



REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF AUDITORS' SPECIAL REPORT

The rule of law in the EU:

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

Contents

I. THE COMMISSION REPLIES IN BRIEF	2
II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA	3
1. Purposes, scopes and objectives of the instruments audited by the ECA.....	3
2. Application of the Conditionality Regulation in case of Hungary	5
3. Combination of different instruments	6
III. COMMISSION REPLIES TO THE CONCLUSIONS AND RECOMMENDATIONS OF THE ECA.....	8
Recommendation 1 – Ensure the necessary administrative capacity for implementing the Conditionality Regulation	8
Recommendation 2 – Systematically identify, assess and document for all member states, how rule of law issues have been addressed under the Conditionality Regulation	9
Recommendation 3 – Monitor the impact of rule-of-law-related measures.....	9
Recommendation 4 – Base any proposal to lift budgetary measures on solid evidence	11
Recommendation 5 – Report annually on the effectiveness of measures taken in response to breaches of the principles of the rule of law.....	12
Recommendation 6 – Improve the rule of law framework to strengthen the protection of the EU's financial interests when preparing future legislative proposals.....	13

This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the [Financial Regulation](#) and to be published together with the Special Report.

I. THE COMMISSION REPLIES IN BRIEF

The Commission welcomes this European Court of Auditors' (ECA) special report.

The **Conditionality Regulation**¹ is a budgetary instrument designed to react with effective protective measures in the event of breaches of the principles of the rule of law in a Member State that affect or seriously risk affecting the EU budget or the EU's financial interests. In the first three years of the application of the Conditionality Regulation, the Commission has been proactively and continuously monitoring the situation in all Member States, to identify at the earliest possible stage such breaches. This monitoring of the situation is constant and ongoing. Since the very entry into force of the Conditionality Regulation in January 2021, the Commission has intensified the synergies between its services to cross both country and sector specific knowledge and identify possible matters that would be relevant for the application of the Conditionality Regulation. In particular, services responsible for the preparation of the Rule of Law Report and for the application of the **Recovery and Resilience Facility ('RRF')** and of the **Common Provisions Regulation² ('CPR')** have exchanged information acquired under the respective activities on a regular basis. So far, one procedure has been opened under the Conditionality Regulation, regarding **Hungary**. In this procedure, the Council adopted protective measures on the basis of a Commission's proposal. The Commission considers this first case of application shows that the procedure under the Conditionality Regulation is an effective instrument that can lead to significant reforms aimed at ensuring an adequate protection of the EU's financial interests, while addressing the underlying rule of law issues.

Firstly, the Commission would like to recall the **different purposes, scopes and objectives of the three main instruments** as they appear in this ECA report: the Conditionality Regulation, the RRF and the CPR. In its report, the ECA considers that the RRF Regulation and the CPR include tools that can be used to protect the EU's financial interests against certain breaches of the principles of the rule of law, or of fundamental rights which are part of the rule of law, although in different ways³. The Commission agrees that the RRF and CPR are not specific rule of law instruments and can only indirectly serve to address certain rule of law issues within the boundaries of the respective regulations. In this respect, the Commission notes that rule of law deficiencies affecting the RRF control system are already addressed through dedicated control milestones ("super milestones"). The new concept of "milestones related to the rule-of-law" introduced in the report is not set out in those terms in the RRF Regulation. The same is true of the Conditionality Regulation, which contains budgetary rules, although it specifically addresses the impact and risks that breaches of the principles of the rule of law may pose to the EU budget.

Secondly, the Commission welcomes the ECA's assessment that the **identification by the Commission of breaches of principles of the rule of law** in the case of Hungary was based on a thorough qualitative assessment and that it was in line with the requirements set out in the Conditionality Regulation⁴.

Thirdly, the Commission welcomes the ECA's assessment that **the Commission has used the RRF, CPR and Conditionality Regulation effectively in combination** in the one case where the Conditionality Regulation has been applied so far (Hungary)⁵. The Conditionality Regulation requires an assessment of the most effective instrument, which is to be done in case all the other conditions for the application of the Conditionality Regulation are considered to be fulfilled. When this happened (i.e., in the case of Hungary) this assessment was well documented in all the acts of the procedure.

¹ Regulation (EU, Euratom) 2020/2092.

² Regulation (EU) 2021/1060.

³ See ECA observation 12.

⁴ See ECA observation 77.

