

Special report

The rule of law in the EU

An improved framework to protect the EU's financial interests, but risks remain



EUROPEAN
COURT
OF AUDITORS

Contents

	Paragraph
Executive summary	I-IX
Introduction	01-18
The rule of law is a fundamental common value in the EU	01-02
Monitoring compliance with the principles of the rule of law in the EU	03-05
Enforcing compliance with principles of the rule of law in member states	06
Protecting the EU's financial interests against breaches of the rule of law	07-14
The 2020 Conditionality Regulation	08-11
Fund-specific provisions on compliance with the rule of law: Recovery and Resilience Facility and cohesion policy	12
The Financial Regulation	13-14
Responsibilities for protecting the rule of law in the EU	15-18
The Commission	15
The Council and the European Parliament	16-17
The member states	18
Audit scope and approach	19-25
Observations	26-97
The Conditionality Regulation has improved the rule of law framework, but risks remain	26-33
The Conditionality Regulation, together with the specific provisions of the RRF and the CPR, has improved the EU rule of law framework	27-30
Certain design aspects of the Conditionality Regulation may pose risks to its effective application	31-33

The Commission is still developing the administrative capacity necessary to apply the Conditionality Regulation	34-43
The Commission started preparing guidelines in good time	35-37
The Commission guidelines lack clarity on certain aspects	38-39
The Commission still needs to build up its administrative capacity to apply the Conditionality Regulation effectively	40-43
The Commission identified challenges to rule of law but did not systematically assess and document their potential impact	44-58
Identification of breaches of the principles of the rule of law in member states: the annual Rule of Law Report is the most important information source	45-47
It was not clear why and when the Commission used other sources	48-49
The Commission did not sufficiently document its “staged” approach when assessing potential impacts on the EU’s financial interests	50-55
Unresolved reforms covered by the Cooperation and Verification Mechanism resumed under current instruments	56-58
The Commission’s decision to use (or not) instruments to protect the EU’s financial interests was not based on well documented criteria	59-74
The Commission has applied at least one of the three instruments for each of the six member states in our sample	60-62
Rule of law issues were addressed by milestones under the RRF Regulation, although not always consistently	63-67
The Commission checks horizontal enabling conditions when programmes and programme amendments are approved	68-72
The reasoning for not applying the Conditionality Regulation was insufficiently clear and not well documented	73-74
The handling of the Hungarian case was in line with the Conditionality Regulation	75-83
The Commission’s assessment was in line with the requirements set out in the Conditionality Regulation	76-79
The Council adopted its implementing decision suspending 55 % of EU funding for three cohesion programmes within the legal deadline	80-83

While the effectiveness of budgetary and remedial measures can only be assessed at a later stage, inherent risks remain **84-97**

In the short term, budgetary consequences for not complying with the rule of law are limited **85-90**

Risks to the EU's financial interests cannot be eliminated even when the Conditionality Regulation is applied **91-92**

Specific risks remain under the RRF Regulation and the CPR in relation to the conditions for payments **93-95**

The Commission had not yet started its evaluation of the Conditionality Regulation, which is due in January 2024 **96-97**

Conclusions and recommendations **98-106**

Annexes

Annex I – Examples of tools used to monitor the state of the rule of law by the World Bank and the World Justice Project

Annex II – Key steps in applying the Conditionality Regulation

Annex III – Cooperation and Verification Mechanism benchmarks and related milestones in the RRFs of Bulgaria and Romania

Annex IV – Common Provisions Regulation for eight EU funds

Annex V – Overview of the application of the Conditionality Regulation for Hungary

Abbreviations

Glossary

Replies of the Commission

Timeline

Audit team

Executive summary

I The EU is founded on a set of fundamental common values laid down in Article 2 of the Treaty on European Union, including the rule of law. The Treaty on the Functioning of the European Union requires public authorities in the member states that implement EU funds to act in accordance with the law, and that the EU and its member states must act to prevent fraud and other illegal activities affecting the EU's financial interests.

II The rule of law situation in some EU member states has deteriorated over the past decade. In this context, this audit aims to follow up on the measures taken by the Commission using the new instruments at its disposal in order to protect the EU's financial interests against breaches of the principles of the rule of law.

III In December 2020, the European Parliament and the Council adopted a Regulation on a general regime of conditionality for the protection of the EU budget against breaches of the principles of the rule of law (the "Conditionality Regulation"). This Regulation came into force on 1 January 2021, and since then budgetary measures under the Regulation have been applied only once: in December 2022, in relation to Hungary.

IV We assessed whether the Commission's application of the Conditionality Regulation was appropriate and consistent with other mechanisms available under the Recovery and Resilience Facility and the 2021-2027 Common Provisions Regulation for cohesion policy. We examined the Commission's internal arrangements for implementing the Regulation, and the actions it took to protect the EU's financial interests under the three instruments. Our sample comprised six member states: Bulgaria, Greece, Italy, Hungary, Poland, and Romania.

V We concluded that the Conditionality Regulation marks an improvement in the rule of law framework. For the single case in which the Commission had proposed measures under the Conditionality Regulation since it entered into force (Hungary), we also concluded that the Commission's proposal was compliant with the Regulation, based on a fair assessment, and complemented the other budgetary mechanisms under the Recovery and Resilience Facility and cohesion policy. However, certain aspects of the Regulation are difficult to apply: in particular, the requirement to establish a sufficiently direct link between breaches of principles of the rule of law and the EU's financial interest. Furthermore, if a member state for which EU funds have been suspended does not fulfil its obligations towards final recipients or beneficiaries

of EU programmes, a short-term consequence may be that the achievement of EU policy objectives is hampered. This would ultimately be the responsibility of the member state concerned, not of the Commission. Finally, not all major EU spending programmes have protective tools equivalent to those set out under the Recovery and Resilience Facility or the Common Provisions Regulation; for example, the Common Agricultural Policy.

VI The Commission has been taking steps, since 2021, to apply the Conditionality Regulation (together with other available tools), but we observed a number of shortcomings:

- The Commission had not yet fully developed the necessary administrative capacity to apply the Conditionality Regulation in terms of allocating the appropriate human resources, setting up a comprehensive IT case management system and specifying clear guidelines.
- The Commission did not systematically assess and document the impact on the EU's financial interests for all member states in which it identified challenges to the rule of law.
- For Bulgaria and Romania, the Cooperation and Verification Mechanism was discontinued in September 2023. However, unresolved reforms covered by the Cooperation and Verification Mechanism had to be resumed under the new instruments.
- In the case of Hungary, the Commission set out its reasoning for using the Conditionality Regulation; however, it did not provide such reasoning for cases where it had identified potential breaches of the principles of the rule of law in other member states but not applied measures under the Regulation.

VII By the end of December 2023, two member states in our sample had been affected by budgetary measures: Hungary and Poland, with a potential future impact of approximately €22 billion and €134 billion, respectively. For Hungary, the figure takes into account the decision of 13 December 2023 to unblock approximately €10 billion because the Commission considered Hungary had fulfilled the horizontal enabling condition on the Charter of Fundamental Rights with regard to judicial independence. As our audit fieldwork ended before that date, this decision was taken into account but not audited. However, these amounts mostly concern future commitments and payments, meaning that the actual budgetary consequences were much more limited in the short term.

VIII Although the effectiveness of the budgetary and remedial measures taken so far can only be assessed at a later stage, we identified a number of risks that could significantly undermine their effectiveness. In particular, we noted that a member state's formal compliance with the remedial measures may not necessarily result in effective and sustainable improvements on the ground that go beyond a mere box-ticking exercise. There are also the risks of such measures subsequently being reversed, or of simultaneous deterioration in other respects. Whereas such risks can only be assessed in the future, we note that the Commission's obligations to report on the effectiveness of the Conditionality Regulation are limited to its evaluation due in January 2024.

IX We recommend that the Commission should:

- ensure the necessary administrative capacity to apply the Conditionality Regulation;
- systematically identify, assess and document, for all member states, how rule of law issues have been addressed under the Conditionality Regulation;
- monitor the impact of rule-of-law-related measures;
- base any proposal to lift budgetary measures on solid evidence;
- report on the effectiveness of the measures taken in response to breaches of the principles of the rule of law on an annual basis; and
- improve the rule of law framework when preparing future legislative proposals.

Introduction

The rule of law is a fundamental common value in the EU

01 The EU is founded on a set of fundamental common values. These values are laid down in Article 2 of the Treaty on European Union (TEU). Once a candidate country becomes a member state, it joins a legal structure based on the idea that all member states share this set of common values. This entails member states trusting one another to recognise those values and abide by the provisions of EU law that implement them. Such mutual trust is essential in a union based on solidarity between member states, in which large amounts are transferred to support investments in economic, social and territorial cohesion under the EU budget.

02 The common values set out in Article 2 TEU include the rule of law. In particular, the rule of law requires law-making to be a transparent, accountable, democratic and pluralistic process. It also requires all public powers to act within the constraints set out by law, in accordance with the values of democracy and respect for fundamental rights. In practice, this means that all citizens and businesses must enjoy legal certainty; effective judicial protection by independent and impartial courts; and non-discrimination and equality before the law.

Monitoring compliance with the principles of the rule of law in the EU

03 In 2013, the European Parliament proposed that member states should be regularly assessed on their continued compliance with the EU's fundamental values and the requirements of democracy and the rule of law¹. In response to this proposal, the Commission in 2014 introduced a general rule of law framework². This framework is aimed at addressing and resolving situations which are considered to represent a systemic threat to the rule of law in a member state.

¹ [European Parliament resolution, 2012](#), [the Rui Tavares Report of 2013](#), the [Louis Michel](#) and the [Kinga Göncz](#) Reports of 2014.

² [Commission communication on A new EU Framework to strengthen the Rule of Law; COM/2014/0158 final](#).

04 The Commission’s rule of law toolbox and its monitoring of the rule of law situation has evolved over time, in particular with the setting up of the annual rule of law cycle in 2020, which is a preventive tool. Until mid-2023, when the Cooperation and Verification Mechanism was closed, it comprised three main monitoring tools, two of which preceded the establishment of the 2014 toolbox. See [Box 1](#).

Box 1

Rule of law monitoring tools

The Commission’s **annual Rule of Law Report** examines developments across all member states in four key areas: justice systems, anti-corruption frameworks, media pluralism and freedom, as well as other institutional issues related to checks and balances. The report contains country chapters, which rely on a qualitative assessment by the Commission and analyse new developments since the previous report. The Commission has issued four reports since 2020³.

The 2022 report for the first time included specific recommendations for the member states. The 2023 report also includes recommendations and an assessment of the implementation of previous recommendations.

The **EU Justice Scoreboard** was launched in 2013 and monitors the effectiveness of member states’ justice systems based on three elements: efficiency (length of court proceedings; number of resolved cases versus number of incoming cases – known as the “clearance rate”; number of pending cases), quality (accessibility, human resources, digitalisation, budget, training), and independence (perceived judicial independence; safeguards relating to structural independence, including judges; and functioning of prosecution services). It provides member states with data each year to help them improve the effectiveness of their national justice systems⁴.

³ European Commission, [Rule of law Mechanism](#).

⁴ [EU Justice Scoreboard](#).

The **Cooperation and Verification Mechanism** was introduced as a transitional measure in 2007 with the accession of Bulgaria and Romania to the EU. Its objective was to assist the two member states in remedying shortcomings in their judicial systems, and in fighting corruption and (in the case of Bulgaria) organised crime. Specific benchmarks were introduced through which the Commission monitored the situation in these two member states. Initially planned for a period of up to three years⁵, the mechanism was formally closed in September 2023⁶. Monitoring continues under the annual Rule of Law Reports, as for all member states.

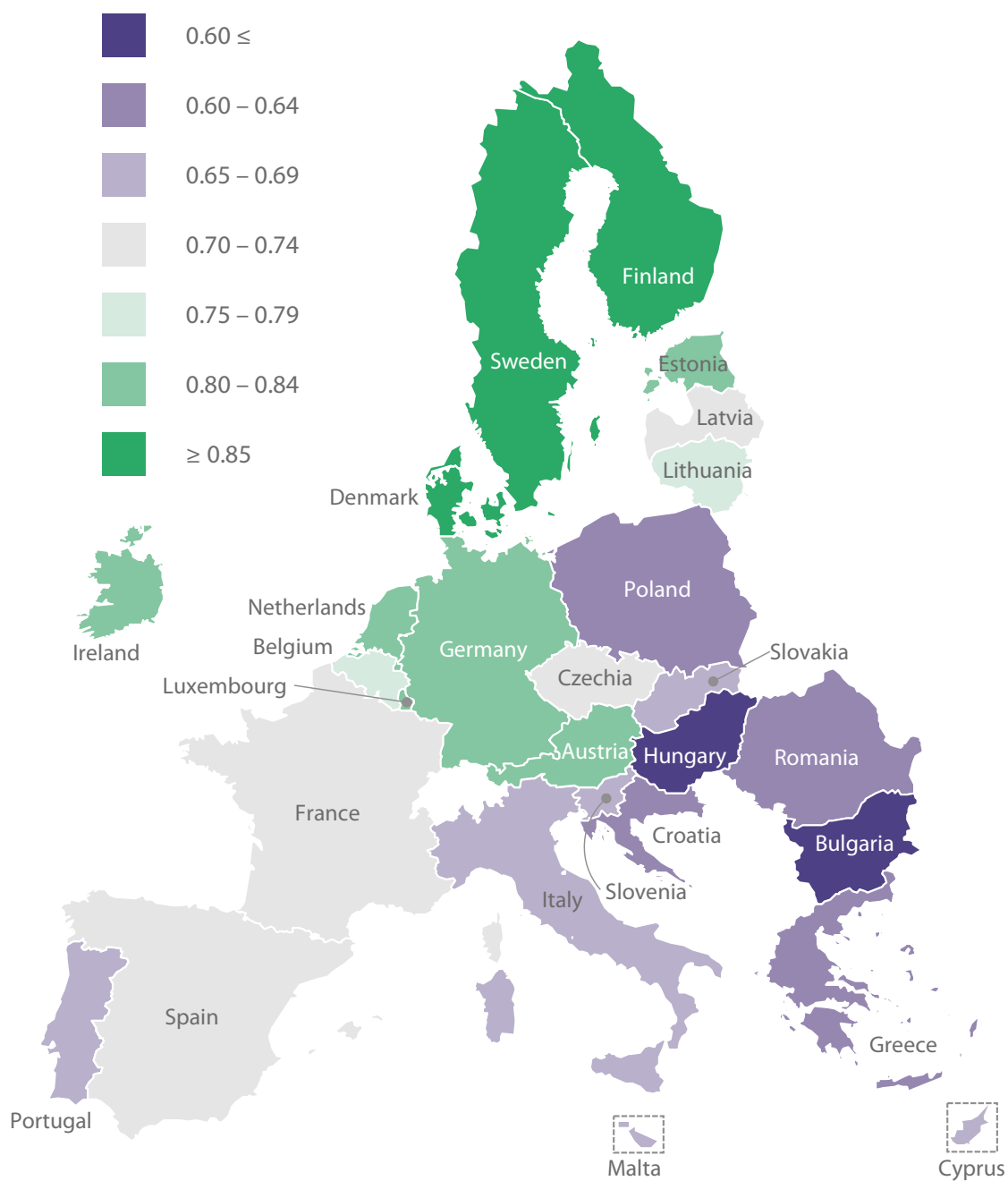
05 In addition to the EU monitoring tools mentioned above, a number of non-governmental organisations (NGOs) produce their own rankings on the rule of law in countries across the world, including the EU member states. [Annex I](#) provides more information about how the World Bank and the World Justice Project assess and rank compliance with the principles of the rule of law across countries. One source relied upon by the Commission in its latest report on economic, social and territorial cohesion⁷ was the Rule of Law Index of the World Justice Project, of which the overall score for 2022 is presented in [Figure 1](#).

