Audit preview
Information on an upcoming audit

The rule of law and the Commission’s action to protect the EU’s financial interests in the cohesion policy and the RRF

January 2023
The rule of law is one of the EU’s fundamental values. Violations of the rule of law can have significant financial implications within the EU.

The European Court of Auditors has started working on an audit to assess the Commission’s actions in protecting the EU’s financial interests and the sound financial management of the EU budget against rule of law breaches. The audit will focus on the measures provided by the Conditionality Regulation and by the Regulations in force for the 2021-2027 cohesion policy funds and for the Recovery and Resilience Facility.

If you wish to contact the audit team, send an e-mail to the following address: ECA-Audit_Previews@eca.europa.eu
Contents

The rule of law as a fundamental EU value 4
Tools to protect the EU budget against rule of law breaches 4
Roles and responsibilities at EU level 6
Audit focus 6
The rule of law as a fundamental EU value

The European Union is founded on a set of fundamental values and principles, as laid down in Article 2 of the Treaty on European Union (TEU) and also explicitly stipulated in the Preamble of the Charter of Fundamental Rights of the European Union. The rule of law is one of these principles and Box 1 provides a definition of the concept.

Box 1

The rule of law

According to the Conditionality Regulation\(^1\), the rule of law requires the respect of the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers, and non-discrimination, and equality before the law.

Tools to protect the EU budget against rule of law breaches

Rule of law breaches can have significant implications for the EU’s financial interests. These include consequences for the sound financial management of EU expenditure.

The EU has developed a variety of interrelated tools to enforce the rule of law in Member States. We have split those tools into four broad categories, distinguishing between monitoring, judicial, financial and other tools (see Figure 1).

The main focus of the audit work will be on the Commission’s implementation of the Conditionality Regulation, the draft version of which we provided an opinion\(^2\) on in 2018. In addition to the Conditionality Regulation, our audit will cover the protective measures put in place by the Regulations in force for the cohesion policy funds (ERDF and ESF) and for the Resilience and Recovery Facility (RRF), as these are important instruments for protecting the EU’s financial interests against breaches of the rule of law.
In 2020, to strengthen the general framework of the Financial Regulation, the EU adopted the Conditionality Regulation, a new mechanism aimed at protecting the sound financial management of the EU budget as a whole. Under certain conditions, the Regulation requires Member States’ access to EU funding to be suspended, reduced or restricted in case of serious breaches of the rule of law. In September 2022, the Commission proposed for the first time measures under the Conditionality Regulation for Hungary. The Council finally approved on 15 December 2022 these measures, which include the suspension of 55% of the budgetary commitments for three operational programmes in Cohesion Policy.

In addition, under the Common Provisions Regulation, which applies to the cohesion funds, respect for the principles set out in the Charter of Fundamental Rights of the EU – including the rule of law – is an explicit condition for the disbursement of funding to Member States.

As regards the RRF, the Commission has to ensure that all, or at least a significant subset, of the country-specific recommendations and other challenges identified within the European Semester are taken into account in Member States’ National Recovery and Resilience Plans (NRRPs). This includes those related to the rule of law.
Roles and responsibilities at EU level

The Commission is the key actor in protecting the rule of law in the EU. As the guardian of the EU treaties, it has the mandate to monitor the uniform application of EU law across the EU. The Commission is also responsible for identifying and addressing possible breaches of the rule of law by a Member State. Under the Conditionality Regulation, the Commission has to demonstrate to the Council the causal link between such breaches and the existence of risks to the sound financial management of the Union budget or the protection of the EU’s financial interests, and to propose measures to address them. The Commission also has to ensure that the Financial Regulation and the Common Provisions Regulation are applied properly, and it assesses and monitors all NRRPs.

The Council also plays an important role in protecting the EU’s financial interests against breaches of the rule of law. Under the Conditionality Regulation, the Council approves protective measures proposed by the Commission. It also approves all NRRPs, including milestones, targets and actions that address rule-of-law specific issues.

While the European Parliament does not have any final decision-making power in connection with the EU’s tools for protecting the rule of law, it can address the protection of the EU’s financial interests against rule of law breaches, and in particular the Commission’s management of such issues, in the annual discharge procedure.

Audit focus

In view of the key risks identified during the ECA’s preparatory work, our audit will seek to determine whether the Commission has been effective in protecting the EU’s financial interests against rule of law breaches. The audit will focus on the actions taken by the Commission under the Conditionality Regulation, the 2021-2027 cohesion policy funds and the RRF. To answer this:

- we will analyse the internal framework the Commission has set up to put the Conditionality Regulation effectively into operation;

- we will analyse the actions taken by the Commission for six Member States: Bulgaria, Greece, Italy, Hungary, Poland and Romania;
we will consult other actors such as the European Parliament, the Council, as well as external stakeholders, to obtain their views on the actions taken by the Commission.
ABOUT ECA SPECIAL REPORTS AND AUDIT PREVIEWS

The ECA’s special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy or programme being audited.

If you wish to contact the team in charge of this audit, please e-mail: ECA-Audit_Previews@eca.europa.eu


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.

Cover page: Adobe Stock / 264157778

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.