⁵ See ECA observation 74.

II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA

1. Purposes, scopes and objectives of the instruments audited by the ECA

The Conditionality Regulation is an instrument protecting the EU budget and the EU's financial interests in case of breaches of the principles of the rule of law. Following a comprehensive approach, the ECA audit also included the RRF and the CPR in its assessment. While the RRF and the CPR are not dedicated rule of law instruments, but have different objectives, both can contribute to addressing certain rule of law issues in the Member States, within the limitations of their legal setup. Similarly, the **Conditionality Regulation** is not a rule of law instrument as such but remains a budgetary instrument, although it is specifically designed to tackle breaches of principles of the rule of law insofar as they have an impact or create risks for the EU budget. Its purpose is therefore fundamentally different from that of the procedure under with Article 7 TEU. Likewise, the annual Rule of Law Report and the procedure under the Conditionality Regulation are two different instruments. Hence, the Commission stresses the need to distinguish between these instruments. This is particularly an issue when referring to Member States which were affected by budgetary measures. The Commission points out that said "measures", as taken under the RRF, CPR and Conditionality Regulation, were not all taken solely to protect the EU's financial interests from breaches of the principles of the rule of law.

The Commission recalls that the **Recovery and Resilience Facility** is the EU's main instrument to address the social and economic shocks of the Covid-19 pandemic using a performance-based funding approach. The RRF is not a specific rule of law instrument and the RRF Regulation does not require a specific assessment of 'rule of law' matters. Generally, rule of law matters are treated under the RRF Regulation in the same way as other country specific recommendations (CSRs). Each Recovery and Resilience Plan (RRP) is expected to contribute to effectively addressing all or a significant subset of challenges identified in the relevant CSRs, some of which relate to the rule of law. In the very specific case where rule of law deficiencies would directly impact the national RRP control systems intended to protect the EU's financial interests, the Commission can propose specific 'control milestones' (also called 'super milestones'). However, the Commission cannot unilaterally propose new rule of law-related (or any other) requirements on Member States if there is no link with the RRF internal control system.

The new concept of 'milestones related to the rule-of-law' introduced in this ECA report has no legal base which would allow for such milestones to block all RRF payments when they are considered as not satisfactorily fulfilled. As for all other milestones and targets, milestones and targets addressing challenges identified in the area of rule of law contain requirements which must be satisfactorily fulfilled for the full payment of the financial contribution allocated to the Member State to be made. In terms of documentation, the Council Implementing Decision approving each RRP indicates which milestones are related to the control systems, and thus allow blocking all subsequent payments under the RRF if these milestones are not satisfactorily fulfilled by the Member State concerned, as this concerns a very specific case. However, the Commission considers that there is no need to document or justify for each of the other milestones and targets why this is not the case (paragraph 66 and 101) and notes that for those milestones and targets the RRF Regulation's rules allowing for payment suspensions and – in case of reversals – also recoveries, fully apply.

Similarly, when assessing RRP payment requests, the Commission is obliged to verify the conditions set by the Council and cannot propose new or additional requirements on its own. The Commission

will therefore assess those requirements carefully in the framework of payment requests. For the purposes of the RRF, the Commission has put in place procedures and systems for the effective correction of cases of fraud, corruption, and conflict of interest in those cases where the Member States have not applied the correction themselves or a serious breach of an obligation resulting from the Financing Agreement without recourse to this new concept.

As regards the **Common Provisions Regulation**, and, in particular, the horizontal enabling condition on the Charter of Fundamental Rights, the purpose of this instrument is to prevent the situation in which programmes and operations supported by the CPR funds or their implementation do not comply with the Charter. The scope of the enabling condition is therefore also distinct from the scope of the Conditionality Regulation. The Charter covers rights that go beyond the scope of the principles of the rule of law. Moreover, not all the dimensions of the principles of rule of law (in particular as defined in the Conditionality Regulation) are covered by the fundamental rights of the Charter. The scope of the Charter determines the scope of the Commission's assessment of the fulfilment of the related horizontal enabling condition⁶.