⁵ Act of Accession of Bulgaria and Romania, Articles 37 and 38 of the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union; [OJ L 157](#), 21.6.2005.

⁶ [Commission Decision \(EU\) 2023/1785](#) repealing Decision 2006/929/EC establishing a mechanism for cooperation and verification of progress in Bulgaria; and [Commission Decision \(EU\) 2023/1786](#) repealing Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania.

⁷ European Commission, [Eighth Report on Economic, Social and Territorial Cohesion](#), p. 219.

Figure 1 – Member states ranking on rule of law



Source: [World Justice Project – Rule of Law Index](#) 2022, Overall score. A higher overall score reflects greater compliance with the rule of law principles.

Enforcing compliance with principles of the rule of law in member states

06 There are two main procedures for dealing with breaches of the rule of law in the member states: the infringement procedure under Article 258 of the Treaty on the Functioning of the European Union (TFEU) and, as a last resort, the procedure under Article 7 TEU.

- Under Article 258 TFEU, the Commission may initiate infringement proceedings against member states for failure to fulfil obligations under the EU Treaties, including breaches of the rule of law.
- Article 7 TEU, introduced by the Amsterdam Treaty in 1997, permits the Council to determine that there is the risk of a serious breach by a member state of the common values referred to in Article 2 TEU. The article sets out two mechanisms for protecting the EU's values; preventive measures if there is a clear risk of a breach, and sanctions when it has been established that a breach has occurred. The range of possible sanctions may include a suspension of voting rights in the Council and the European Council. Up to now, the preventive procedure has been launched twice: in 2017, by the Commission in respect of Poland⁸, and in 2018, by the European Parliament in respect of Hungary⁹. The Council has not yet voted on the proposals, and the outcome of both procedures is still pending.

Protecting the EU's financial interests against breaches of the rule of law

07 Breaches of the rule of law by the member states can negatively affect the sound financial management of the EU budget and the protection of the EU's financial interests. Such breaches may affect the proper functioning of the authorities implementing the EU budget and the related financial control, monitoring and audit; but also the effective judicial review by independent courts, the prevention and sanctioning of fraud and corruption or other situations or conduct of authorities that are relevant to the sound financial management¹⁰ of funds.

⁸ European Commission, Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law [COM/2017/0835](#), 20.12.2017.

⁹ European Parliament resolution of 12 September 2018, [2017/2131](#).

¹⁰ Article 4(2) of the Conditionality Regulation.

The 2020 Conditionality Regulation

08 In 2018, the Commission issued a proposal for a regulation to protect the EU's financial interests against rule of law deficiencies in member states¹¹. In the same year, we issued an opinion on this proposal. See [Box 2](#).

Box 2

ECA opinion on the 2018 Commission's proposal for a rule of law conditionality regulation

In our 2018 opinion¹² on this proposal, we welcomed the legislative initiative and agreed with the Commission's view that unlawful and arbitrary decisions by public authorities responsible for managing funds and for judicial review could harm the EU's financial interests.

We also issued five recommendations, four of which were implemented in the adopted Conditionality Regulation. The one which was not taken up was the recommendation that the Commission should, before proposing measures assess the possible budgetary implications of a reduction in EU funding for the national budget of the member state.

09 In December 2020, the European Parliament and the Council adopted a Regulation on a general regime of conditionality for the protection of the EU budget against breaches of the principles of the rule of law¹³ (the "Conditionality Regulation"). It is applicable as of 1 January 2021.

¹¹ Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, [COM\(2018\) 324](#).

¹² [Opinion 01/2018](#), paragraph 10.

¹³ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, [OJ L 433I](#), 22.12.2020, p. 1-10.

10 The aim of the Regulation is not to resolve breaches of the principles of the rule of law, but to protect the EU's financial interests against them. It applies to the entire EU budget (i.e. all income and expenditure) as well as all other financial interests of the EU, including NextGenerationEU. Under specific conditions, it provides the possibility of suspending, reducing or restricting member states' access to EU funding. See [Box 3](#).

Box 3

Application of the Conditionality Regulation

When proposing budgetary measures to the Council in the case of breaches of the principles of the rule of law, the Commission has to demonstrate that they affect, or seriously risk affecting, the sound financial management of the EU budget or the protection of the EU's financial interests in a sufficiently direct way.

The proposed budgetary measures must be proportionate to the nature, duration, gravity and scope of the breaches of the principles of the rule of law. As far as possible, they must also target the EU actions affected by the breaches. The Regulation also requires the Commission to assess whether other procedures would better protect the EU's financial interests.

Finally, the Council may adopt the Commission's proposal, with or without amendments, and impose budgetary measures against the member state concerned by qualified majority. This takes the form of a Council implementing decision.

Under qualified-majority voting, a favourable vote is required from at least 55 % of the members of the Council (in practice, 15 out of 27 member states) representing at least 65 % of the EU's population.

11 [Annex II](#) summarises the key steps in applying the Conditionality Regulation.

Fund-specific provisions on compliance with the rule of law: Recovery and Resilience Facility and cohesion policy

12 Neither the Recovery and Resilience Facility (RRF) Regulation¹⁴ nor the Common Provisions Regulation (CPR)¹⁵, which governs the four cohesion policy funds, one fisheries fund and three home affairs funds, were created specifically to address breaches of the principles of the rule of law in member states. Nevertheless, both instruments include tools that can be used to protect the EU's financial interests against such breaches, although in different ways.

- For the RRF, the Commission must ensure that member states' national recovery and resilience plans (RRPs) effectively address a significant subset of country-specific recommendations and other challenges identified in other relevant documents officially adopted by the Commission under the European Semester procedure. Country-specific recommendations and other such challenges may result in RRP milestones and targets for reforms or investments which aim to address challenges related to the rule of law in a member state (milestones related to the rule of law). In addition, when assessing national RRP, the Commission is required to assess whether member states have adequate arrangements to prevent, detect, and correct fraud, corruption and conflicts of interest when using RRF funds. As with all other EU funds, RRF funds must also be implemented in accordance with the Conditionality Regulation¹⁶.
- The CPR imposes four general prerequisites or "horizontal enabling conditions", one of which makes EU funding contingent on the effective application and implementation of the Charter of Fundamental Rights. One of these rights, and a key aspect of the rule of law, is the right to an effective remedy and to a fair trial by an independent and impartial court¹⁷.

¹⁴ Regulation (EU) 2021/241.

¹⁵ Regulation (EU) 2021/1060.

¹⁶ Article 8 of Regulation (EU) 2021/241 on RRF.

¹⁷ Article 47, Charter of Fundamental Rights of the EU.

The Financial Regulation

13 The Financial Regulation¹⁸ contains the general rules applicable to the EU budget. While its primary objective is not to address the financial impact of breaches of the rule of law in the member states, the Commission can use some of the procedures it prescribes to tackle certain situations that may stem from breaches of the rule of law, such as irregularities, fraud and conflicts of interest. For example, the Commission may prevent entities from signing future legal commitments based on the Early Detection and Exclusion System (EDES), or suspend or terminate contracts or grant agreements.

14 In recent years, we have audited the Commission's and member states' use of tools, such as EDES and ARACHNE¹⁹, to protect the EU's financial interests from untrustworthy counterparties such as those involved in fraud or corruption. In a report published in 2022²⁰, we concluded that blacklisting under EDES was not used effectively, and we recommended that its use should be made mandatory in shared management. In a more recent audit on the prevention of conflicts of interest in EU cohesion and agricultural spending²¹, we identified gaps in the measures in place for detecting, resolving and reporting on conflicts of interest.

Responsibilities for protecting the rule of law in the EU

The Commission

15 As the guardian of the EU treaties, the Commission is responsible for identifying and addressing possible breaches of EU law. The Commission monitors the rule of law in member states, identifies possible breaches, and proposes measures to address them through the various procedures at its disposal. The Commission is responsible for managing the EU budget and must ensure the proper application of the Financial Regulation and the fund-specific provisions to protect the EU budget against all risks, including those resulting from breaches of the rule of law in the member states. Finally, the Commission can initiate proceedings under Article 7 TEU.

¹⁸ Regulation (EU) No 2018/1046.

¹⁹ Commission's introduction to ARACHNE risk scoring tool.

²⁰ Special report 11/2022: "Protecting the EU budget – Better use of blacklisting needed".

²¹ Special report 06/2023: "Conflict of interest in EU cohesion and agricultural spending – Framework in place but gaps in transparency and detection measures".

The Council and the European Parliament

16 The Council plays a key role in protecting the EU's financial interests against breaches of the rule of law as it has the power to adopt legally binding decisions for all measures under Article 7 TEU and under the Conditionality Regulation. The Council also approves all RRP's under the RRF Regulation, including those milestones, targets and actions addressing issues specific to the rule of law.

17 The European Parliament can initiate proceedings under Article 7 TEU and has certain rights to be informed by the Commission about various steps proposed and taken under the Conditionality Regulation. It may also address rule of law matters in the annual discharge procedure. However, it has no decision-making power.

The member states

18 Responsibility for compliance with the obligations arising from the EU's treaties, including respect for the rule of law, lies in the first instance with the member states²². National administrations are the main bodies responsible for the implementation of both cohesion policy and RRF. It is generally they who implement and evaluate EU-funded measures. This process includes selecting projects, awarding grants and public contracts, and carrying out compliance audits. For both cohesion policy and the RRF, the Commission's assurance on the legal and regular spending of EU funds and on performance are therefore founded primarily on effective controls and audits by the member states. Under the Conditionality Regulation, the Commission proposes budgetary measures and the Council adopts them. However, responsibility for proposing and implementing measures to remedy the breaches of the rule of law, and thus to eliminate risks to the EU's financial interests, lies with the member states.

²² Article 4(3) TEU.

Audit scope and approach

19 Different indicators show that the rule of law situation in some EU member states has deteriorated over the past decade (see [Annex I](#)). We therefore decided to carry out this audit, a few years after the entry into force of the Conditionality Regulation, to assess the Commission's initial use of the new instruments at its disposal to protect the EU's financial interests from breaches of the principles of the rule of law. The audit also follows up on our 2018 opinion welcoming the Commission's initial legislative proposal. We expect our report to help the Commission to make the best use of these new instruments by the end of the current multi-annual financial framework (MFF) period (2021-2027).

20 Our audit assessed whether the Commission's application of the Conditionality Regulation was appropriate and consistent with other tools available under the RRF and cohesion policy to protect the EU budget against breaches of the principles of the rule of law. In particular, we examined whether:

- the Conditionality Regulation complemented effectively the other tools to protect the EU's financial interests under the RRF and the cohesion policy;
- the Commission had taken efficient and timely measures to apply the Conditionality Regulation;
- the procedures put in place by the Commission were effective in identifying breaches of the principles of the rule of law in member states, and in systematically assessing their impact on the EU's financial interests in an objective, impartial and fair manner;
- the Commission had properly coordinated its use of the different instruments available to protect the EU's financial interests, and applied them in a consistent manner;
- before proposing budgetary measures, the Commission had assessed the appropriateness and proportionality of budgetary measures to mitigate the identified risks to the EU's financial interests; and
- the Commission had taken the necessary actions to be able to assess whether the remedial measures to be taken by member states would protect the EU's financial interests effectively against identified breaches of the principles of the rule of law.

21 The audit covered the period from the entry into force of the Conditionality Regulation in January 2021 until December 2023.

22 As part of the audit, we examined the Commission's:

- o internal arrangements for enforcing the Conditionality Regulation;
- o actions to protect the EU's financial interests through the Conditionality Regulation, the RRF Regulation and the 2021-2027 CPR covering the cohesion policy funds (the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the Just Transition Fund).

23 We focused our audit work on the Commission's actions for a sample of six member states. The sample included those countries for which procedures under Article 7 TEU (Poland and Hungary) and the Conditionality Regulation (Hungary) had been opened and those that fell under the Cooperation and Verification Mechanism (Romania and Bulgaria). It also included Greece and Italy (based on identified rule of law challenges (see [Annex I](#)), geographical balance and materiality).

24 We carried out a desk review of both publicly available information and internal Commission documents relating to its actions under the Conditionality Regulation and to its use of other protective tools under the RRF and the CPR relevant to the rule of law. We also held interviews with officials from the relevant Commission services.

25 This audit did not cover the implementation of the RRF or the funds covered by the CPR. We did not carry out any audit work in these member states to directly examine their compliance with the rule of law. As our audit fieldwork ended before the Commission decided, on 13 December 2023, that Hungary had partially achieved certain horizontal enabling conditions, this decision was taken into account but not audited. We also did not assess whether the budgetary and remedial measures imposed under the Conditionality Regulation had been effective in addressing the deficiencies identified by the Commission in connection with the principles of the rule of law.

Observations

The Conditionality Regulation has improved the rule of law framework, but risks remain

26 We assessed the extent to which the Conditionality Regulation complemented the other instruments effectively in protecting the EU's financial interests and ensuring the sound financial management of EU funds under the RRF and cohesion policy. In this context, we examined the legal provisions in the Regulations under all three instruments and their potential limitations.

