament and the Council, in accordance with Article 31.'

(7) Annex V is amended in accordance with the Annex I to this Regulation.

(7a) Annex IVa is inserted after Annex IV in accordance with Annex Ia to this Regulation.

Article 2

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

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

'(e) where applicable, the breakdown of financial resources by category of region drawn up in accordance with Article 108(2) and the amounts of allocations proposed to be transferred pursuant to Articles 26, **26a** and 111, including a justification for such transfers;'

(2) In Article 22(3)(g), the following point is added:

'(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, **Article 26a** or 27;'

(3) In Article 26(1), the following is inserted after the end of the first sub-paragraph:

'Where the Partnership Agreement has been approved and one or more programmes have not yet been adopted, a transfer to the Recovery and Resilience Facility in accordance with Regulation (EU) 2021/241 may be requested through notification of a revision of the information referred to in Article 11(1) points (c), (e) and (h) in accordance with Article 69(9).'

(4) In Article 26 (1), the following new sub-paragraph is inserted:

2. By way of derogation from Article 40(2), point (d) and the paragraph above, the monitoring committee shall be consulted on the programme amendment, where such amendment is strictly limited to what is necessary for the purposes of the transfer to the Recovery and Resilience Facility.

'3. Where the Partnership Agreement has been approved and the transfer is requested as part of a programme submission, the resulting inconsistency shall not be taken into account when assessing the programme pursuant to Article 23(1).'

(4a) In Article 26 (5), the following sentence is inserted at the end of the paragraph:

'For transfers to the Recovery and Resilience Facility, resources of current calendar years may be transferred if such request for transfer is submitted before 1 November of that given year.'

(4b) Article 26 (6) is replaced by the following:

'6. JTF resources, including any resources transferred from the ERDF and the ESF+ in accordance with Article 27, shall not be transferable to other Funds or instruments pursuant to paragraphs 1 to 5 of this Article, with the exception of the Recovery and Resilience Facility.'

(5) The following Article is inserted:

'*Article 26a*

Transfer to the Recovery and Resilience Facility

(1) Member States submitting to the Commission a recovery and resilience plan containing a REPowerEU chapter in accordance with Regulation (EU) 2021/241 may request the transfer of up to 7.5% of their initial national allocation of each Fund to the Recovery and Resilience Facility, provided that the Member State has already requested transfers from that specific Fund up to the ceiling of 5% in accordance with the first and second sub-paragraphs of Article 26(1). The transfer request shall be made either in the Partnership Agreement, including through the notification of a revision of the information referred to in Article 11(1) points (c), (e) and (h) in accordance with Article 69(9) or in a request for an amendment of a programme. Where the request for transfer concerns an amendment of a programme, ~~**only**~~ resources of ~~**future**~~ **current** calendar years may be transferred **if such request for transfer is submitted before 1 November of that given year**. Such transfers shall be additional to the possibility of transfer of resources envisaged under Article 26 of this Regulation.

(2) Transferred resources shall be implemented in accordance with the provisions of Regulation (EU) 2021/241 and shall be used for the benefit of the Member State concerned.

(3) Where the Partnership Agreement has been approved, and the transfer is requested before the approval of one or more programmes, the resulting inconsistency between the Partnership Agreement and the programmes shall not be taken into account when assessing the programme pursuant to Article 23(1). In such cases the Member State concerned shall submit a revision of the information referred to in Article 11(1) points (c), (e) and (h), which shall constitute a request for transfer within the meaning of this Article.

(4) Where a programme need to be amended for the purpose of transfers set out in this Article, by way of derogation from Article 24(2) and (4), the Commission shall adopt or refuse the amendment as regards the transfer and the resulting changes to the programme within one month after the date of submission of the programme by the Member State. By way of derogation from Article 40(2), point (d), the monitoring committee shall be consulted on the programme amendment. Requests for an amendment of a programme shall set out the total amount transferred for each year by Fund and by category of region, where applicable.