The CPR sets out the criteria for fulfilment of enabling conditions, including the Charter, as well as the procedures to be followed for determining whether an enabling condition is fulfilled. The CPR requires Member States to ensure that enabling conditions remain fulfilled throughout the whole programming period. The Commission continuously monitors this fulfilment throughout the programming period and has procedures in place for doing so, ensuring that all decisions on the fulfilment of enabling conditions are coherent, consistent, and based on solid evidence. In this regard, it must be noted that the second subparagraph of Article 15(4) of the CPR determines that the Commission shall only motivate its decision in case it disagrees with the Member State on the fulfilment of the enabling condition. The CPR sets out specific procedures, which determine the conditions for non-reimbursement of expenditure. As regards enabling conditions, the Commission shall not reimburse the related expenditure when an enabling condition is not considered fulfilled following the procedures set out in Article 15 of the CPR. When an enabling condition is fulfilled, the Commission is required to reimburse expenditure, unless one of the conditions set out in Articles 96 or 97 of the CPR (interruption or suspension of payments) applies or programme commitments are suspended as part of the measures adopted under the Conditionality Regulation. In the Commission's view, in addition to not being legally required, rechecking the fulfilment of the criteria before each reimbursement, would neither be proportionate nor feasible in terms of resources. In case there is a serious risk that the expenditure claimed by the Member States is not legal or regular, the CPR provides that the Commission may suspend the payment to the Member State. In addition, the Commission shall apply financial corrections in case expenditure included in the accounts is irregular (Article 104 of the CPR).

As regards the **Cooperation and Verification Mechanism (CVM)**, the Commission stresses that this mechanism, closed since September 2023, was neither a budgetary instrument, nor an instrument to protect the EU's financial interests. The CVM aimed at accompanying Romania and Bulgaria in the fulfilment of specific benchmarks set at their accession to the EU. However, it was never part of the rule of law framework or the rule of law cycle. The closing of this instrument was consistent with its legal framework and procedural requirements. The Commission also recalls that there was no link between the CVM and the Conditionality Regulation. The Commission does not share the ECA's observation that there were "unresolved" reforms covered by the CVM that had to be resumed under the new instruments⁷. Reforms in Romania and Bulgaria continued, and the new instruments were all already in force by the time of the ending of the CVM. For both countries, in its screening under the Conditionality Regulation, the Commission has not identified breaches of the principles of the rule of law that would affect or seriously risk affecting the budget in a sufficiently

⁶ See ECA observation 69.

⁷ See ECA observation VI (third indent) and 102.

direct way. The Commission however continues its monitoring under the Conditionality Regulation and the annual rule of law report, as for all Member States.

2. Application of the Conditionality Regulation in case of Hungary

The Commission welcomes the ECA's assessment 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 and that it was in line with the requirements set out in the Conditionality Regulation⁸.

However, the Commission does not consider that the effectiveness of the budgetary measures proposed by the Commission and the effectiveness of the remedial measures offered by Hungary may only be assessed at a later stage⁹. In the Commission's view, the budgetary measures as proposed by the Commission and adopted by the Council are already effective: in a proportionate way, they protect the EU budget and the EU's financial interests until the situation that led to their adoption is remedied. As regards the effectiveness of the remedial measures that Hungary has committed to, the Commission recalls that Hungary proposed remedial measures in the course of the procedure last year and implemented (partially or in full) many of them. Some positive steps have already been taken in Hungary, following the submission of 17 remedial measures last year. For example: (i) there is now an active Integrity Authority in Hungary, with (inter alia) powers to intervene in public procurement procedures to minimise risks of irregularities, (ii) there are now avenues of challenging a prosecutor's decision not to pursue a case, (iii) OLAF now has reinforced cooperation structures in Hungary. Notwithstanding these positive steps, the Council, upon proposal of the Commission, adopted protective measures because it was considered that a risk due to the identified breaches of the rule of law still remains. In this respect, pursuant to Article 7 of the Conditionality Regulation, once Hungary submits to the Commission a written notification including evidence to show that the conditions of Article 4 of the Conditionality Regulation are no longer fulfilled, or at the latest one year after the adoption of the budgetary measures by the Council, the Commission must reassess the situation in Hungary. In this reassessment, the Commission must take into account any evidence submitted by Hungary, as well as the adequacy of any new remedial measures adopted by Hungary. For the remedial measures to be considered adequate, they will also have to be effective. In line with the Conditionality Regulation, on 13 December 2023, within one year of the adoption of the Council measures, and in absence of any written notification from the Member State concerned, the Commission reassessed the situation in Hungary. In its reassessment, the Commission decided not to propose the Council to adapt or lift the budgetary measures, as Hungary has not adopted any new remedial measures and the risk for the EU budget remains the same as assessed in the Council Implementing Decision of 15 December 2022.