The Conditionality Regulation, together with the specific provisions of the RRF and the CPR, has improved the EU rule of law framework

27 The entry into force of the Conditionality Regulation in January 2021 provided the Commission with an instrument specifically aimed at protecting the EU's financial interests against breaches of the principles of the rule of law and ensuring the sound financial management of EU funds, for which the Commission is ultimately responsible under the annual discharge procedure. As already pointed out in our opinion, the adopted mechanism gives the Commission a greater role and is more direct and time-bound compared to the Article 7 TEU mechanism.

28 The Conditionality Regulation lists situations that are indicative of breaches of the principles of the rule of law, as well as the types of situation that any such breach must concern for the Regulation to apply. It also allows the Commission to act in a preventive manner, before the EU's financial interests are affected, providing a clear legal basis and procedure. In this regard, the Conditionality Regulation contributes to an improved framework for protecting the EU's financial interests against breaches of the principles of the rule of law, as it is not subject to the same limitations as other instruments not aimed primarily at protecting against such breaches. Two of these instruments are covered in this report: the RRF Regulation and the CPR.

29 Overall, the set of instruments – comprising the Conditionality Regulation, milestones and targets related to the rule of law under the RRF Regulation, and the horizontal enabling condition on the Charter of Fundamental Rights under the CPR – results in a more complete framework for protecting the EU’s financial interests against breaches of the principles of the rule of law in the 2021-2027 period. However, while the Conditionality Regulation covers all EU funds, the horizontal enabling conditions of the CPR only apply to the eight funds mentioned. They do not cover other EU funds, such as the Common Agricultural Policy.

30 Finally, any budgetary measures proposed by the Commission under the Conditionality Regulation will be adopted by the Council with a qualified majority or rejected. This illustrates the joint responsibility of the Commission and all member states for protecting the EU’s financial interests against the negative impacts of breaches of the principles of the rule of law (see paragraph 18).

Certain design aspects of the Conditionality Regulation may pose risks to its effective application

The Conditionality Regulation does not specify what constitutes a sufficiently direct link between breaches of the principles of the rule of law and the EU’s financial interests

31 The requirement that breaches of the principles of the rule of law in a member state should affect or seriously risk affecting the sound financial management of the EU budget or the protection of the EU’s financial interests “in a sufficiently direct way” is an important aspect on which the final provisions in the Conditionality Regulation differ from the proposal on which we based our opinion²³. As the Regulation does not provide detailed criteria for assessing and establishing the existence of such a link, this modification has rendered its application more restrictive and difficult than initially envisaged.

²³ Opinion 01/2018.

In the short term, blocking EU funds may hamper the achievement of EU policy objectives

32 The budgetary measures set out in the Conditionality Regulation include the suspension of commitments and payments and the prohibition of entering into new legal commitments, loans or other instruments. The Regulation clarifies that budgetary measures do not exempt the member state from its obligations towards final recipients or beneficiaries under the corresponding programme. For shared management, the member state must report on how it fulfils its obligations towards final recipients or beneficiaries.

33 Ultimately, it is the member states' responsibility to comply with the rule of law and with all of their existing legal obligations. This cannot be the responsibility of the Commission. Nevertheless, a possible short-term consequence of such budgetary measures is that national authorities may not have the financial or legal capacity to implement programmes in the same way as they would with EU support. Failure by the member state to fulfil its obligations may impact the achievement of the EU's objectives, such as social and territorial cohesion and the professional and personal development of people in education, with potential negative effects on EU citizens in the short term. For example, students may not be able to participate in the Erasmus+ exchange programme.

The Commission is still developing the administrative capacity necessary to apply the Conditionality Regulation

34 We examined the measures taken by the Commission to apply the Conditionality Regulation. In particular, we looked at the way the Commission had developed guidelines for identifying and assessing breaches of the principles of the rule of law, and whether it had done so in a timely manner. Apart from the procedural aspects, we also assessed whether appropriate human resources had been allocated, and whether an effective case-management system had been deployed to apply the Conditionality Regulation effectively.

The Commission started preparing guidelines in good time

35 The Commission started internal work on operationalising the Conditionality Regulation at the beginning of 2021. The first draft of the official guidelines, published on 18 March 2022²⁴, was ready in March 2021. By publishing its guidelines, after the judgement of the European Court of Justice in February 2022²⁵, the Commission informed all stakeholders how it would apply the Conditionality Regulation in an objective, fair, impartial and fact-based way, ensuring due process, non-discrimination and the equal treatment of member states. The publication of these guidelines was a requirement for the political agreement by the member states on the adoption of the Conditionality Regulation²⁶.

36 The Commission also prepared a set of internal instructions for staff (the “internal guidance notes”) comprising various documents, such as a methodological note, a case-creation checklist, workflow/case-lifecycle charts and internal rules of procedure for applying the Conditionality Regulation. The first version was ready in December 2021 and is updated regularly, most recently (during the period covered by this audit) in May 2022.

37 The published guidelines and internal guidance notes together cover all necessary procedural steps (see [Annex II](#)) in varying levels of detail. They satisfy basic requirements of the Conditionality Regulation in that they instruct Commission staff on how to carry out a thorough qualitative assessment in an objective, impartial and fair manner. They also specify possible sources of information for identifying breaches of the principles of the rule of law in member states, building upon the indicative list set out in the Regulation²⁷. However, according to the internal guidance notes, these sources of information are to be consulted on a case-by-case basis, rather than systematically for all member states.

²⁴ Commission guidelines on the application of the Conditionality [2022/C 123/02](#).

²⁵ Judgment of 16 February 2022, *Hungary v European Parliament and Council of the European Union*, [C-156/21](#), [EU:C:2022:97](#) and judgment of 16 February 2022, *Republic of Poland v European Parliament and Council of the European Union*, [C-157/21](#), [EU:C:2022:98](#).

²⁶ [European Council conclusions](#), 10-11 December 2020, I.2.(b) and (c).

²⁷ Recital 16 of the Conditionality Regulation.

The Commission guidelines lack clarity on certain aspects

38 Overall, we consider that the internal guidance notes and published guidelines, taken together, do not provide enough detail to guide Commission staff in some areas. In particular, they do not cover certain key aspects in sufficient detail to ensure the uniform and effective application of the Conditionality Regulation across all member states, and for all situations to which it may be applicable:

- They provide insufficient advice on how to assess the existence of a sufficiently direct link between breaches of the principles of the rule of law and risks to the sound financial management of the EU budget or the protection of the EU's financial interests. The published guidelines acknowledge that the link should be "genuine" or "real"²⁸. The internal guidance notes only state that the existence of such a sufficiently direct link may be presumed if similar situations or conducts have affected the EU budget in the past. They also do not provide enough guidance on what form of threats to the independence of the judiciary may constitute a sufficiently direct link.
- They do not adequately specify how the Commission will ensure a proactive approach when assessing cases under the Conditionality Regulation.
- They contain insufficient advice on how the limited set of budgetary measures possible under the Conditionality Regulation can be used to effectively address breaches of the principles of the rule of law with a sufficiently direct link to risks to EU own resources such as revenue from VAT and customs duties.
- They contain little information on how the effectiveness of budgetary and remedial measures can be assessed.

39 As regards complementarity with other instruments, both the published guidelines and internal guidance notes provide some instructions on how to justify the use of the Conditionality Regulation with regard to other instruments, such as the possibilities offered by the RRF Regulation and the CPR. However, they do not cover essential aspects such as the scope of their application, possible measures, or the adoption procedure to be followed. The absence of detailed guidance on these matters may hamper the consistent application of all available instruments by the Commission and makes it difficult to justify the decision to use one specific instrument or multiple instruments to address certain challenges.

²⁸ Paragraph 33 of the Guidelines.

The Commission still needs to build up its administrative capacity to apply the Conditionality Regulation effectively

40 Within the Commission, responsibility for implementing the Conditionality Regulation lies with the Directorate-General for Budget (DG BUDG). By February 2023, the Commission had allocated 10 people directly and permanently to the application of the Conditionality Regulation in DG BUDG. The Commission considers these ten people to be the equivalent of five full-time staff members due to their other responsibilities. In addition, other staff in other Commission departments contribute indirectly to this work as needed.

41 The Commission did not perform any prior assessment of the number of people required to apply the Conditionality Regulation. We observed that current staff numbers appeared insufficient for an in-depth examination of the rule of law situation across all 27 member states, or for the necessary follow-up work.

42 Furthermore, the transparent and consistent application of the Conditionality Regulation to all member states requires an effective IT case-management system to manage and document the actions undertaken. Such a system should make it possible to document the information received, control access to that information, allow actions to be performed electronically, and enable both internal and external oversight by the competent authorities (the Court of Justice, the European Ombudsman and the ECA) in a systematic way.

43 The Commission started to set out the technical specifications in 2021 to adapt an existing case-management system to record documents relating to the management of the procedure laid down in the Conditionality Regulation. At the time of our audit fieldwork, however, the system ("CASE@EC for RoLC") was only capable of recording documents and did not yet facilitate the day-to-day work and decision-making flow of applying the Conditionality Regulation. This makes it more difficult to apply the Regulation consistently and efficiently. Finally, the system was not planned to be fully operational before autumn 2023.

The Commission identified challenges to rule of law but did not systematically assess and document their potential impact

44 We examined whether the information sources used and the procedures put in place by the Commission were effective in identifying breaches of the principles of the rule of law in all member states, and whether it consistently assesses the possible impact on the EU's financial interests. This is a continuous process to be undertaken systematically for all member states.

Identification of breaches of the principles of the rule of law in member states: the annual Rule of Law Report is the most important information source

45 The Commission published its first annual Rule of Law Report in September 2020, just before the adoption of the Conditionality Regulation. Since then, three more editions have been issued: in July 2021, July 2022 and July 2023. The reports are based on a variety of sources. Since 2022, the reports have included recommendations addressed to the member states. Since 2023, the reports also consider to what extent the recommendations have been implemented. The ECA has reviewed the Commission's annual rule of law reporting and the review will be published in a separate report²⁹.

46 So far, the annual Rule of Law Report is the most important source of information used by the Commission for applying the Conditionality Regulation. This annual report presents, in its country chapters, the rule of law challenges for all 27 member states. The Commission prepares these reports based on a continued dialogue with member states and relies on a variety of additional sources³⁰, including those mentioned in the Conditionality Regulation.

²⁹ Review 02/2024: "The Commission's rule of law reporting".

³⁰ European Commission, [Methodology for the preparation of the annual Rule of Law Report](#).

47 According to the Commission’s information, for the 2023 report it received approximately 250 horizontal and country-specific contributions from a variety of contributors including EU agencies, European networks, national and European civil society organisations and professional associations, and international and European organisations. It also organised more than 530 online meetings with national authorities, independent bodies and stakeholders, including civil society organisations. Though not its primary objective, the annual Rule of Law Report provides an important basis for identifying breaches of the principles of the rule of law under the Conditionality Regulation.

It was not clear why and when the Commission used other sources

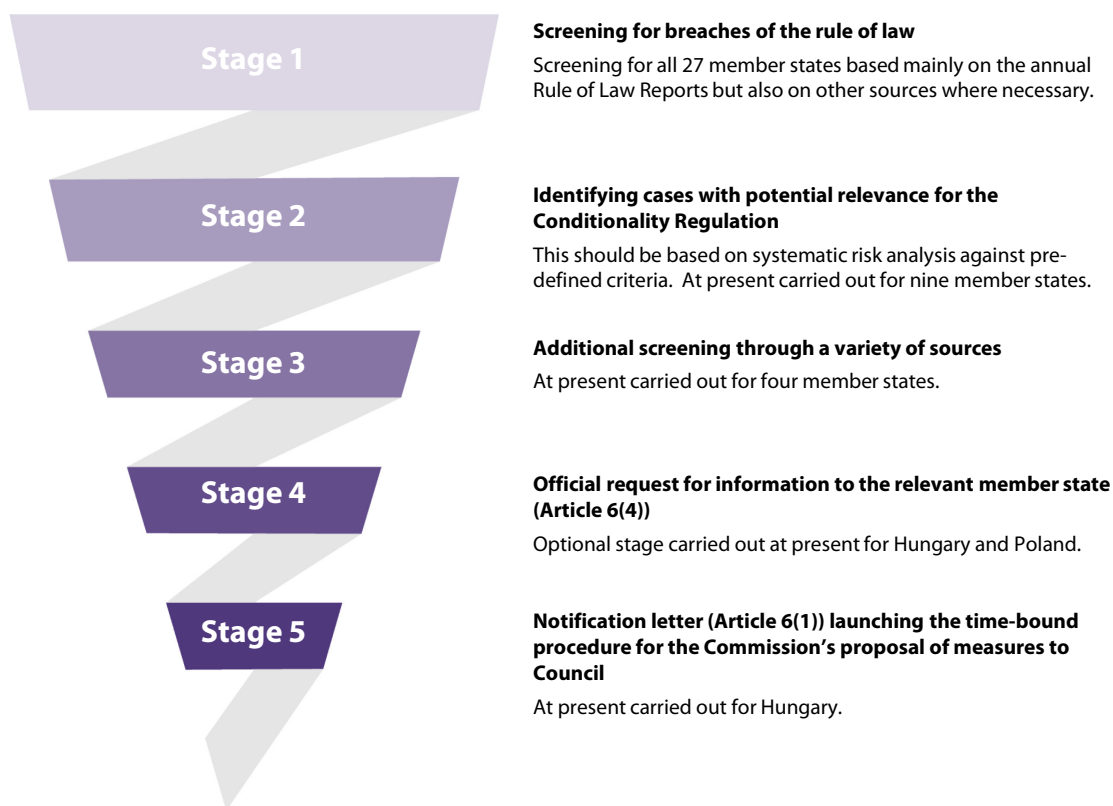
48 In addition to the annual Rule of Law Reports, the Commission collected information from all sources mentioned in the Conditionality Regulation, with the exception of the EU Agency for Fundamental Rights, which was not consulted for the six member states in our sample.

49 As regards the use of the additional information sources mentioned in the Commission’s guidelines, for some member states the Commission assessed allegations and complaints to identify potential breaches of the principles of the rule of law and, for one member state, obtained evidence by procuring an external study. However, we also found that the use of such complementary information varied across the six member states in our sample, and the Commission did not provide reasons for using this case-by-case approach during the audit.

