

SPAIN



Trends and Developments

Contributed by:

Rosa María Vidal Monferrer and Nuria Portell Salom
Broseta Abogados

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projects. These are professionals with an average of 30 years of experience, who are accessible, proactive and involved in every decision that is relevant to the client. The firm promotes transformation as the basis for growth and rejects static and standardised solutions. Each client is a challenge, and their needs define the firm's service offering. Broseta aims to increase the value of its clients' business through a different way of doing things.

Authors



Rosa María Vidal Monferrer is the managing partner at Broseta, where she has led the firm and the Public Regulatory Law practice since 2016. Prior to joining the firm in 2006, she

served as a State Lawyer and held a number of different positions, including Head State Lawyer in Soria and Castellón, State lawyer at the AEAT in Valencia, and secretary of the Board of Directors of the Port Authority of Castellón. Additionally she is a dominical director (consejero dominical) of Banco de Crédito Cooperativo, BCC, Cajamar Group. She is also an arbitrator of the Civil and Commercial Court of Arbitration (CIMA), has extensive teaching experience and is widely published.



Nuria Portell Salom holds the position of director of the Public Law Department at Broseta and has extensive experience providing legal advice to various stakeholders in the health

sector including companies and public administrations. Throughout her professional career, she has advised some of the most prominent business groups in the health sector in Spain. Nuria holds a degree in Law from the Jaume I University. Since 2021, she has been an associate lecturer in the Department of Public Law at the University of Valencia, and since 2018, she has been a lecturer on the Master's degree in Urban Planning, Environment and Smart Cities at ISDE.

Broseta Abogados

Calle de Goya, 29
28001
Madrid
Spain

Tel: +34 914 323 144
Fax: 93 414 53 00
Email: info@broseta.com
Web: www.broseta.com



Public Funding for Health Projects: The Autonomous Resilience Fund (Fondo de Resiliencia Autonómica) and the Possibility of Establishing Joint Ventures

The instruments and mechanisms created to stimulate economic recovery and growth, specifically, the Autonomous Resilience Fund (Fondo de Resiliencia Autonómica)

In July 2020, the European Council endorsed an instrument aimed at addressing both the economic and social repercussions of the COVID-19 pandemic, referred to as the Next Generation EU.

It is an unprecedented economic stimulus mechanism, intended to provide funding for the European Union's economic recovery, amounting to a maximum of EUR750 billion. This expenditure is allocated in the form of either grants or loans to the member states.

Within the framework of this recovery plan, the main tool is the Recovery and Resilience Mechanism (hereinafter, MRR).

According to Article 3 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021, establishing the Recovery and Resilience Mechanism, the MRR is based on six pillars:

- ecological transition;
- digital transformation;
- smart, sustainable and inclusive growth, including economic cohesion, employment, productivity, competitiveness, research, development and innovation, and a robust internal market with strong SMEs;
- social and territorial cohesion;
- policies aimed at the next generation, children and youth, such as education and skills development; and
- health and economic, social and institutional resilience, with the aim, among others, of increasing preparedness and responsiveness to crises.

Based on these six pillars, the general objective of the MRR, as outlined in Article 4 of the aforementioned Regulation, is to enhance the economic, social and territorial cohesion of the Union by improving resilience, crisis preparedness, adjustment capacity and growth potential of the member states, mitigating the social and economic impact of the crisis and promoting economies that are prepared for the ecological and digital transition.

Aligned with this, the specific objective of the MRR is to offer financial aid to the EU member states through the grants and loans facilitating

the accomplishments of milestones and objectives of the reforms and investments provided for in their recovery and resilience plans. The MRR, therefore, serves as the European Union fund designed to finance the recovery and resilience plans approved by the states, thereby providing them with substantial investment resources.

Specifically, the MRR was allocated with EUR672.5 billion, of which Spain can access a total of over EUR140 billion, which is intended to support the reforms and investments it has undertaken during the period between 2021 and 2026.

Hence, for the member states to access funds under the MRR, they were required to approve plans outlining the allocation of funds and their intended investments.

In this regard, on 30 April 2021, the Official State Gazette published the Resolution of 29 April 2021, of the Undersecretariat, which itself published the Agreement of the Council of Ministers of 27 April 2021, which approved the Recovery, Transformation and Resilience Plan (hereinafter, the “Plan”).

According to the indicated Agreement, the Plan is conceived as “a national initiative that outlines the roadmap for the modernisation of the Spanish economy, the recovery of economic growth and the creation of employment, after the COVID-19 crisis, as well as to prepare the country to face the challenges of the future”.

To achieve this objective, the Plan contemplates the mobilisation of public investment in the Spanish territory amounting to over EUR140 billion by 2026 with the aim of catalysing private investment of up to EUR500 billion.

The Plan is structured around four pillars: ecological transition, digital transformation, social and territorial cohesion and gender equality. These four pillars are developed through ten lever policies, which in turn integrate 30 lines of action. One of the lever policies is related to the “pact for science and innovation. Reinforcement of the capacities of the National Health System”; and one of the lines of action is the “renewal and expansion of the capacities of the National Health System”.