As regards the question of the effectiveness of the suspension of 55% commitments in three cohesion programmes in the case of Hungary¹⁰, the Conditionality Regulation prescribes that the principle of proportionality should apply when determining the measures to be adopted¹¹. As such, in light of the circumstances of the case and taking into account the positive steps taken by Hungary already at the time of the Council Implementing Decision, the Commission had decided that it would have been disproportionate to propose measures accounting for 100% of commitments. The Council took the final decision on 15 December 2022 and agreed with this approach proposed by the Commission. Since the principle of proportionality must be respected, the Commission identified the programmes most at risk from breaches of the principles of the rule of law in relation to public procurement, and the percentage of the risk for these three programmes.

⁸ See ECA observation 77.

⁹ See ECA observation 91.

¹⁰ See ECA observation 91.

¹¹ See Recital 18 of Conditionality Regulation, OJ L 433I , 22.12.2020, p. 1–10.

Moreover, as regards the risk identified by the ECA that the Conditionality Regulation may result in a box-ticking exercise rather than real change in the situation on the ground¹², the ECA gives the example of the creation of the Integrity Authority in Hungary, which, ‘does not, in itself, automatically ensure an effective fight against corruption’ in Hungary. The Commission recalls that the very purpose of the Integrity Authority is to reinforce the prevention, detection and correction of fraud, conflicts of interest and corruption, as well as other illegalities and irregularities in the implementation of any EU financial support. The Commission proposal for a Council Implementing Decision presents in detail the powers of the Authority. In addition, the creation of the Integrity Authority must also be considered within the context of other remedial measures, such as the creation of an anti-corruption task force and on commitments to strengthening the anti-corruption framework. Clearly, reform implementation in any policy area or national context is based on different institutional and legal steps and may often include the set-up of relevant governance bodies. Depending on the nature of the remedial measures proposed by the Member State concerned, the Commission will monitor the concrete application of those remedial measures and their desired and expected effects on the ground. Should all the conditions of the Conditionality Regulation remain fulfilled, the Commission would not propose the Council to lift the protective measures. Hence, the Commission cannot agree with this notion of a risk of “box-ticking exercise”.

Finally, as regards the risk of the remedial measures being reversed once the budgetary measures are lifted¹³, such risk is not specific to the Conditionality Regulation. The Commission recalls it can open a new case under the Conditionality Regulation in such situations.

3. Combination of different instruments

The Commission welcomes the ECA’s assessment that the Commission has used the RRF, CPR and Conditionality Regulation effectively in combination in the case of Hungary. However, as regards the ECA observations that the Commission did not comprehensively document why it chose not to use the Conditionality Regulation¹⁴, the Commission recalls that no such documentation is required by the Regulation. Documenting all negative assessments for all Member States would not be cost-efficient and would entail an unnecessary and disproportionate administrative burden. It is only in the event when the Commission considers that the conditions for the application of the Conditionality Regulation are fulfilled that it must document, if applicable, why the Conditionality Regulation is the most effective instrument to protect the EU’s financial interests. When this happened (in the case of Hungary), such assessment was well documented in all the acts of the procedure (i.e., the written notification, the letter addressed to Hungary with the intention to propose measures, the Commission proposal for a Council Implementing Decision) and was based on a clear reasoning. In the case of Hungary, the three instruments were applied in the same timeframe. However, this was due to specific time-related reasons (entry into force of the instruments, submission of the Hungarian RRP, timing of the procedure under the Conditionality Regulation, adoption of the Common Provisions Regulation partnership agreements and programmes). Hence, it cannot be expected that this precise situation arises again in the future.

The Commission welcomes the ECA’s assessment that the Commission has made use of its prerogatives under the RRF Regulation and under the CPR to address challenges to the rule of law and shortcomings in national management and control systems for these EU funds¹⁵. As demonstrated by the ECA report, the RRF can help address national challenges beyond what other instruments can achieve. The RRF Regulation does not provide for the Commission to unilaterally propose rule of law milestones, without a link with the internal control system, and thus the Commission does not carry out a specific mapping or analysis to this effect. The ECA notes that

¹² See ECA observation 91.

¹³ See ECA observation 91.

¹⁴ See ECA observation 74.