The Commission did not sufficiently document its “staged” approach when assessing potential impacts on the EU’s financial interests

50 Although not formalised, in practice the Commission applies a “staged” approach to identifying breaches of the principles of the rule of law and assessing the possible impact on the EU’s financial interests. We observed five different stages in the application of the Conditionality Regulation, culminating in the launch of the time-bound procedure (five to nine months) through a notification to the member state concerned pursuant to Article 6(1). See [Figure 2](#).

Figure 2 – Staged approach in the application of the Conditionality Regulation



Source: ECA's own analysis of Commission's internal work process.

51 By the end of our audit fieldwork, the Commission had carried out an initial screening for breaches of the principles of the rule of law for all 27 member states. Subsequently, the Commission had identified potential issues for nine member states and started assessing whether they could constitute cases under the Conditionality Regulation. The Commission then conducted more in-depth analysis and carried out additional investigations for four member states. By September 2023, the Commission had taken official actions under Article 6(4) of the Conditionality Regulation for Hungary and Poland (stage 4) and launched the Article 6(1) procedure for Hungary (stage 5).

52 In principle, this “staged” approach is in line with the Conditionality Regulation. However, we consider that the Commission should specify its criteria for advancing from one stage to the next. This has not been the case so far.

53 Our analysis showed that the process for deciding for which cases the assessment moves to the next step, and for which a more in-depth analysis should be carried out, was not documented. We did not obtain any evidence of how the Commission applied systematic risk analysis to support these decisions.

54 For example, although the Commission's annual Rule of Law Report had identified some challenges to the rule of law for all 27 member states, for two of the six member states in our sample the Commission had not taken any specific action under the Conditionality Regulation to further identify possible breaches of the principles of the rule of law. It also had not documented any assessment of whether the rule of law challenges identified had an impact on EU's financial interests. For Poland, the Commission has received and analysed the replies of the competent authorities to its Article 6(4) request for information. On this basis, it considered that moving to the next stage could be one of the possible options. Ultimately, the Commission concluded that it would be more appropriate to continue monitoring the situation in relation to the identified breaches of the principles of the rule of law under the Conditionality Regulation and their potential impact on the EU's financial interests.

55 The Commission's documentation of its assessments under the Conditionality Regulation of whether the EU's financial interests were consistently and adequately protected from identified potential breaches of the principles of the rule of law were insufficient for five of the six sampled member states. The exception was Hungary, for which measures were taken under the Conditionality Regulation, as well as under the two other instruments.

Unresolved reforms covered by the Cooperation and Verification Mechanism resumed under current instruments

56 When joining the EU in 2007, both Bulgaria and Romania were subject to the Cooperation and Verification Mechanism (see [Box 1](#)). The Commission set six benchmarks for Bulgaria³¹ and four for Romania³² to assess their progress on issues highly relevant to adherence to the principles of the rule of law. In 2017, the Commission issued two reports in which it further set out the requirements it expected from Bulgaria³³ and Romania³⁴ under the Cooperation and Verification Mechanism.

³¹ Commission Decision establishing a mechanism for cooperation and verification of progress in Bulgaria, [2006/929/EC](#).

³² Commission Decision establishing a mechanism for cooperation and verification of progress in Romania, [2006/928/EC](#).

³³ Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Co-operation and Verification Mechanism; [COM/2017/0750 final](#).

³⁴ Report from the Commission to the European Parliament and the Council on progress in Romania under the Co-operation and Verification Mechanism; [COM/2017/044 final](#).

57 The Commission decided in September 2023 to formally close the Cooperation and Verification Mechanism for Bulgaria and Romania³⁵. However, we note the following:

- o Since 2019, there has been no further reporting for Bulgaria under the Cooperation and Verification Mechanism, as the Commission considered that Bulgaria had made sufficient progress in fulfilling the commitments made at the time of its accession to the EU³⁶. This was despite the Commission itself acknowledging that Bulgaria must continue its reforms³⁷. The last report for Romania also acknowledges that further reforms are necessary³⁸.
- o The latest Commission's annual Rule of Law Report highlights a number of issues relevant to the Cooperation and Verification Mechanism benchmarks, which would require further action by both member states³⁹.

58 Under the Conditionality Regulation, we found that the Commission had not satisfactorily documented its assessments for Bulgaria and Romania or defined the stage to which it should progress under its staged approach (see [Figure 2](#)). Meanwhile, we identified a number of rule-of-law-related milestones and targets relevant to the Cooperation and Verification Mechanism benchmarks in the national RRP of both Bulgaria and Romania (see [Annex III](#)).

³⁵ See footnote ⁶.

³⁶ European Commission, [Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Cooperation and Verification Mechanism](#), 22 October 2019, p. 13.

³⁷ Ibid.

³⁸ European Commission, [Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism](#), 22 November 2022, p. 13.

³⁹ [Annex to the 2023 Rule of Law Report](#), p. 2 for Bulgaria and p. 23 for Romania.

The Commission's decision to use (or not) instruments to protect the EU's financial interests was not based on well documented criteria

59 While the Conditionality Regulation is the only Regulation for the specific purpose of protecting the EU's financial interests against breaches of the principles of the rule of law, both the RRF Regulation and the CPR can also contribute (see paragraph [12](#)). Formally, the Commission may only apply the Conditionality Regulation if it considers that other procedures are less effective in protecting the EU budget⁴⁰. Therefore, even though there is no explicit legal obligation to do so, these Regulations need to be used in a complementary manner in order to protect the EU's financial interests, as effectively as possible. In this section, we assess the actions taken by the Commission under the RRF Regulation, the CPR and the Conditionality Regulation.

The Commission has applied at least one of the three instruments for each of the six member states in our sample

60 In a number of cases during the period covered by this audit, the Commission has made use of its prerogatives under the RRF Regulation and for the cohesion policy funds under the CPR to address challenges to the rule of law and shortcomings in national management and control systems for these EU funds.

61 For each of the six member states in our sample (Bulgaria, Greece, Hungary, Italy, Poland and Romania), the Commission has applied at least one of the instruments. An overview of the specific measures taken for each of these member states is provided in [Table 1](#).

⁴⁰ Article 6 (1) of the Conditionality Regulation.

Table 1 – Measures taken under the three instruments for the member states in our sample

Country	Instrument	Measure
Bulgaria	Conditionality Regulation	No measures.
	CPR	Considered to effectively apply and implement the Charter of Fundamental Rights.
	RRF	We identified 13 milestones related to the rule of law, the last one to be achieved by Q1 2026. There were 3 “super-milestones” not exclusively related to the rule of law, which had to be achieved before any payment and the Commission has assessed to be satisfactorily achieved.
Greece	Conditionality Regulation	No measures.
	CPR	Considered to effectively apply and implement the Charter of Fundamental Rights.
	RRF	We identified 5 milestones related to the rule of law, the last one had to be achieved by Q4 2022. There was 1 “super-milestone” to be achieved before any payment, which the Commission has assessed as having been satisfactorily achieved.

Country	Instrument	Measure
Hungary	Conditionality Regulation	<p>Measures proposed, approved by the Council with some modifications.</p> <p>Suspension of 55 % (€6.4 billion) for three Cohesion Policy programmes, as well as prohibition on entering into legal commitments with public interest trusts and entities maintained by them under direct and indirect management.</p>
	CPR	<p>Until mid-December 2023, non-fulfilment of horizontal enabling conditions blocking future reimbursement of almost €22 billion for EU funds. Advance payments and technical assistance were not affected, €0.6 billion has been paid.</p> <p>Following its decision of 13 December on the fulfilment of the third horizontal enabling condition with regard to judicial independence, the Commission announced that Hungary may start claiming reimbursements up to around €10.2 billion.</p>
	RRF	<p>We identified 31 milestones related to the rule of law, the last one to be achieved by Q1 2026.</p> <p>There were 27 “super-milestones” to be achieved before the first payment, including those identified by both the Commission and the ECA as relating to the rule of law. There is not yet any Commission assessment of these milestones.</p> <p>Total RRP amount: €6.5 billion in grants and €3.9 billion in loans, including €0.9 billion advance payments for which the super-milestones do not apply.</p>
Italy	Conditionality Regulation	No measures.
	CPR	Considered to effectively apply and implement the Charter of Fundamental Rights.
	RRF	<p>We identified 18 milestones related to the rule of law, the last one to be achieved by Q2 2026.</p> <p>There was 1 “super-milestone” to be achieved before any payment, which the Commission has assessed as having been satisfactorily achieved.</p>

Country	Instrument	Measure
Poland	Conditionality Regulation	Article 6(4) request for information in November 2022.
	CPR	Non fulfilment of horizontal enabling conditions blocking future reimbursement of €74.1 billion for EU funds. The advance payment was not affected, €1.7 billion has been paid.
	RRF	<p>We identified 7 milestones related to the rule of law; these are to be achieved during programme implementation, the last one by Q2 2026.</p> <p>There were 3 “super-milestones” to be achieved before the first payment, including those identified by both the Commission and the ECA as relating to the rule of law.</p> <p>There is not yet any Commission assessment of these super-milestones.</p> <p>Total RRP amount: €25.3 billion in grants and €34.5 billion in loans including €5.1 billion advance payments for which the super-milestones do not apply.</p>
Romania	Conditionality Regulation	No measures.
	CPR	Considered to effectively apply and implement the Charter of Fundamental Rights.
	RRF	<p>We identified 16 milestones related to the rule of law, the last one to be achieved by Q2 2026.</p> <p>There were 2 “super-milestones” not exclusively related to the rule of law, which were to be achieved before any payment and the Commission has assessed them as having been satisfactorily achieved.</p>

Source: ECA analysis based on Commission data.

62 *Annex IV* gives an overview of the relevant provisions of the Common Provisions Regulation and the six member states in our sample.

Rule of law issues were addressed by milestones under the RRF Regulation, although not always consistently

63 For the RRF, the member states had to submit their draft RRFs, including their milestones and targets, to the Commission for assessment. The Commission had to assess⁴¹ whether RRFs addressed all or a significant subset of country-specific recommendations or other challenges identified within the European Semester process. In addition, the Commission's proposal for a Council Implementing Decision to approve each national RRF had to contain an explanation⁴² of how that RRF ensured the protection of the EU's financial interests.

64 When assessing the RRFs, the Commission checked whether they addressed all, or a significant subset, of country-specific recommendations. We found that most rule of law issues either had corresponding milestones that had to be achieved before any milestone-related payment could be made, also known as "super-milestones" (in the case of Hungary and Poland), or ordinary milestones which were to be achieved by Q2 2026 (Bulgaria, Greece, Italy and Romania). In addition to their super-milestones, Hungary and Poland also have ordinary rule-of-law-related milestones. The non-achieved rule-of-law-related milestones for Bulgaria, Greece, Italy, and Romania are not super-milestones, and therefore do not block all milestone-related payments, but they need to be achieved for full payment to be made.

65 Where the Commission's assessment of the design of management and control systems identified shortcomings, the Commission approved corrective milestones to address them. According to the Commission guidelines, milestones to address shortcomings in national control systems to effectively detect, prevent and correct fraud and corruption should be achieved before the first payment request. Such "super-milestones" were proposed for all six member states in our sample.

- o For Hungary, after the Commission's assessment, the RRF included 27 super-milestones, which prevent RRF payments until the corresponding risks identified have been resolved. Of these, 21 relate directly to the rule of law and concern the implementation of the 17 remedial measures agreed with Hungary under the Conditionality Regulation procedure⁴³.

⁴¹ Article 19(3)(b) RRF Regulation.

⁴² Article 20(5)(e) RRF Regulation.

⁴³ EPRS, [Rule of law-related "super milestones" in the recovery and resilience plans of Hungary and Poland](#), Table 4.

- o For Poland, there are two rule-of-law-related super-milestones related to judicial independence that prevent RRF payments until the milestones have been satisfactorily achieved.

66 For Bulgaria and Romania, however, some milestones relating to the prevention, detection and correction of fraud and corruption, and thus to the rule of law, are only ordinary milestones. Some of these rule-of-law-related milestones need to be achieved only towards the end of the RRF eligibility period. These include, for example, the new 2021 anti-corruption strategy in Romania, which is required to be implemented by the end of 2025 (see [Annex III](#)). As these are ordinary milestones, RRF funding for the prior achievement of other milestones and targets will be provided beforehand (see also paragraph [94](#)). Based on the Commission’s documentation, we cannot conclude on whether this difference of approach was justified.

67 Furthermore, establishing RRF (super or ordinary) milestones and targets related to the rule of law can only be a first step, though an indispensable one. The Commission will subsequently need to assess and monitor whether these milestones, once achieved, actually provide an effective and sustained remedy to the challenges identified. This process starts when a member state submits a payment request. See also paragraphs [93-95](#).

The Commission checks horizontal enabling conditions when programmes and programme amendments are approved

68 For the CPR, the Commission must check horizontal enabling conditions at the time a programme or a programme amendment is approved. The Commission must also continuously monitor the fulfilment of horizontal enabling conditions throughout the programming period and can only reimburse costs for as long as they remain fulfilled. However, in accordance with the CPR, the Commission does not recheck their fulfilment before each reimbursement. For the rule of law, the third horizontal enabling condition – requiring member states to put in place effective mechanisms to ensure compliance with the Charter of Fundamental Rights of the EU – is the most relevant one.

69 We analysed the criteria used by the Commission to check whether a member state complies with the rule-of-law-related aspects of the Charter of Fundamental Rights. We found that these criteria cover the proper functioning of judicial systems in the member states. However, the prevention, detection and correction of systemic conflicts of interest and fraud and corruption are not included in the Commission's verification for the Charter of Fundamental Rights. Instead, fraud-related aspects are checked under the first horizontal enabling condition, but only to the extent that they concern public procurement.

70 We also note that the Commission did not seek the input of the European Fundamental Rights Agency in establishing criteria for assessing the compliance of national management and control systems with the Charter. While this is not a legal obligation, we consider it a missed opportunity to make use of the expertise available at EU level on the topic.

71 Furthermore, as regards the Commission's examination of member states' self-assessments on compliance with the third horizontal enabling condition, we found shortcomings in the way the evidence received was documented. This carries the risk that assessments may have been carried out inconsistently.