(5) ~~**JTF resources, including any resources transferred from the ERDF and the ESF+ in accordance with Article 27, shall not be transferable to the Recovery and Resilience Facility pursuant to this Article.**~~ **In accordance with Article 26(6), JTF resources allocated under Regulation (EU) 2020/2094 according to Article 4 of Regulation (EU) 2021/1056 may be transfered to the Recovery and Resilience Facility pursuant to this Article.**

(6) Where the Commission has not entered into a legal commitment for resources transferred in accordance with paragraph 1, the corresponding uncommitted resources may be transferred back to the Fund from which they have been initially transferred and allocated to one or more programmes, in accordance with the provisions in Article 26(7), 26(8) and 26(9).'

(6) Annexes II and V are amended in accordance with the Annex II to this Regulation.

Article 3

Regulation (EU) 2021/2115 is amended as follows:

(1) The following Article is inserted:

Article 81a

Use of EAFRD delivered through the Recovery and Resilience Facility

(1) Member States submitting to the Commission a recovery and resilience plan containing a REPowerEU chapter in accordance with Regulation (EU) 2021/241 of the European Parliament and of the Council may allocate, in the proposal for a CAP Strategic Plan referred to in Article 118 or in the request for amendment of a CAP Strategic Plan referred to in Article 119, up to 12.5% of its ~~**initial**~~ allocation for the EAFRD to the Recovery and Resilience Facility**, including the amount transferred to EAFRD in accordance with Article 103.**

(2) Member States shall determine the total amount contributed for each year. In case of request for amendment of a CAP Strategic Plan, ~~**those amounts shall concern only future years**~~ **resources of current calendar years may be allocated if such request for allocation is submitted before 1 November of that given year.**

(3) Where a CAP Strategic plan needs to be amended for the purpose of transfers set out in this Article, by way of derogation from Article 119(6), the Commission shall adopt or refuse the amendment containing the allocation and the resulting changes to the CAP Strategic Plan within one month after the date of submission of the request by the Member State. The amendment shall not count for the maximum number of requests for amendment provided for in Art. 119 (7).

(4) Member States may revise the proposed CAP Strategic Plans for the purpose of allocation set out in this Article, at any time before their approval by the Commission.

(5) The EAFRD allocation delivered through the Recovery and Resilience Facility, in accordance with paragraph 1, shall be fully included:

in the calculation of the minimum financial allocation referred in Article 93 (1) and shall for the purpose of Article 93 (3) be considered as an intervention referred to in Article 93 (2). 100% of the allocated expenditure will be taken into account for the calculation referred to in Article 93(2);

in the calculation of the reduction of the minimum financial allocation for eco-schemes as defined in Article 97(2) and shall for the purpose of Article 97 (3) be considered as an intervention in accordance with Articles 70, 72, 73 and 74.

(6) Where the Commission has not entered into a legal commitment for resources allocated in accordance with paragraph 1, the corresponding uncommitted resources may be transferred back to the EAFRD.

(a) To this end, the Member State shall submit a request for a CAP Strategic Plan amendment in accordance with Article 119, at the latest 4 months before the time limit for commitments set out in the first subparagraph of Article 114(2) of the Financial Regulation. Such amendment shall not count for the maximum number of requests for amendment provided for in Art. 119 (7).

(b) Resources transferred back to the EAFRD shall be implemented in accordance with the rules set out in this Regulation as from the date of submission of the request for programme amendment according to point (a) above.

(c) For the resources transferred back to the EAFRD in accordance with paragraph 6 of this Article, the decommitment time limit as defined Article 34(1) of Regulation (EU) 2021/2116 shall start in the year in which the corresponding budgetary commitments are made.