¹⁵ See ECA observation 60.

nonetheless most rule of law issues had corresponding milestones in the RRFs. The Commission considers this a confirmation that the RRF is an effective tool to encourage reforms in the Member States. Nevertheless, the Commission notes that the RRF Regulation does not provide for different types of milestones and targets depending on their subject-matter, except for ‘control milestones’ (also called “super milestones”) to ensure compliance with Article 22 of the RRF regulation, concerning the protection of the EU’s financial interests.¹⁶ Such ‘control milestones’ require specific improvements to the national control system to combat fraud, corruption, conflicts of interest and double funding. Control/super milestones are explicitly identified with a brief explanation in the Council Implementing Decision and preclude all RRF payments until they are satisfactorily fulfilled. Thus, once included in Council Implementing Decisions, they must be satisfactorily fulfilled prior to the first payment request or prior to the subsequent payment request (in case of amendments of the Council Implementing Decision). In contrast, no such clear identification of ‘rule of law milestones’ exists, nor would such an identification allow the Commission to block all payments. The fact that some control milestones are related to the rule of law does not mean that any milestone or target linked to challenges related to the rule of law can or should be considered as a control milestone.

Concerning the risk the ECA identifies as regards expenditure incurred by the Member States before rule of law issues have been addressed¹⁷, the Commission and Member States carry out audit work with the purpose of obtaining assurance on the protection of the EU’s financial interests. The Commission notes that there is no general concept of disbursements or expenditure “affected by breaches of the rule of law”, which would go beyond that of the Conditionality Regulation (“breaches of the principles of the rule of law in a Member State 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”). Such a concept would imply that any breach of the rule of law would automatically pose a risk to the EU’s financial interests, which is not the case. When making its assessment, the Commission needs to demonstrate such risk.

¹⁶ Specifically, Article 20(5)(e) of the RRF Regulation provides for the Commission to lay down as part of its proposal for a Council Implementing Decision on a specific RRF also “measures necessary for complying with Article 22”. Article 22 concerns the protection of the EU’s financial interests in the context of RRF implementation.

¹⁷ See in particular ECA observation 94.

III. COMMISSION REPLIES TO THE CONCLUSIONS AND RECOMMENDATIONS OF THE ECA

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;**

Target implementation date: 2024

The Commission accepts this sub-recommendation. Nonetheless, it should be noted that the Commission operates within very tight margins of the stable staffing principle and its administrative budget in Heading 7, which is already under very significant pressure; this affects the human resources that can be allocated to all Commission activities, including the Conditionality Regulation. Additionally, it should be noted that while the resources dedicated specifically to the application of the Conditionality Regulation are not extensive, the Commission makes full use of the synergies between different Commission services in the application of the Conditionality Regulation, i.e., by taking advantage of the monitoring performed and stakeholder visits taking place as part of other work streams (such as the preparation of the annual Rule of Law report, or by building on Commission's audits).

- (b) finish developing its IT case-management system to manage and document the workflow for the decisions and actions taken; and**

Target implementation date: 2024

The Commission accepts this sub-recommendation and notes that all of the features of the IT tool (CASE@EC) are scheduled to be fully functional in due time within the target implementation date. In fact, CASE@EC is operational already now, with only two elements regarding the interface and internal reporting being currently developed and tested.

- (c) review and consolidate its guidelines, based on its experience 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: as soon as possible, and by 2027 at the latest (in view of the preparations for the new MFF).

The Commission accepts this sub-recommendation. The current guidelines are the first ones on the application of the Conditionality Regulation, and that they were developed in the absence of case practice. As such, these guidelines only show a certain picture in time, which is why they already include a "review clause". Hence, the Commission accepts to review the guidelines, along with the internal guidance notes, once the Commission considers the case practice to be sufficient and the need for revision to be there.

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 principle of the rule of law, as well as their potential impact on the EU's financial interests.

Target implementation date: 2024.

The Commission partially accepts this recommendation.

It accepts to assess whether identified issues qualify as breaches of the principles of the rule of law under the Conditionality Regulation and, in such a case, whether they have a potential impact on the EU's financial interests.