72 We also note that the CPR does not oblige the Commission to carry out its own assessment when it agrees with the member state's self-assessment of non-compliance with horizontal enabling conditions. For example, the Partnership Agreement with Poland of 30 June 2022⁴⁴ and Poland's subsequent self-assessment concluded that the country was not compliant with the horizontal enabling condition on the Charter of Fundamental Rights. The Commission in its approval of the operational programmes⁴⁵ agreed but did not disclose its own reasons for doing so, simply referring to Poland's self-assessment. This may hamper the future monitoring of remedial measures that are still to be agreed between the Commission and Poland since its own reasoning is not transparently disclosed. The Commission has informed us that it intends to systematically publish all programme approval decisions under the CPR. This will be particularly important in cases where the Commission considers that one or more horizontal enabling conditions (such as the effective application and implementation of the Charter of Fundamental Rights) are not satisfied.

⁴⁴ See [Partnership Agreement with Poland](#) – 2021-2027, point 6.

⁴⁵ See for example Commission Implementing Decision of 18.11.2022 approving the 'European Funds for Digital Development 2021-2027' programme to support from the European Regional Development Fund under the Investment Objective for jobs and growth' in Poland (CCI 2021PL16RFPR002); reference 4 and Article 3.

The reasoning for not applying the Conditionality Regulation was insufficiently clear and not well documented

73 For the audited period, the Commission used different instruments to address the identified breaches of the principles of the rule of law. Against this backdrop, we noted that the Commission guidelines do not set out clear criteria on whether or not to apply the Conditionality Regulation. See paragraph [59](#).

74 In the only instance in which the Commission used the three instruments in combination (Hungary), their use was coordinated effectively and documented sufficiently. However, in other cases, the Commission did not comprehensively document why it chose not to use the Conditionality Regulation to protect the EU's financial interests. In Poland, for example, funds were not released, in one case because a horizontal enabling condition was not fulfilled and in others because super-milestones were not achieved, but the reasons for not applying the Conditionality Regulation were not documented.

The handling of the Hungarian case was in line with the Conditionality Regulation

75 For the one case so far where the Commission has fully applied the Conditionality Regulation, we examined whether it did so after having carried out an objective, impartial and fair assessment of the breaches of the principles of the rule of law and of their potential impact on the EU's financial interests, in line with the Conditionality Regulation⁴⁶. We also checked that the legal deadlines had been complied with. [Annex V](#) provides an overview of the application of the Conditionality Regulation for Hungary.

⁴⁶ Recital (16) of the Conditionality Regulation.

The Commission's assessment was in line with the requirements set out in the Conditionality Regulation

76 The Commission sent an Article 6(4) request for information to Hungary on 24 November 2021. On 16 February 2022, a judgment by the European Court of Justice confirmed the validity of the Conditionality Regulation, dismissing entirely Hungary's and Poland's actions for annulment⁴⁷. On 27 April 2022, the Commission sent an Article 6(1) notification to Hungary. This was the first time that the Commission had used the Article 6(1) procedure.

77 Our analysis showed that the identification of breaches of the principles of the rule of law by the Commission in the case of Hungary was based on a thorough qualitative assessment. It was also in line with the requirements set out in the Conditionality Regulation.

78 The Commission's assessment that led to its proposal of budgetary measures took into account the observations of the member state concerned, including the proposed remedial measures. The assessment followed all the criteria mentioned in the Conditionality Regulation⁴⁸.

79 Our analysis confirms that the Commission's assessment of whether a sufficiently direct link between these breaches and the EU's financial interests existed, and its subsequent proposal of budgetary measures for three Cohesion Policy programmes, were objective and based on relevant and reliable information, including past experience in the management of EU funds. Whether the Commission should have proposed more falls under its discretionary power. As mentioned in paragraph 25, we did not assess whether the proposed measures were sufficient to cover all risks to the EU's financial interests.

⁴⁷ Judgment of 16 February 2022, *Hungary v European Parliament and Council of the European Union*, [C-156/21](#), [EU:C:2022:97](#) and judgment of 16 February 2022, *Republic of Poland v European Parliament and Council of the European Union*, [C-157/21](#), [EU:C:2022:98](#).

⁴⁸ Recital (18) and Article 5(3) of the Conditionality Regulation.

The Council adopted its implementing decision suspending 55 % of EU funding for three cohesion programmes within the legal deadline

80 On 18 September 2022, after completing its assessment, the Commission submitted its proposal for an implementing decision to the Council. The Commission proposed the suspension of 65 % of the commitments for three cohesion policy programmes⁴⁹ and a prohibition on entering into legal commitments with public interest trusts and entities maintained by them.

81 On 15 December 2022, when adopting the measures, the Council decided to suspend 55 % (rather than 65 %) of the budgetary commitments for the three programmes considered to be particularly affected by breaches of the principles of the rule of law. This corresponded to approximately €6.4 billion – €1.2 billion less than initially proposed by the Commission.

82 Both the Commission’s proposal for a Council Implementing Decision and the Council’s amendment of the proposal and adoption of its final Decision took place by the legal deadlines set out in the Conditionality Regulation, between 5 and 9 months after the Article 6(1) notification was sent (see also [Annex II](#)).

83 At the same time, we note that the European Parliament expressed regret at “the lack of information made available to Parliament regarding the Commission’s assessment of the Hungarian authorities’ compliance with the milestones and conditions” and reminded the Commission of “its legal obligations set out in Article 25(2) of the RRF Regulation and Article 8 of the Rule of Law Conditionality Regulation”⁵⁰.

⁴⁹ Environmental and Energy Efficiency Operational Programme Plus; Integrated Transport Operational Programme Plus; Territorial and Settlement Development Operational Programme Plus.

⁵⁰ European Parliament, [resolution of 1 June 2023](#), point 14.

While the effectiveness of budgetary and remedial measures can only be assessed at a later stage, inherent risks remain

84 We examined whether the Commission had taken all necessary measures to be able to assess whether budgetary measures and the remedial measures to be taken by member states will protect the EU's financial interests effectively against identified breaches of the principles of the rule of law over time.

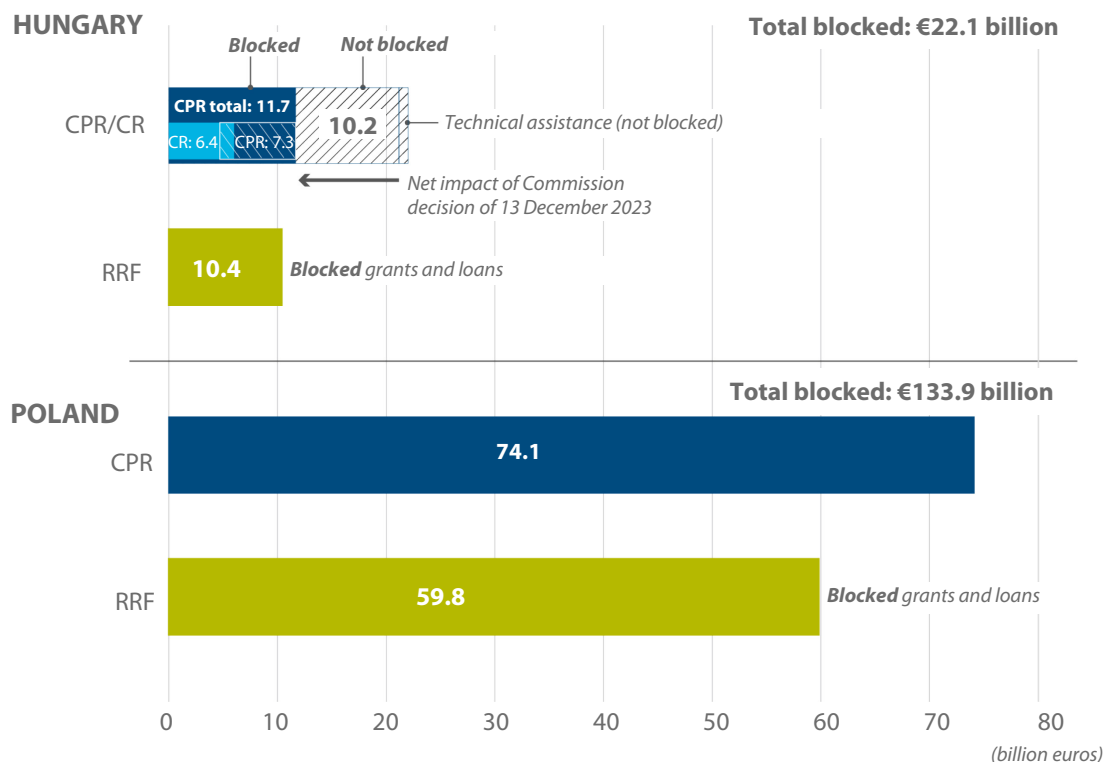
In the short term, budgetary consequences for not complying with the rule of law are limited

85 By the end of December 2023, two member states in our sample were affected by budgetary measures under two or three of the instruments covered by this audit: Hungary and Poland, with potential future impacts of approximately €22 billion and €134 billion, respectively. See [Figure 3](#).

86 For Hungary, the figure takes into account the Commission's decision of 13 December 2023 that Hungary had fulfilled the horizontal enabling condition on the Charter of Fundamental Rights with regard to judicial independence⁵¹. According to the Commission, following this decision, Hungary may start claiming reimbursements of up to around €10.2 billion (including technical assistance not affected by the enabling conditions, representing less than €0.5 billion before mid-December). As our audit fieldwork ended before that date, this decision was taken into account but not audited.

⁵¹ See [European Commission press release of 13 December 2023](#): the Commission considers that Hungary's judicial reform addressed deficiencies in judicial independence, but maintains measures on budget conditionality.

Figure 3 – Future reimbursements and commitments blocked with current measures under the Conditionality Regulation, CPR and RRF Regulation

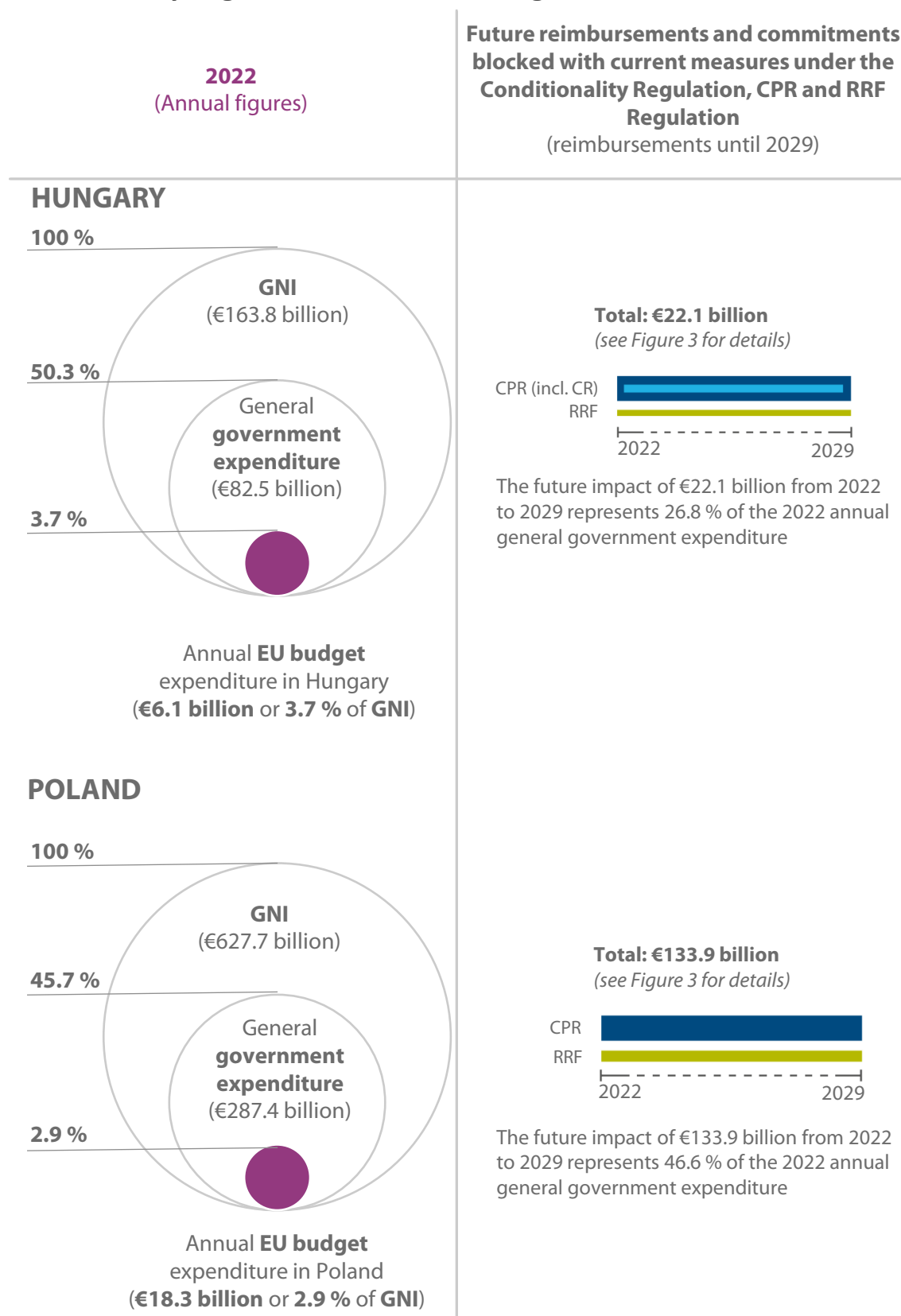


Note: For Hungary, from the €6.4 billion suspended under the Conditionality Regulation, around €2.0 billion is blocked in parallel for reimbursement under the enabling conditions of the CPR. Hence, only €4.4 billion would be unblocked if the remedial measures of Hungary defined under the Conditionality Regulation would be fulfilled, but CPR enabling conditions not.

Source: ECA analysis based on Commission data (as of December 2023).

87 The above amounts represent the impact on future payments and commitments of the current measures assuming they remain in place until the end of the decade, based on the RRFs and cohesion policy programmes adopted up to the end of December 2023. These future impacts until the end of the decade correspond to around 27 % of 2022 annual general government expenditure in Hungary and around 47 % in Poland. [Figure 4](#) illustrates these future amounts in proportion to the two member states' respective gross national incomes (GNI), general government expenditures and EU budget expenditures.

Figure 4 – Relative magnitude of current measures under the Conditionality Regulation, CPR and RRF Regulation



Source: ECA analysis based on Commission (as of December 2023) and Eurostat (as of October 2023) data. Annual EU budget comprises the EU expenditure made in the member states concerned from the MFF programs in 2022.