The projects are expected to be promoted through different instruments, including agreements, contracts, grant calls and aid or participation in consortia.

Lastly, in October 2023, the European Commission approved the Addendum to the Plan, which aims to mobilise, by 2026, all the resources assigned to Spain from the Next Generation EU funds (hereinafter, the “Addendum”).

The approval of the Addendum marks the beginning of the second phase of the Plan. With it, the Strategic Projects for Economic Recovery and Transformation, the well-known PERTEs, will be provided with almost EUR27 billion additional resources.

Furthermore, the approval of the Addendum entails the mobilisation of up to EUR83 billion in loans, an amount that is made available to Spain with the aim of financing investments by private and public companies. To this end, the Addendum introduces different financial instruments aimed at promoting investments, among them, the Autonomous Resilience Fund (hereinafter, the “Fund”).

According to the Addendum, this Fund, which will be managed by the European Investment

Bank and will be provided with up to EUR20 billion, will allow for more flexible management and greater decision-making capacity for the Autonomous Communities, thus meeting the main demand of the autonomous administrations.

Therefore, through the Fund, the State will allocate up to EUR20 billion to finance sustainable investment projects in the Autonomous Communities. Particularly notable, in terms of health, is the emphasis on “research, development and innovation” as one of the priority areas within which the actions are to be framed.

The European Investment Bank announced in February of this year that the first tranche of the Fund will be EUR3.6 billion, an amount which is expected to be deployed throughout 2024.

The increasingly pressing need for investment in the health and pharmaceutical sector

The financing of the health system is a matter of utmost concern as it can affect the competitiveness of companies, while having a very important impact on public accounts.

The COVID-19 crisis has brought to light a series of shortcomings and, at the same time, a set of needs. Both must be successfully addressed so that health systems emerge stronger and are able to face any situation that may arise.

In this sense, the health crisis has highlighted the need to invest in research as well as the important role played by the pharmaceutical industry in relation to the supply of drugs.

In addition to these challenges, there are issues arising from the fact that:

- the population is increasingly demanding of health and pharmaceutical care, because it is an increasingly aging and dependent population;
- there is depopulation in many parts of the Spanish territory, which makes it difficult for the inhabitants of these nuclei to access health and pharmaceutical services; and
- environmental aspects, such as climate change, are increasingly affecting people’s health, which creates greater dependence on the health system and the need to have new drugs to face new pathologies or diseases.

The possibility of public-private collaboration in the health and pharmaceutical sector that the Autonomous Resilience Fund provides

Returning to the above-mentioned Autonomous Resilience Fund, there is no doubt that the investments that are going to be financed with the EUR20 billion will be able to address the challenges and needs that the health and pharmaceutical system currently presents.

However, when mobilising the EUR20 billion, it will be crucial to turn to the private sector; and this is due to the large amount of money involved and the short space of time, by 2026, in which the investments must be made.

Therefore, and assuming that it will be necessary to turn to private companies to make the appropriate investments, it will be necessary to look at models of public-private collaboration.

One of these models could be the constitution of mixed economy companies, that is, companies in whose capital private companies and public administrations participate.

Summary

Through the Autonomous Resilience Fund, the State will allocate up to EUR20 billion to finance sustainable investment projects in the Autonomous Communities (*Comunidades Autónomas*). Among the priority areas in which the actions to be carried out is that of “research, development and innovation”.

The financing of the health system is a matter of utmost concern. In addition, the COVID-19 crisis has brought to light a series of shortcomings and, at the same time, a particular set of needs. To this must be added the problems generated by demographic conditions, such as an increasingly aging population, or environmental conditions, such as climate change.

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However, when mobilising the EUR20 billion, it will be crucial to turn to the private sector. In this sense, one of the models of public-private collaboration could be the constitution of mixed economy companies, that is, companies in whose capital private companies and public administrations participate.

This approach is not uncommon in the field of health. On 12 March 2024, the Council of Ministers approved an agreement that marks the inception of Spain’s first commercial company for advanced therapies with public-private capital, established through a partnership agreement between the Ministry of Science, Innovation and Universities, on the one hand, and Insud Pharma S.L. and Laboratorios Farmacéuticos Rovi, S.A., on the other.

The public investment will be 49%, while the private partners will have a 51% participation in the mixed commercial company, it being foreseen that the company may mobilise up to EUR220 million, of which EUR107 would be a public contribution.

The commercial company will be dedicated to the research, development and commercialisation of medicines in new advanced therapies. The Minister of Science, Innovation and Universities has declared that another of the objectives of this company will be “to train Spanish companies in this field in order to strengthen the national industry in these types of therapies”, as well as “to offer the drugs resulting from this process to the National Health System at a competitive price, making our National Health System more sustainable and facilitating access to expensive treatments”.