

Why the European recovery plan funds have not yet been released

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The economic and social consequences of the Covid-19 pandemic are fuelling legitimate impatience with the European recovery plan, the funds of which have not yet been released, almost a year after the European Commission's proposal.

This plan, which is unprecedented in its volume (750 billion euros) and in its philosophy (allowing the Commission to borrow on the markets to make budget transfers and loans to member states), is based on a complex institutional architecture.

The legal cornerstone of the European recovery plan is the [Council Decision on the system of own resources of 14 December 2020](#), provided for in article 311 of the treaty on the functioning of the European Union. In the European legal order, this text has [a quasi-treaty rank](#). It requires the unanimous approval of the member states in accordance with their respective constitutional procedures, which implies in most cases authorisation by the national parliament and thus full respect for national sovereignty.

The same text puts the funds borrowed to finance common European policies outside the budgetary balance by giving them the status of "*external assigned revenue*". This provision makes it possible not to contravene the principle of budgetary equilibrium, according to which the Union may not borrow to finance its own budget.

Lengthy procedures

After the outbreak of the crisis, political decisions have been taken rapidly. [The Franco-German initiative for European recovery of 18 May 2020](#) paved the way for the [European Commission's proposal of 27 May](#).

Two months later, on 21 July, the heads of state or government reached [a unanimous agreement at the European Council](#). Negotiations to conclude [a compromise with the European Parliament](#) on the multiannual financial framework 2021-2027 and the Next Generation EU recovery plan took only four months. This timeframe is comparable to that observed in the negotiations on the two previous EU multiannual financial frameworks (five months in 2006 and 2013).

EU leaders have collectively committed to complete the national procedures for approving the Own Resources Decision as soon as possible. However, they were well aware that they could be long and full of pitfalls.

By way of comparison, between the adoption of the [Council Decision on Own Resources of 7 June 2007](#) and its entry into force on 1 March 2009, it took 21 months to secure its approval by all the member states. 28 months were needed for the [Decision of 26 May 2014](#).

On 30 April 2021, 19 member states completed the process of approving the Council Decision on the system of own resources of 14 December 2020. The available information suggests that procedures are under control and could be finalised before the end of May in most other countries.

Obstacles in Germany and Poland

In the meantime, two obstacles have emerged. The first, a legal one in Germany, was quickly overcome. The law authorising the approval of the decision on own resources obtained a strong two-thirds majority of members in the Bundestag and was unanimously agreed in the Bundesrat.

However, the introduction of two actions challenging its compliance with the EU Treaties and the German Basic Law (Grundgesetz) led [the Federal Constitutional Court on 26 March 2021](#) to order the federal president not to issue the law until the Federal Constitutional Court has ruled on the application for a temporary injunction. If such a suspension order had been maintained pending a judgment on the merits, after a possible reference for a preliminary ruling to the Court of Justice of the European Union, the whole of the European recovery plan could have been called into question, both in terms of its timing and its principle.

In an [order published on 21 April](#), the Federal Constitutional Court rejected an application for preliminary injunction directed against the act ratifying the EU Own Resources Decision, allowing it to be signed by the federal president.

The Federal Constitutional Court considered indeed that *‘based on a summary examination, it does not appear highly likely that the Court will find a violation of Article 79(3) of the Basic Law in the main proceedings’*. The Court therefore based its decision on a balancing of consequences. In its view:

“the consequences that would arise if the preliminary injunction sought were not issued by the act of approval were later found to be unconstitutional are less severe than the consequences that would arise if the preliminary injunction were in fact issued but the constitutional complaints lodged by applicants ultimately turned out to be unfounded in the principal proceedings”.

The second, political that one in Poland, is now on its way to be lifted. Indeed, a small member of the ruling majority, United Poland, refused to support the Own Resources Decision, further exacerbating tensions in the tripartite coalition led by the Law and Justice Party (PiS). In particular, this party opposes the [regulation](#) opening up the possibility of sanctioning a member state in the event of a failure in the rule of law, which could adversely affect the financial interests of the Union, a regulation on which Poland and Hungary have also lodged an appeal with the Court of Justice of the European Union.

For exactly symmetrical reasons, the main opposition group, the Civic Platform, was inclined not to vote on the bill until the government provides sufficient guarantees that the EU money benefitting to Poland would be spent in a fair and transparent manner.

Therefore, the government had to negotiate with another opposition formation to get the bill approved by the Sejm. It has still to be approved by the Senate and signed by the president. Timing uncertainties also remain in Hungary, also linked to the introduction of the rule of law

conditionality. Pressure from other member states is increasing as the EU's ability to implement its recovery plan is at stake.

No delay, but urgency

In parallel to the ratification process, intensive work is being carried out in the capitals and in Brussels. Member states had to submit by 30 April the final version of their national recovery and resilience plans. However, only 12 of them were able to meet that requirement.

The Commission had previously decided to relax this deadline, transforming it in a non-binding target, in order to allow the member states to complete their plans in the context of the very detailed dialogue it had opened with them, rather than having to ask them to amend their plans after their official transmission.

By doing so, the Commission intends to ensure that the European recovery plan does not simply inject liquidity into the economy but in line with [the Regulation establishing the Recovery and Resilience Facility](#), will strengthen the growth potential, job creation and the economic, social and institutional resilience of the member states. The EU will therefore provide financial support "*with a view to achieving the milestones and targets of reforms and investments as set out in the (national) recovery and resilience plans*". The completion of those milestones and targets will be regularly checked and will trigger payments to the member states.

After the formal submission of the national plans, the Commission has two months to assess them. It will pay particular attention to the coherence of public investments and structural reforms, to be implemented by 2026 in order to address the challenges of the green (at least 37 % of the allocation to each member state) and digital transitions (at least 20 % of the envelope). The Council will then have one month to approve these plans on a case-by-case basis.

On 14 April, the Commission also presented its [funding strategy to finance Next Generation EU](#). With a borrowing envelope of around 150 billion euros per year, it will become one of the largest issuers in that currency. It intends to combine the use of different funding instruments (medium and long-term bonds, some of which will be issued as green bonds, and EU Bills) in order to maintain flexibility in terms of market access and to manage liquidity needs and maturity profile.

It will carry out a combination of auctions and syndications, in order to ensure cost-efficient access to the necessary financing on advantageous terms.

Preparing everything that can be done to start as soon as the ratifications of the Own Resources Decision have been completed, speeding up to ensure that this unprecedented European solidarity materialises, the mobilisation is complete, both in Brussels and in the other European capitals. If there is not yet any delay, there is certainly urgency.