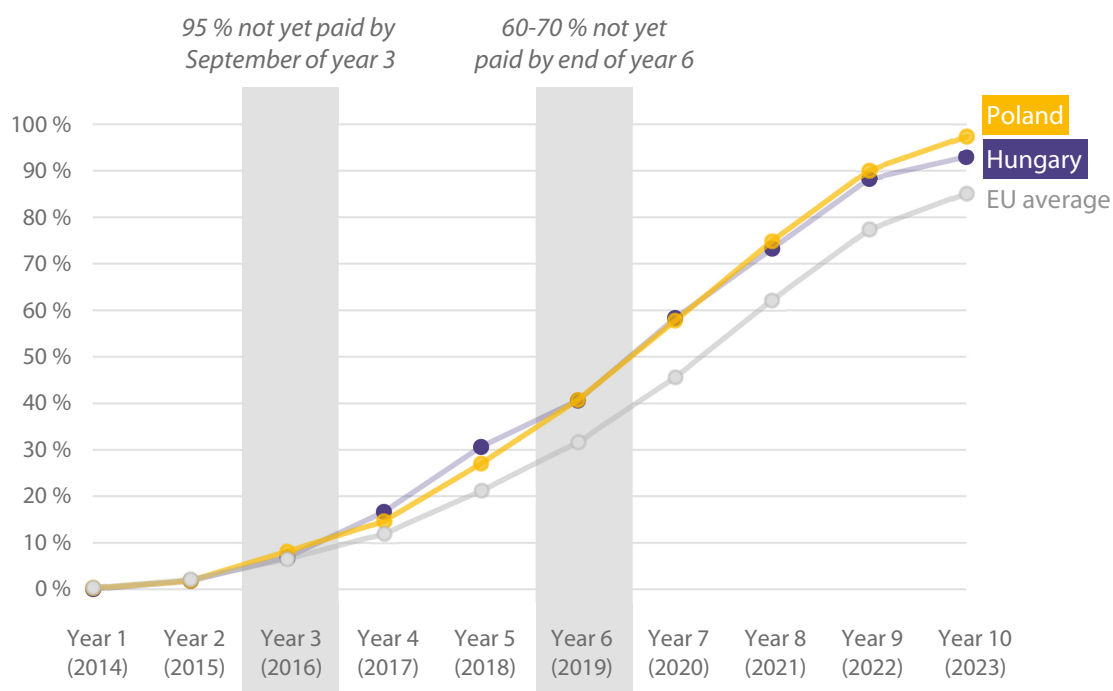
88 In the short term, the direct budgetary consequences for Hungary and Poland are, however, much more limited than these figures may suggest:

- Firstly, the budgetary measures do not affect advance payments. For their 2021-2027 CPR programmes, Hungary and Poland received advance payments amounting to €0.5 billion and €1.7 billion, respectively. Moreover, under the latest RRF programmes adopted in 2023, Hungary is eligible for an advance payment of €0.9 billion and Poland for an advance payment of €5.1 billion. Part of these advance payments might have to be recovered.
- Secondly, most of these amounts only concern future payments, i.e. payments that, even under normal circumstances without budgetary measures, would not yet have taken place. By mid-December 2023, Poland had not yet submitted any requests for RRF payments or for reimbursement of cohesion expenditure. Hungary has made payment requests under the CPR for a total of €0.3 billion. It is not possible to determine directly whether additional payment requests would have been submitted in the absence of budgetary measures. Furthermore, even if unblocked, most future payments would not take place in the near future: they would be made up to the end of the decade (for the MFF) or 2026 (for the RRF).

89 Regarding the MFF, member states have traditionally been slow to make payment requests during the first few years of a given MFF period and a significant share of cohesion payments have taken place towards the end of the eligibility period. As far as the CPR is concerned:

- As illustrated by [Figure 5](#), by the equivalent stage in the 2014-2020 MFF period (September 2016), Hungary and Poland had received approximately 5 % of their respective total allocations, in line with the EU average. By the end of the sixth year of the period, Hungary and Poland had each received approximately 40 % of their respective allocations, while the EU average was 30 %.
- So far, the payment rate for the 2021-2027 MFF is even lower. For the three main cohesion funds (Cohesion Fund, European Regional Development Fund, European Social Fund Plus), the average payment rate for the 27 EU member states as of the end of September 2023 was 2.6 % of their respective total 2021-2027 allocations.

Figure 5 – Payment rate for 2014-2020 (CF, ERDF, ESF)



Source: ECA analysis based on Commission data.

90 Regarding the RRF, based on their initial indicative planning, Hungary and Poland were entitled to receive €0.8 billion and €8.8 billion respectively by the end of the second quarter of 2023. However, this is an optimistic scenario that assumes these member states will achieve all their respective milestones and targets on time. In practice, by the end of June 2023, only five member states had received more than 25 % of their RRF allocation and seven other member states had not yet received any payments at all, despite not being subject to any rule of law “super-milestones”.

Risks to the EU's financial interests cannot be eliminated even when the Conditionality Regulation is applied

91 As regards the protective measures under the Conditionality Regulation taken against Hungary, the extent to which the budgetary measures proposed by the Commission and the remedial actions offered by Hungary will actually be effective in a sustainable manner can only be assessed at a later stage:

- Firstly, the coverage of the Council decision is only partial, focusing on three cohesion programmes (accounting for 55 % of commitments) most at risk of breaches of the principles of the rule of law in relation to public procurement. However, this risk may in principle affect all public tenders under all programmes. As a consequence, these measures cannot eliminate the risk that the remaining 45 % of the three programmes or any other EU funds (such as other cohesion programmes or the Common Agricultural Policy) may be affected by similar problems.
- Secondly, the risk remains of the application of the Conditionality Regulation resulting in a box-ticking exercise rather than in real change in the situation on the ground. In particular, a member state's formal compliance with the measures agreed with the Council and the Commission to remedy rule-of-law-related weaknesses may not result in an effective and sustained improvement. As an example, the creation of an Integrity Authority (see [Annex V](#)) does not, in itself, automatically ensure an effective fight against corruption in the member state concerned. That can only be achieved by the effective and sustained functioning of such a body over time. Furthermore, there is the risk of a member state reversing the remedial measures it has implemented once budgetary measures are lifted – a risk also identified by the European Parliament⁵². This implies that the measures agreed and implemented must be monitored over the long term to prevent them from being undermined or reversed at a later stage.
- Finally, there is a risk of future decisions being made to unblock a member state's EU funds, based on the implementation of remedial measures defined a year or more previously, even though other aspects of the rule of law may have since deteriorated in that country, posing further risks to the EU's financial interests. The Commission will need to monitor the effective and sustained implementation of the agreed measures.

⁵² See [EP Resolution of 1 June 2023](#), point 19.

92 These risks are all the more important as unblocking funds may be easier than blocking (or re-blocking) them. Such decisions must be grounded in technical and legal analysis, but they also ultimately take account of broader considerations. In this respect, we note that decisions to lift budgetary measures, which require a qualified majority, may be discussed at the same time as other decisions requiring unanimity. These include key decisions on, for example, the Commission's proposal for a review of the EU budget to make sure it remains fit for purpose until 2027, or its proposal to establish the Ukraine Facility.

Specific risks remain under the RRF Regulation and the CPR in relation to the conditions for payments

93 The achievement of rule-of-law-related RRF milestones and the fulfilment of the horizontal enabling conditions under the CPR were still ongoing at the time of our audit. Our audit scope did not include assessing the effectiveness of these milestones and conditions.

94 Nevertheless, we consider that some risks remain, under the RRF Regulation and the CPR, in relation to the conditions for payments and possible retroactive payments:

- As RRF measures could be eligible for EU funding from 1 February 2020, which includes the period for which such risks were not yet addressed, the Commission has to take additional care when checking the extent to which the achievement of rule-of-law-related milestones (including super-milestones) ensures that RRF disbursements for the satisfactory achievement of milestones and targets were not affected by the breaches of the rule of law at the time.
- As regards the cohesion policy funds under the CPR, expenditure is also eligible retroactively, including for periods during which member states did not yet comply with the horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights. This means that expenditure incurred during such periods would become eligible for reimbursement once the horizontal enabling condition is considered fulfilled. Therefore, in the case of Hungary and Poland, the Commission will have to continue to ensure that any expenditure declared retroactively was not affected by non-compliance with the Charter at the time it was incurred.

95 Finally, as in the case of the Conditionality Regulation, we note that formal compliance with any of these requirements in itself does not necessarily result in the effective and sustained mitigation of risks to the EU's financial interests on the ground. For example, the achievement of the milestone on the entry into force of a judicial reform (Poland)⁵³ does not in itself guarantee that the reform's intended impact will be achieved. Such impacts can only be assessed at a later stage, including through ex-post audit work and future evaluations.

The Commission had not yet started its evaluation of the Conditionality Regulation, which is due in January 2024

96 In January 2024, the Commission must⁵⁴ report to the European Parliament and the Council on the application of the Conditionality Regulation; the overall effectiveness of the procedure set out in the Regulation; the effectiveness of measures adopted; and the complementarity of the Conditionality Regulation with other instruments. By the end of our audit fieldwork, the Commission had not developed guidance on how these four elements are to be assessed and had not yet started the preparatory work for this evaluation.

97 This is a one-off report. Therefore, after 2024, the Commission will have no specific obligations to report to the Council and the European Parliament on measures taken to address breaches of the principles of the rule of law in member states under the Conditionality Regulation or based on fund-specific provisions.

⁵³ Case T-531/22.

⁵⁴ Article 9 and recital (28) of the Conditionality Regulation.

Conclusions and recommendations

98 The Conditionality Regulation, together with the relevant provisions of the Recovery and Resilience Facility (RRF) Regulation and the Common Provisions Regulation (CPR), provides the Commission with a useful additional set of tools to protect the EU's financial interests and to ensure the sound financial management of EU funds. However, some of its design aspects carry risks to its effective application. For example, restricting a member state's access to EU funds may temporarily hamper the achievement of EU policy objectives. However, this would be a short-term consequence of a process intended to enhance the rule of law. Ultimately, it is the responsibility of the member states to avoid such drawbacks by complying with the rule of law and with their legal obligations. Finally, not all major EU spending programmes have equivalent protective tools to those set out under the RRF or the CPR; for example, the Common Agricultural Policy. See paragraphs [26-33](#).

99 For the single case in which the Commission has proposed measures under the Conditionality Regulation since it entered into force in January 2021 (Hungary), we concluded that it had done so on the basis of a fair assessment, in compliance with the Regulation, and in complementarity with other protective tools under the Recovery and Resilience Facility and cohesion policy. However, we also identified a number of areas where the Commission should further improve its work to ensure the consistent application of the rule of law framework and the full protection of the EU's financial interests.

100 From early 2021, the Commission took measures to operationalise the Conditionality Regulation. As of the end of our audit fieldwork, this process was still ongoing. The implementation guidelines issued so far are a useful step towards an objective, impartial and fair application of the Regulation in all 27 member states. However, they fall short of clarifying some key questions, such as what constitutes a sufficiently direct link between breaches of the principles of the rule of law and the EU's financial interests, how to apply the Conditionality Regulation to protect the full collection of EU own resources, and how to assess the effectiveness of budgetary and remedial measures. Furthermore, the Commission has not yet put in place a functioning IT case-management system, which is necessary for consistent and transparent handling of breaches of the principles of the rule of law. Finally, while the Commission has mobilised the necessary staff for the cases brought forward so far, it did not ensure yet the human resources needed to apply the Regulation consistently and effectively to all member states. See paragraphs [34-43](#).

101 Our audit showed that the Commission follows a “staged” approach to identifying breaches of the principles of the rule of law and assessing their possible impact on the EU’s financial interests. The Commission had put in place procedures to identify possible breaches of the principles of the rule of law. However, its assessment of their potential impact and the need for further action was not documented systematically. We obtained no evidence that the Commission applied systematic risk analysis against predefined criteria to support its decisions. Therefore, we consider that the Commission cannot transparently demonstrate that the EU’s financial interests are adequately protected across all member states. See paragraphs [44-57](#).

102 The only instance where the Commission had used all three instruments in combination was in respect of Hungary, and we concluded that their use was well coordinated. For Bulgaria and Romania, the Cooperation and Verification Mechanism was discontinued in September 2023. However, unresolved reforms covered by the Cooperation and Verification Mechanism had to be resumed under the new instruments. Under the RRF, the documentation available is not sufficient to justify whether the choice between super-milestones (which block all RRF payments until they are achieved) and ordinary milestones (whose achievement triggers specific payments) was appropriate. For member states other than Hungary, we could not verify the Commission’s underlying reasons for not using the Conditionality Regulation to protect the EU’s financial interests. See paragraphs [59-74](#).

103 By the end of December 2023, the Commission had proposed measures under the Conditionality Regulation for only one member state: Hungary. Our analysis showed that this proposal was in line with the Conditionality Regulation, based on a fair assessment and sufficiently documented. Whether the Commission should have proposed more budgetary measures falls under its discretionary power. Ultimately, the Council suspended EU funding worth a total of €6.4 billion, which was €1.2 billion less than initially proposed by the Commission. See paragraphs [75-83](#).

104 Overall, two member states in our sample had been affected by budgetary measures under the RRF and the CPR: Hungary and Poland, with a potential impact of approximately €22 billion and €134 billion, respectively. For Hungary, the figure takes into account the decision of 13 December 2023 to unblock approximately €10 billion because the Commission considered Hungary had fulfilled the horizontal enabling condition on the Charter of Fundamental Rights with regard to judicial independence. As our audit fieldwork ended before that date, this decision was taken into account but not audited. However, these amounts mostly concerned payments which may only become due in the future, meaning that the short-term budgetary consequences were much more limited.

105 Although the effectiveness of the budgetary and remedial measures over time can only be assessed at a later stage, we identified a number of risks that could significantly undermine their effectiveness. In particular, we note that a member state's formal compliance with the remedial measures may not necessarily result in effective and sustained improvements on the ground that go beyond a mere box-ticking exercise. There are also the risks of remedial measures later being reversed or of simultaneous deterioration in other aspects of the rule of law. These risks are all the more important as a decision to unblock funds may be easier to take than the one to block them. Such decisions must be grounded in technical analysis, but they also ultimately take account of broader considerations. Finally, we note that the Commission's obligations to report on the effectiveness of the Conditionality Regulation are limited. See paragraphs [84-97](#).