As regard the documentation, the Commission cannot fully accept the recommendation, and underlines the following:

1. Where certain issues would (i) qualify as breaches of the principles of the rule of law and (ii) affect or seriously risk affecting the EU budget, the Commission will further document the reasons for its assessment in a succinct manner in its IT case management tool. Moreover, the Commission is ready to document further the reasons why it chose not to use the Conditionality Regulation in cases where it considers that there is a breach of the principles of the rule of law and a related sufficiently direct link with the EU's financial interests but that other instruments under EU legislation are more effective than the Conditionality Regulation to protect the EU's financial interests.
2. On the other hand, the Commission has no reasons to document further where the conditions under point 1 to apply the Conditionality Regulation are not met. Documenting all negative assessments for all Member States would not be cost-efficient and would entail an unnecessary and disproportionate administrative burden. This would also neither be in line with the risk-based approach principle nor with the intention of the co-legislators.
3. In cases where issues would (i) qualify as breaches of the principles of the rule of law (ii) affect or seriously risk affecting the EU budget, and (iii) provided that no other procedures under EU legislation would allow the Commission to protect the EU budget more effectively, the Commission would apply the Conditionality Regulation by sending a written notification to the Member State concerned, and it will document its assessment as part of the "intention letter" and of proposal of measures to the Council, as well as in the Council Implementing Decision adopting measures.

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 Recovery and Resilience Facility and the Common

Provisions Regulation (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 RRF 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.

The Commission partially accepts this recommendation.

Under the Conditionality Regulation, the Commission would like to clarify that it does monitor the impact of budgetary protective measures, such as protection of the EU's financial interests, effective improvement of the rule of law, impact on beneficiaries. In fact, this monitoring is done through the assessment of (i) whether the EU budget is being effectively protected, (ii) if measures can be adapted or lifted and (iii) if the Member State concerned, in spite of the budgetary protective measures, is implementing the programme or fund affected by the measure, and in particular is respecting its obligations towards final recipients or beneficiaries. In particular, the Commission monitors the impact of the adopted remedial measures on the rule of law situation in the Member State concerned in the context of the procedure to lift the protective measures under the Conditionality Regulation, by evaluating whether the Member State concerned has taken up effective remedial measures to address the issues. If that is the case, the Commission proposes the Council to adapt or lift the measures. Concerning the impact on EU policy objectives, the Conditionality Regulation is in place to protect the proper achievement of the EU policy objectives, by making sure that the EU budget and EU's financial interests are protected, and the funding can go where it is supposed to. Finally, regarding the impact of budgetary protective measures on beneficiaries, the Commission would like to stress the obligations the Member States have to correctly implement EU programmes and also towards final recipients and beneficiaries under the Conditionality Regulation. These obligations are not hypothetical, as the Member States are obliged to implement the programmes effectively and protect (and pay) the final recipients or beneficiaries once an obligation has been established (e.g., award was granted, or public procurement won).

With regard to the CPR, the Commission accepts the first part of this recommendation insofar as this is relevant, since the CPR does not establish specific provisions with regard to the principles of the rule of law. Instead, the CPR requires that Member States have effective arrangements in place to ensure that programmes and their implementation comply with the Charter throughout the programming period. The fulfilment and application of enabling conditions is examined in the context of monitoring committees of programmes (Article 40(1)(h) CPR) as well as during annual review meetings, which are organised, as a general rule, once a year between the Commission and the Member State. In case the Commission learns of new elements, such as in the context of the rule of law, which may have an impact on the fulfilment of the horizontal enabling condition on the Charter it shall assess whether the enabling condition remains fulfilled or not and inform the Member State of its assessment, in accordance with the procedures set out in the CPR.

As for the second part of this recommendation, in seeking reasonable assurance, the Commission takes account of particular risks identified and adapts its audit work accordingly. The fact that operations do not comply with the Charter of Fundamental Rights could constitute an irregularity by an economic operator (Article 2(31) of the CPR) and financial corrections may be applied.

As the RRF is a performance-based instrument, payments from the Commission to the Member States are made upon the satisfactory fulfilment of milestones and targets. Regarding the concept of satisfactory achievement of milestones or targets (under the RRF) that could be affected by the breaches of rule of law, the Commission notes that a breach that affects the satisfactory fulfilment of milestones and targets would lead to an assessment of non-fulfilment. Issues which affect the EU's financial interests, notably individual cases of serious irregularities, such as fraud, corruption and conflict of interest, or breaches of the obligations included in the financing agreement, can be corrected through the RRF control system. Beyond this, there is no legal basis for payments suspensions or corrections for issues that neither affect the satisfactory fulfilment of milestones and targets nor the EU's financial interests.

