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[RRF - procedure assessment milestones and targets leading to payments - visual - European Council Conclusions.pdf](#)

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Dear [redacted]

As agreed, we would like to come back to you on the governance of the RRF. We very much welcome the possibility to discuss this with you and appreciate your effort to incorporate what has been agreed at EUCCO in the legal text.

The EUCCO conclusions have introduced a specific role for the EFC (A19). It is clear that this role has to be meaningful. For the NL this is an essential element. In light of the discussion at FiCo and our assessment of the proposal, we would like to raise the points below. In addition, we have included, for your consideration only, a visual overview of how we see the process.

1) Upstream involvement EFC: The EUCCO conclusions state that the Commission shall ask an EFC opinion on the satisfactory fulfilment of milestones and targets. Therefore, it is clear that there has to be a meaningful involvement of the EFC relating to the Commission assessment of the satisfactory fulfilment. This means that the involvement of the EFC must take the form of an upstream consultation, not in parallel with comitology.

Moreover, introducing an obligation for the Commission to consult a body like the EFC is compatible with the Comitology Regulation only as long as *“their role is limited to a purely advisory function prior to the committee procedure (that is, as long as it is “upstream”)*” (CLS opinion st.11096/15, para 43). It is therefore possible to create a new and separate obligation for the Commission to ask an opinion from the EFC *before* submitting a draft implementing decision to the examination procedure committee (comitology). Introducing an involvement of the EFC in parallel with the examination procedure would instead be legally problematic in light of regulation (EU) No 182/2011 (and see also point 31 of the IIA on better law making).

2) Report of Commission to EFC: This separate upstream element is not meant as an element of delay, but to allow for a discussion/dialogue with the Commission on its assessment. The NL can agree to the introduction of a deadline for the EFC opinion under the RRF regulation. But for the EFC to be able to act quickly and efficiently, it would need a draft assessment from the Commission as a basis for its discussion. This does not have to be a draft implementing decision, it can be a Commission report on its assessment of the satisfactory fulfilment of the relevant milestones and targets. This also makes more sense substantively. The EFC involvement is meant to prevent the use of the emergency brake by facilitating a timely discussion between experts.

3) Time limits: In light of the above, it is currently not clear what time period may be extended under article 19(9) RRF, as there does not seem to be a time limit in article 19(3) RRF for a decision on disbursement, only for the Commission assessment.

4) Taking into account: For the NL, it is clear that the EFC opinion has to be taken into account. If not, asking an EFC opinion would become meaningless. The CLS has rightfully made clear during the FICO of 28/7 that ‘taking the opinion into account’ does not mean that the opinion is legally binding on the Commission. Therefore, stating that the EFC opinion has to be taken into account by the Commission should not be legally problematic.

5) Consensus: [redacted] 10.2.a
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[redacted] 10.2.a The NL is of the opinion that striving for consensus is not the same as introducing a new voting procedure, so this should not be legally problematic. If it is really considered problematic, then we are ready to adopt a new Council decision on the EFC committee on the basis of article 242 TFEU. This decision can be adopted by the Council by simple majority, after consulting the Commission.

As this is a very sensitive and important element of the RRF for us, we are hoping to discuss the points above with you and if needed CLS. Given the availability of our experts, hopefully we could do so today or tomorrow.

Thanks.

Kind regards, also on behalf of and .

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