106 Against this backdrop, we make the following recommendations.

Recommendation 1 – Ensure the necessary administrative capacity for implementing the Conditionality Regulation

The Commission should:

- (a) assess the human resources necessary to consistently and effectively apply the Conditionality Regulation across all member states;
- (b) finish developing its IT case-management system to manage and document the workflow for the decisions and actions taken; and
- (c) review and consolidate its guidelines, based on its experiences in implementing the Regulation, and clarify the issues identified during our audit: what constitutes a sufficiently direct link between breaches of the principles of the rule of law and the EU's financial interest; how to apply the Conditionality Regulation to protect EU own resources; and how to assess the effectiveness of budgetary and remedial measures.

Target implementation date for (a) and (b): 2024.

Target implementation date for (c): as soon as possible, and by 2027 at the latest (in view of the preparations for the new multi-annual financial framework).

Recommendation 2 – Systematically identify, assess and document, for all member states, how rule of law issues have been addressed under the Conditionality Regulation

In order to transparently demonstrate that the EU's financial interests are adequately protected across all member states, the Commission should, systematically and for all member states, and on the basis of clear criteria, assess and document whether or not identified issues constitute breaches of the principles of the rule of law, as well as the potential impact on the EU's financial interests.

Target implementation date: 2024.

Recommendation 3 – Monitor the impact of rule-of-law-related measures

The Commission should monitor rule-of-law-related measures taken under the Conditionality Regulation, the RRF and the CPR (such as protection of the EU's financial interests, improvements in the rule of law, impact on EU policy objectives and beneficiaries) to ensure that these have been implemented effectively and sustainably.

For expenditure preceding the achievement of Recovery and Resilience Facility milestones or the introduction of mitigating measures to meet horizontal enabling conditions under the CPR, the Commission should obtain reasonable assurance that such expenditure (under cohesion policy) or the satisfactory achievement of milestones or targets (under the RRF) was not affected by breaches of the rule of law at the time it was incurred.

Target implementation date: annually, until the end of the eligibility period.

Recommendation 4 – Base any proposal to lift budgetary measures on solid evidence

Considering the issues identified in relation to the closures of the Cooperation and Verification Mechanism and the specific risks we identified to the effectiveness of the remedial measures, the Commission should base any proposal to lift budgetary measures (Conditionality Regulation, horizontal enabling conditions under the CPR or super-milestones under the RRF) on solid, comprehensive and up-to-date information. This decision should be well documented.

Target implementation date: until the end of the eligibility period.

Recommendation 5 – Report annually on the effectiveness of measures taken in response to breaches of the principles of the rule of law

Following its first report in January 2024, the Commission should report annually on the application of the different tools available to address risks to the EU's financial interests and the effectiveness of the measures taken against breaches of the principles of the rule of law in member states. This reporting could be linked to, but should not be part of, the annual Rule of Law Report.

Target implementation date: annually from 2025.

Recommendation 6 – Improve the rule of law framework to strengthen the protection of the EU's financial interests when preparing future legislative proposals

The Commission should further assess potential gaps undermining the effectiveness of the rule of law framework. This assessment should take account of the risks identified in this report (such as the potential impact of suspensions on the achievement of specific EU policy objectives, and horizontal enabling condition on the Charter of Fundamental Rights under the CPR not covering other relevant parts of the budget) and of experience gained in the coming years. When preparing the post-2027 regulatory framework, the Commission should propose additional protective measures based on any issues identified by that point.

Target implementation date: by 2027 at the latest (in view of the preparations for the new multi-annual financial framework).

This report was adopted by Chamber II, headed by Mrs Annemie Turtelboom, Member of the Court of Auditors, in Luxembourg at its meeting of 10 January 2024.

For the Court of Auditors

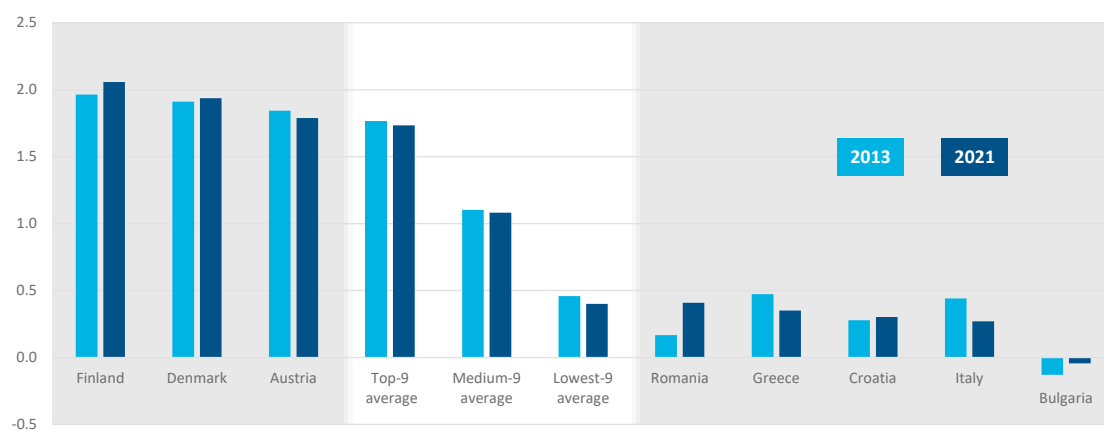
Tony Murphy
President

Annexes

Annex I – Examples of tools used to monitor the state of the rule of law by the World Bank and the World Justice Project

The World Bank's Rule of Law Index, similarly to the Control of Corruption Index, is part of the World Bank's Worldwide Governance Indicators that measure various dimensions of governance performance. This index includes several indicators, which measure the extent to which agents have confidence in and abide by the rules of society. These include perceptions of the incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts.

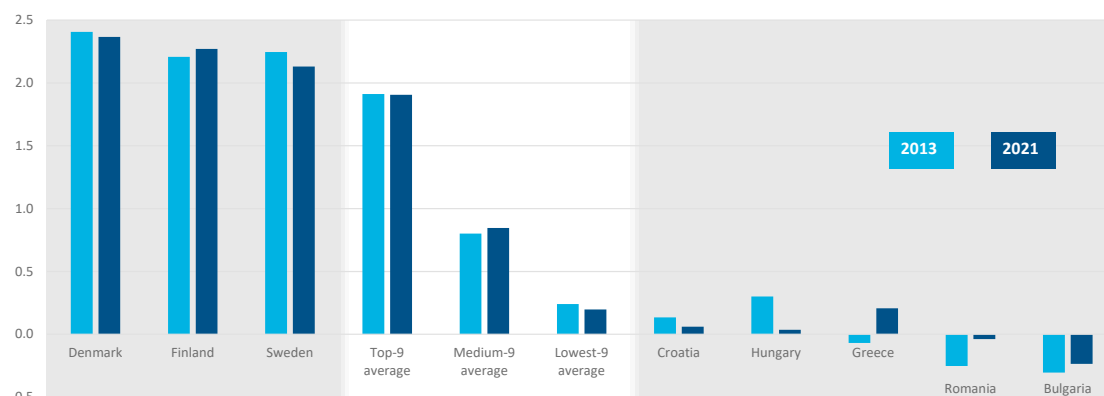
World Bank – WGI Rule of Law Index (min. – 2.5; max. + 2.5)



Source: World Bank; <https://info.worldbank.org/governance/wgi/>

Another measure is the World Bank's Control of Corruption Index, where it captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as capture of the state by elites and private interests.

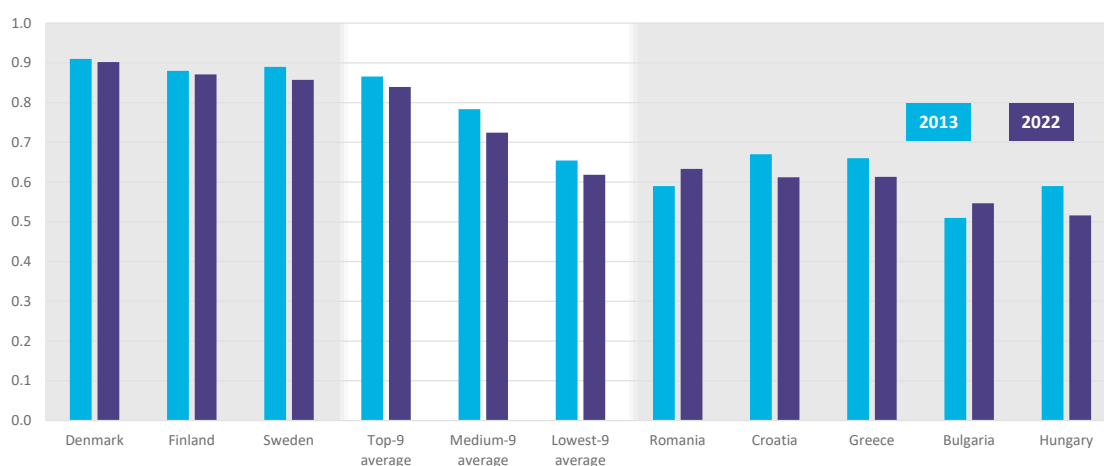
World Bank – WGI Corruption Index 2013–2021 (min. – 2.5; max. + 2.5)



Source: World Bank; <https://info.worldbank.org/governance/wgi/>

The **World Justice Project’s Rule of Law Index** measures the rule of law based on the experiences and perceptions of the general public and in-country legal practitioners and experts worldwide. A country’s performance is measured using 44 indicators, covering a broad range of areas such as civil and criminal justice, fundamental rights, governmental power constraints, regulatory enforcement, or the absence of corruption.

WJP – Rule of Law Index 2013–2022 (min. 0.0; max. 1.0)



Source: World Justice Project; <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021/current-historical-data>

Annex II – Key steps in applying the Conditionality Regulation

Steps / deadlines		
Articles 3 and 4	(1) Commission identifies breaches of the principles of the rule of law.	
	(2) Commission assesses whether identified breaches of the principles of the rule of law affect or seriously risk affecting the sound financial management of the EU budget or the EU's financial interests in a sufficiently direct way.	
Articles 5 and 6	(3) Commission sends written notification to member state.	
	(4) Member state replies to notification, including possible remedial measures.	1-3 months
	(5) Commission analyses member state's reply.	1 month
	(6) If applicable, Commission assesses the proportionality of budgetary measures in line with Article 5 and 6.	
	(7) If applicable, Commission informs member state of conclusions and intended budgetary measures.	
	(8) Member state replies to the Commission's analysis and intended budgetary measures.	1 month
	(9) If necessary, Commission proposes protective measures to Council.	1 month
	(10) Council adopts/modifies Commission's proposal.	1-3 months
Article 7	(11) Member state informs the Commission that the conditions for applying the Conditionality Regulation are no longer fulfilled and requests lifting of budgetary measures.	
	(12) Commission carries out assessment and, if appropriate, proposes lifting or adapting budgetary measures, at the latest one year after their adoption.	
	(13) Council adopts decision to lift measures.	

Source: ECA.

Annex III – Cooperation and Verification Mechanism benchmarks and related milestones in the RRP of Bulgaria and Romania

The first column of the table below sets out the Cooperation and Verification Mechanism benchmarks for Bulgaria, as adopted in Commission Decision [2006/929/EC](#). The second column contains an indicative list of milestones and targets under the RRP for Bulgaria that we consider relevant for the six Cooperation and Verification Mechanism benchmarks.

Bulgaria

	Cooperation and Verification Mechanism benchmarks	Relevant RRP milestones and targets
1	Adopt Constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system.	C10.R2-219: Anti-corruption – Improving the role of the Inspectorate within the Supreme Judicial Council in preventing and counteracting corruption in the judiciary (Q4 2022).
2	Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase.	On monitoring – Publication of four annual analyses of the application of e-Justice rules in the Civil Procedure Code and the Criminal Procedure Code and 3.3.6. - 3.3.7. Monitoring and Reporting Structure (MRS).
3	Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually.	C10.R2-219: Anti-corruption – Improving the role of the Inspectorate within the Supreme Judicial Council in preventing and counteracting corruption in the judiciary (Q4 2022).

	Cooperation and Verification Mechanism benchmarks	Relevant RRP milestones and targets
4	Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials.	<p>C10.R2-218: Anti-corruption – Entry into force of the legislative amendments reforming the Anti-corruption and the Illegal Assets Forfeiture Commission (related milestones: 220; 221) (Q3 2022).</p> <p>C10.R2-221: Anti-corruption – Entry into force of the electronic platform and supporting legislative amendments to strengthen anti-corruption bodies and units (Q2 2023).</p> <p>C10.R2-222: Anti-corruption – Entry into force of the legislative amendments to safeguard the effectiveness of criminal proceedings and improve the accountability and criminal liability of the Prosecutor General (Q2 2023).</p> <p>C10.R2-223: Anti-corruption – Entry into force of legislative measures regulating lobbying activities (Q4 2023).</p>
5	Take further measures to prevent and fight corruption, in particular at the borders and within local government.	226 – Annual analyses on the implementation of the National Strategy for Preventing and Combatting Corruption.
6	Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas.	<p>218 – Anti-corruption – Entry into force of the legislative amendments reforming the Anti-corruption and the Illegal Assets Forfeiture Commission (related milestones: 220; 221).</p> <p>238 – Action plan to mitigate the money laundering and terrorist financing risks identified in the national risk assessment (deadline Q3 2021).</p>

The first column of the table below sets out the Cooperation and Verification Mechanism benchmarks for Romania, as adopted in Commission Decision [2006/928/EC](#). The second column contains an indicative list of milestones and targets under the RRP for Romania that we consider relevant for the four Cooperation and Verification Mechanism benchmarks.

Romania

	Cooperation and Verification Mechanism benchmarks	Relevant RRP milestones and targets
1	Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.	C14.R5-423: Entry into force of the “Justice laws” (laws on the status of magistrates, judicial organisation, Superior Council of Magistracy) (Q2 2023). C14.R5-424: Amendment of the Criminal Code and Criminal Procedure Code (Q4 2022).
2	Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.	RO-C[C14]-R[R7.0]-M[431]. Evaluation and update of legislation on the integrity framework – Entry into force of the consolidated laws on integrity.
3	Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.	C14.R6-426: Entry into force of the government decision approving new National Anti-Corruption Strategy (Q4 2021). C14.R6-428: Completion of at least 70 % of the measures foreseen in the new anti-corruption strategy (Q4 2025). C14.R6-430: Entry into force of the law on whistle-blowers’ protection (Q1 2022).