In Article 112(2), point (d) is replaced by the following:

‘(d) where relevant, transfer of Member State’s allocations from the EAFRD for support under InvestEU or the RRF in accordance with Article 81 or 81a of this Regulation respectively, under Regulation (EU) 2021/783 or under Regulation (EU) 2021/817 in accordance with Article 99 of this Regulation;’

Article 3a

Regulation (EU) 2021/1755 is amended as follows:

(1) 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 all or part of the amounts of the provisional allocation set out in the implementing act referred to in Article 4(5). If the transfer request is approved, the Commission shall amend the implementing act referred to in Article 4 (5) to reflect the adjusted amounts following the transfers.

(2) Where the transfers affect 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 all or part of the 2021 and 2022 instalments paid to that Member State as pre-financing, in accordance with the Financial Regulation. 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 purpose referred to in 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. Article 10 (2) shall not apply to the amounts transferred to the Recovery and Resilience Facility.'

Article 4

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

Article 10e

Recovery and Resilience Facility

(1) For the period until 31 December 2026, the allowances released pursuant to Article 1(6) of Decision (EU) 2015/1814 **and allowances auctioned pursuant to paragraph 1a of this Article** shall be auctioned until the amount of revenue obtained from such auctioning has reached EUR 20 billion. This revenue shall be made available to the Recovery and Resilience Facility established by Regulation (EU) 2021/241 and shall be implemented in accordance with the provisions of that Regulation.

(1a) By derogation from Article 10a paragraph 8, for a period until 31 December 2026, a part of the allowances referred to in that paragraph shall be auctioned to support the objectives of Article 21c of Regulation (EU) 2021/241, until the amount of revenue obtained from such auctioning has reached EUR 16 billion.

(2) The Commission shall ensure that the allowances destined for the Recovery and Resilience Facility**, including for pre-financing payments, where appropriate, in accordance with Article 21ca of Regulation (EU) 2021/241,** are auctioned in accordance with the principles and modalities laid down in Article 10(4) of Directive 2003/87/EC and in accordance with Article 24 of Commission Regulation (EU) No 1031/2010[1].

(3) The European Investment Bank (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 Commission Regulation (EU) No 1031/2010[2] and shall provide the auction revenues to the Commission.

(4) The proceeds from auctioning those allowances shall constitute external assigned revenue for the purpose of Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.'

Article 5

Amendments to Decision (EU) 2015/1814

Article 1 of Decision (EU) 2015/1814 is amended as follows:

~~**In paragraph 5, first subparagraph, the third sentence is replaced by the following:**~~

> ~~**'By way of derogation from the first and second sentences, until 31 December 2030, the percentages and the 100 million allowances referred to in those sentences shall be doubled.'**~~

In paragraph 6, the following subparagraph**s** ~~**is**~~ **are** added:

> 'By way of derogation from the first subparagraph, for a period until 31 December 2026, a number of allowances shall be released from the reserve and auctioned in accordance with Article 10e of Directive 2003/87/EC, until the amount of revenue obtained from such auctioning has reached EUR ~~**20**~~ **4** billion.
>
> **The proceeds from auctioning those allowances shall constitute external assigned revenue for the purpose of Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.**'

Article 6

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

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

Done at Brussels,

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

ANNEX I

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

(a) In section 2, the following point is added:

'2.12. The measures referred to in Article 21c **~~(1) and (2)~~** are expected to effectively contribute towards the Union's security of supply for the Union as a whole, notably through a diversification of energy supply or reduction of dependence on fossil fuels before 2030'.

When assessing the measures referred to in Article 21c **~~(1)~~** 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 ~~take~~ .The Commission shall consider** the following elements:

Scope

— the implementation of the envisaged measures is expected to **effectively** **~~significantly~~** contribute to the improvement of energy infrastructure and facilities to meet immediate security of supply needs for oil and gas, 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** **~~significantly~~** contribute to boosting energy efficiency in buildings **and related critical energy infrastructure**, decarbonising industry, increasing production and uptake of sustainable biomethane and renewable or fossil free hydrogen and increasing the share of renewable energy,

or

— the implementation of the envisaged measures is expected to address energy infrastructure bottlenecks, in particular by constructing cross-border links with other Member States, or supports zero-emission transport and its infrastructure, including railways,

or

— the implementation of the envisaged measures is expected to **effectively** ~~**significantly**~~ contribute to supporting a requalification of the workforce towards green skills, as well as supporting value chains in key materials and technologies linked to the green transition,

and

— whether the measures, provided under Article 21c ~~**(1)**~~ are ~~**complementary to each other and significantly contribute, together with measures under Article 21c(2), points (a) and (b), to achieve the Union's diversification of energy supply or reduction of dependence on fossil fuels before 2030.**~~ **coherent with the efforts of the Member State concerned to achieve the REPowerEU objectives, taking into account the measures in the already adopted Council Implementing Decision**.'

Rating

A – to a large extent

B – to a medium extent

C – to a small extent

(b) In section 3 the part which starts with the words “As a result of the assessment process, and taking into account the ratings” is replaced by the following:

‘As a result of the assessment process, and taking into account the ratings:

(a) The recovery and resilience plan complies satisfactorily with the assessment criteria:

If the final ratings for the criteria under point 2 include scores with:

— an A for criteria 2.2, 2.3, 2.5, 2.6 and 2.12;

and for the other criteria:

— all As,

Or

— no majority of Bs over As and no Cs.

(b) The recovery and resilience plan does not comply satisfactorily with the assessment criteria:

If the final ratings for the criteria under point 2 include scores with:

— not an A in criteria 2.2, 2.3, 2.5, 2.6 and 2.12;

and for the other criteria:

— a majority of Bs over As,

Or

— at least one C.’

ANNEX Ia

Annex IVa is inserted after Annex IV of Regulation (EU) 2021/241 as follows:

'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 170 % of the Union weighted average.

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

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

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

where $\sigma_{i,2021} = \frac{pop_{i,2021}}{pop_{EU,2021}} \times \min\left\{\frac{GDP^{PC}_{EU,2021}}{GDP^{PC}_{i,2021}}; 1{,}7\right\}$,

Defining[8]:

$pop_{i,2021}$ – as the 2021 total population (national accounts) in Member State i;

$pop_{EU,2021}$ – as the 2021 total population (national accounts) in the EU-27 Member States;

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

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

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

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

$GFCF_{i,2022Q2/2021Q2}$ – 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;

$GFCF_{EU,2022Q2/2021Q2}$ – 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.'

[8] All data in this Regulation is from Eurostat. Cut-off date 21 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.

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	1,76%	351 417
Bulgaria	2,36%	471 350
Czechia	3,15%	629 780
Denmark	0,62%	123 849
Germany	13,13%	2 625 807
Estonia	0,39%	77 090
Ireland	0,41%	82 775
Greece	3,78%	755 115
Spain	11,95%	2 389 687
France	10,73%	2 145 258
Croatia	1,32%	264 536
Italy	13,08%	2 615 111
Cyprus	0,24%	48 490
Latvia	0,61%	121 747
Lithuania	0,92%	183 652
Luxembourg	0,04%	7 713
Hungary	3,44%	688 802
Malta	0,13%	25 947
Netherlands	2,53%	506 779
Austria	1,27%	254 586
Poland	13,96%	2 792 175
Portugal	3,25%	650 905
Romania	6,87%	1 373 830
Slovenia	0,54%	108 041
Slovakia	1,80%	360 308
Finland	0,68%	135 514
Sweden	1,05%	209 733
EU27	100,00%	20 000 000

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ANNEX II

(1) In paragraph 4.2 of Annex II of Regulation (EU) 2021/1060, the following is inserted:

'Reference: Articles 26(1) and 26a CPR'

(2) In paragraph 3.1 of Annex V of Regulation (EU) 2021/1060, the following is inserted:

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

(3) In footnote 1 of paragraph 3.1 of Annex V of Regulation (EU) 2021/1060, the following is inserted:

'[1] Applicable only to programme amendments in accordance with Articles 14, 26, and 26a **~~except 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. '