	Cooperation and Verification Mechanism benchmarks	Relevant RRP milestones and targets
4	Take further measures to prevent and fight against corruption, in particular within the local government.	<p>M 426: Entry into force of the government decision approving new National Anti-Corruption Strategy (Q4 2021).</p> <p>Target (T) 428: Completion of at least 70 % of the measures foreseen in the new anti-corruption strategy (Q4 2025).</p> <p>M 430: Entry into force of the law on whistle-blowers' protection (Q1 2022).</p> <p>Target 429: Occupation rate of 85 % of National Anti-Corruption Directorate prosecutor positions attained (Q2 2023).</p> <p>Target 446: Developing the logistical (non-IT) infrastructure needed to fight corruption and recover the proceeds and damage from crime, including training in these areas – Warehouses for the storage of seized property made operational (Q3 2025).</p>

Annex IV – Common Provisions Regulation for eight EU funds

CPR overview

Aspect	Description								
Financial scope	<p>Total budget of the eight funds for 2021-2027 at 2022 prices: €405.1 billion:</p> <ul style="list-style-type: none"> European Regional Development Fund (ERDF), except INTERREG programmes: €226 billion; the European Social Fund Plus (ESF+): €98.5 billion; the Cohesion Fund: €48 billion; the Just Transition Fund (JTF): €8.4 billion; the European Maritime, Fisheries and Aquaculture Fund (EMFAF): €6.11 billion; the Asylum, Migration and Integration Fund (AMIF): €9.88 billion; the Internal Security Fund (ISF): €1.93 billion; Instrument for Financial Support for Border Management and Visa Policy (BMVI): €6.25 billion. 								
Actors	<table> <tr> <td>EU member state</td><td>While preparing operational programme, performs self-assessment of compliance with the horizontal enabling condition on the Charter of Fundamental Rights in relation to the implementation of that programme.</td></tr> <tr> <td>Commission</td><td>Assesses member state's self-assessment and approves programme.</td></tr> <tr> <td>EU member state</td><td>Implements the programme and requests reimbursement of expenditure, which is paid if the enabling conditions are fulfilled.</td></tr> <tr> <td>Commission</td><td>Assesses payment request and whether enabling conditions are fulfilled.</td></tr> </table>	EU member state	While preparing operational programme, performs self-assessment of compliance with the horizontal enabling condition on the Charter of Fundamental Rights in relation to the implementation of that programme.	Commission	Assesses member state's self-assessment and approves programme.	EU member state	Implements the programme and requests reimbursement of expenditure, which is paid if the enabling conditions are fulfilled.	Commission	Assesses payment request and whether enabling conditions are fulfilled.
EU member state	While preparing operational programme, performs self-assessment of compliance with the horizontal enabling condition on the Charter of Fundamental Rights in relation to the implementation of that programme.								
Commission	Assesses member state's self-assessment and approves programme.								
EU member state	Implements the programme and requests reimbursement of expenditure, which is paid if the enabling conditions are fulfilled.								
Commission	Assesses payment request and whether enabling conditions are fulfilled.								
Conditions for applying measures	Lack of effective mechanisms to ensure compliance with the horizontal enabling condition on the Charter of Fundamental Rights of the European Union in the implementation of the Fund.								
Measures	No reimbursement of expenditure except for technical assistance and expenditure contributing to the fulfilment of the enabling condition.								

Aspect	Description							
Timing of measures	Throughout programme implementation.							
Application of measures as of mid-December 2023 for the six countries in our sample	Bulgaria	Not applicable.						
	Greece	Not applicable.						
	Hungary	CPR programmes adopted; however, as some horizontal and thematic enabling conditions are considered not being fulfilled, a total amount of €11.7 billion (as estimated by the Commission) is blocked for reimbursement under the CPR and the Conditionality Regulation (see <i>Figure 3</i>).						
	Hungary	In billion euros						
	ERDF	6.56	ESF+	3.55	CF	1.40	JTF	0.14
	EMFAF	0	AMIF	0.03	BMVI	0	ISF	0
	Total	11.68						
	Italy	Not applicable.						
	Poland	CPR programmes adopted; however, the decisions state that the third horizontal enabling condition is not fulfilled. As a result, reimbursement of expenditure under the CPR funds is blocked for a total amount of €74.1 billion (as estimated by the Commission).						
	Poland	In billion euros						
ERDF	45.80	ESF+	12.40	CF	11.30	JTF	3.70	
EMFAF	0.48	AMIF	0.24	BMVI	0.16	ISF	0.07	
Total	74.15							
	Romania	Not applicable.						
Lifting of measures	The measures will be lifted once the Commission concludes that the member state concerned is compliant with horizontal enabling condition 3.							

Annex V – Overview of the application of the Conditionality Regulation for Hungary

The Conditionality Regulation

Description
<p>Application of measures as of mid-December 2023</p> <p>Two budgetary measures (Article 5) proposed by the Commission and imposed on Hungary by the Council.</p> <p>(1) Suspension of 55 % of the budgetary commitments under the following operational programmes in Cohesion Policy, once approved:</p> <ul style="list-style-type: none"> (a) Environmental and Energy Efficiency Operational Programme Plus 55 % of €3.666 billion = €2.016 billion of EU funding suspended. (b) Integrated Transport Operational Programme Plus 55 % of €3.546 billion = €1.950 billion of EU funding suspended. (c) Territorial and Settlement Development Operational Programme Plus 55 % of €4.354 billion = €2.395 billion of EU funding suspended. <p>Total EU funds suspended across the three programmes: €6.361 billion (including around €2.0 billion blocked for reimbursements under the CPR provisions. See Figure 3).</p> <p>(2) Prohibition on entering into legal commitments with any public-interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public-interest trust, where the Commission implements the EU budget under direct or indirect management pursuant to Article 62(1), points (a) and (c), of Regulation (EU, Euratom) 2018/1046.</p> <p>As the prohibition does not target a source of funding but a type of entity that may be funded through any source, it is not possible to estimate its financial impact.</p>
<p>Lifting of measures</p> <p>Article 5 budgetary measures: no deadline for the lifting of budgetary measures; the Commission will reassess the situation in Hungary either on its own initiative or at Hungary's request, at the latest one year after the adoption of measures by the Council.</p> <p>For Hungary, the budgetary measures were adopted by the Council on 15 December 2022, so the Commission has to complete the reassessment by 15 December 2023.</p>

Description

The following 17 remedial measures (Article 6(9)) were proposed by Hungary:

- (1) Strengthening the prevention, detection and correction of illegalities and irregularities concerning the implementation of EU funds through a newly established Integrity Authority;
- (2) Setting up an Anti-Corruption Task Force;
- (3) Strengthening the anti-corruption framework;
- (4) Ensuring transparency in the use of EU support by public-interest asset management foundations;
- (5) Introducing a specific procedure for special crimes relating to the exercise of public authority or the management of public property;
- (6) Strengthening audit and control mechanisms to guarantee the sound use of EU support;
- (7) Reducing the share of tender procedures with single bids financed from EU funds;
- (8) Reducing the share of tender procedures with single bids financed from the national budget;
- (9) Developing a single-bid reporting tool to monitor and report on public procurement procedures closed with single bids;
- (10) Developing an Electronic Public Procurement System to increase transparency;
- (11) Developing a performance measurement framework assessing the efficiency and cost-effectiveness of public procurement;
- (12) Adopting an action plan to increase the level of competition in public procurement;
- (13) Providing training for micro, small and medium-sized enterprises on public procurement practices;
- (14) Setting up a support scheme to compensate micro, small and medium-sized enterprises for the costs associated with participating in public procurement;
- (15) Using ARACHNE, the Commission's risk scoring tool;
- (16) Strengthening cooperation with OLAF;
- (17) Adopting a legislative act to enhance transparency in public spending.

Abbreviations

CPR: Common Provisions Regulation

RRF: Recovery and Resilience Facility

RRP: Recovery and resilience plan

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

Glossary

Cohesion policy: The EU policy which aims to reduce economic and social disparities between regions and member states by promoting job creation, business competitiveness, economic growth, sustainable development, and cross-border and interregional cooperation.

Cohesion policy funds: The four EU funds supporting economic, social and territorial cohesion across the EU in the 2021-2027 period: the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the Just Transition Fund.

Common Provisions Regulation: Regulation setting out the rules that apply to eight EU funds, including the four cohesion policy funds. The current Regulation covers the 2021-2027 period.

Conditionality Regulation: Regulation setting out rules to protect the EU budget from breaches of the principles of the rule of law in member states.

Control-milestone: Specific requirement, relating to a member state's audit and control systems, which must be met before the country can receive any RRF funding (Article 22 RRF Regulation). Also known as "**super-milestone**".

Corruption: In the context of this report, intentional conduct by a public official that harms the EU's financial interests.

EU Rule of Law toolbox: Set of tools to promote and uphold the rule of law in the EU and its member states.

European Semester: Annual cycle which provides a framework for coordinating the economic policies of EU member states and monitoring progress.

Financial Regulation: The rules governing how the EU budget is set and used, and the associated processes such as internal control, reporting, audit and discharge.

Fraud: Intentional and unlawful use of deception to gain material advantage by depriving another party of property or money.

Horizontal enabling conditions: Four prerequisites for funding applicable across all the EU funds covered by the Common Provisions Regulation.

Infringement procedure: A procedure whereby the Commission takes action against an EU member state that fails to meet its obligations under EU law.

Milestone: Qualitative achievement on the way to completing a reform or investment, as a prerequisite for a specific RRF payment.

NextGenerationEU: Funding package to help EU member states recover from the economic and social impact of the COVID-19 pandemic.

Own resources: The funds used to finance the EU budget, the vast majority coming from member state contributions.

Programme: The means by which specific EU policy objectives are delivered, generally through co-financed projects.

Public procurement: The purchase by a public body or other authority of works, supplies or services, through an open and competitive procedure, in order to achieve quality and value for money.

Recovery and Resilience Facility: The EU's financial support mechanism to mitigate the economic and social impact of the COVID-19 pandemic and stimulate recovery, while promoting green and digital transformation.

Recovery and resilience plans: Document setting out member state's intended reforms and investments under the Recovery and Resilience Facility.

Super-milestone: Specific requirement, relating to a member state's audit and control systems, which must be met before the country can receive any RRF funding (Article 22 RRF Regulation). Also known as "**control-milestone**".

Target: Quantitative measure of a member state's progress towards completing a specific reform or an investment in its recovery and resilience plan.

Replies of the Commission

<https://www.eca.europa.eu/en/publications/sr-2024-03>

Timeline

<https://www.eca.europa.eu/en/publications/sr-2024-03>

Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber II Investment for cohesion, growth and inclusion spending areas, headed by ECA Member Annemie Turtelboom. The audit was led by ECA Member Annemie Turtelboom, supported by Eric Braucourt, Head of Private Office and Celil Ishik, Private Office Attaché; Friedemann Zippel, Principal Manager; Dieter Böckem, Head of Task; Aleksandar Latinov, deputy Head of Task; Jussi Bright, Marton Baranyi and Plamen Petrov, Auditors; Rebecca Tronci, Heidi Rand, and Abel Ferrero Tazza, trainees.



From left to right: Rebecca Tronci, Jussi Bright, Aleksandar Latinov, Marton Baranyi, Dieter Böckem, Annemie Turtelboom, Eric Braucourt, Friedemann Zippel, Celil Ishik, Heidi Rand.

COPYRIGHT

© European Union, 2024

The reuse policy of the European Court of Auditors (ECA) is set out in [ECA Decision No 6-2019](#) on the open data policy and the reuse of documents.

Unless otherwise indicated (e.g. in individual copyright notices), ECA content owned by the EU is licensed under the [Creative Commons Attribution 4.0 International \(CC BY 4.0\) licence](#). As a general rule, therefore, reuse is authorised provided appropriate credit is given and any changes are indicated. Those reusing ECA content must not distort the original meaning or message. The ECA shall not be liable for any consequences of reuse.

Additional permission must be obtained if specific content depicts identifiable private individuals, e.g. in pictures of ECA staff, or includes third-party works.

Where such permission is obtained, it shall cancel and replace the above-mentioned general permission and shall clearly state any restrictions on use.

To use or reproduce content that is not owned by the EU, it may be necessary to seek permission directly from the copyright holders.

Software or documents covered by industrial property rights, such as patents, trademarks, registered designs, logos and names, are excluded from the ECA’s reuse policy.

The European Union’s family of institutional websites, within the europa.eu domain, provides links to third-party sites. Since the ECA has no control over these, you are encouraged to review their privacy and copyright policies.

Use of the ECA logo

The ECA logo must not be used without the ECA’s prior consent.

HTML	ISBN 978-92-849-1565-1	ISSN 1977-5679	doi:10.2865/091534	QJ-AB-24-002-EN-Q
PDF	ISBN 978-92-849-1575-0	ISSN 1977-5679	doi:10.2865/00087	QJ-AB-24-002-EN-N

The rule of law is one of the EU's fundamental common values. The situation has deteriorated in some member states over the last decade. The EU adopted a new instrument in December 2020 to protect its financial interests against breaches of the principles of the rule of law in EU countries: the Conditionality Regulation.

We assessed whether the Commission's application of the Conditionality Regulation was appropriate and consistent with other mechanisms available under the Recovery and Resilience Facility and the Common Provisions Regulation 2021-2027 for cohesion policy. We examined the Commission's internal arrangements for implementing the Regulation, and the actions it took to protect the EU's financial interests under the three instruments.

We concluded that, together with specific provisions of the Recovery and Resilience Facility and the Common Provisions Regulation for cohesion policy, the Conditionality Regulation marks an improvement in order to protect the EU's financial interests against breaches of the principles of rule of law, and the measures taken for one country so far were in line with the Regulation. However, we also identified certain aspects of the Regulation which are difficult to apply and identified a number of risks that could significantly undermine the effectiveness of measures taken. Our recommendations are aimed at addressing these matters to strengthen the effectiveness of the framework.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



EUROPEAN
COURT
OF AUDITORS



Publications Office
of the European Union

EUROPEAN COURT OF AUDITORS
12, rue Alcide De Gasperi
1615 Luxembourg
LUXEMBOURG

Tel. +352 4398-1

Enquiries: eca.europa.eu/en/contact

Website: eca.europa.eu

Twitter: @EUAuditors