The Commission accepts the recommendation insofar as it will continue monitoring the implementation of the "rule of law related measures" under the RRF by assessing the respective milestones and targets as well as verifying that they have not been reversed. The Commission also notes that, as part of its assessment work, it has already proposed to the Council the introduction of specific control/super milestones, where these were necessary to ensure compliance with Article 22 of Regulation (EU) 2021/241 as regard the protection of the EU's financial interests. These need to be fulfilled prior to payment being made to the respective Member State. In addition, the Commission has by end 2023 audited all national control systems to provide assurance on their adequacy.

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.

The Commission partially accepts this recommendation, insofar as it concerns the Conditionality Regulation and the CPR. However, the Commission does not share the view that there were any "unresolved reforms covered by the CVM"¹⁸.

The Commission considers that all proposals should be based on sound evidence: not just the decisions to lift budgetary measures, but also the decisions to propose measures.

While the procedure to lift budgetary measures under the Conditionality Regulation has not been used yet, the Commission is fully prepared to base any future proposal to lift budgetary measures under the Conditionality Regulation on solid, comprehensive, and updated information and will document any such decision. This, in the view of the Commission, is indeed in line with the requirements set by the Conditionality Regulation, which states that the Commission's assessment should be thorough, objective, impartial and fair. In that sense, the Commission will base its assessment on actual facts or evidence available, and it will seek proactively the most relevant and up-to-date information. As recalled by the Court of Justice (judgements in cases C-156/21 and C-157/21), the Commission will take into account all information that is reliable.

¹⁸ See ECA observation 102.

The decisions regarding the fulfilment of enabling conditions, including the horizontal enabling conditions on the Charter of Fundamental Rights, are based on a thorough assessment of the self-assessment presented by the Member States, in line with the CPR provisions. The Commission takes any decision based on sound evidence, both decisions which conclude that an enabling condition is fulfilled and decisions concluding that it is not. The Commission will continue to undertake thorough assessments based on adequate data and criteria and to consider any lifting of such measures on the basis of robust evidence of fulfilment of the required actions.

The RRF operates with the fulfilment of milestones and targets, which are assessed by the Commission, based on documentation and justification provided by the Member State, as satisfactorily fulfilled or not. This assessment is always based on compliance with the requirements set by the Council for the specific milestones and targets, and the Commission is bound by the requirements of the legislations.

The ECA audits the Commission's assessment of milestones and targets as part of the statement of assurance and has so far, in the vast majority of cases, confirmed the Commission's assessment. The Commission intends to continue to undertake thorough assessments and will continue to refine and continuously improve its work.

Lastly, the Commission recalls that the CVM is not a budgetary measure, and as such, differs from the instruments subject to this audit. According to the Decisions establishing the CVM, the CVM is to be closed when all benchmarks have been met. The steps taken and recorded by the Commission in its CVM reports and 2023 Rule of Law Report led to the definitive decisions to close the CVM in September 2023. Furthermore, the Commission notes that the audit scope did not include an assessment of the decisions taken by the Commission to close the CVM. Monitoring continues under the Rule of Law Report for all Member States, including Romania and Bulgaria.

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.

The Commission cannot accept this recommendation, as (i) it imposes additional reporting obligations other than the one established by the co-legislators under the Conditionality Regulation, (ii) it would not be an effective use of the Commission's resources to produce further reports on the application of the different tools, in particular at a time when the Commission is trying to limit its reporting and the burden it generates on the Member States (as the reports are generally based on the input the Commission collects from them)..

The Commission acknowledges its reporting obligation established by the Conditionality Regulation (see Article 9). However, the Commission considers that this reporting obligation should not be linked with potential reporting obligations as regards the application of other procedures whose main objectives are different. As these other tools do not have as their main purpose the protection of the EU's financial interests from breaches of the principles of the rule of law, the Commission cannot accept this recommendation.

Additionally, the Commission considers that the link to the annual Rule of Law Report does not appear appropriate either, as the Conditionality Regulation contains a specific list of situations that may be indicative of breaches of the principles of the rule of law, which is more limited as compared to the categories of issues analysed under the Rule of Law Report. Finally, the Conditionality Regulation, the RRF Regulation and the CPR are all binding tools with direct effect, whereas the Rule of Law Report is a Communication from the Commission. Linking reporting under these categories of legal acts (Regulations) and document (Communication) may create legal uncertainty.

Moreover, the Commission already reports on the overall situation of the rule of law in the Member States under the general 'umbrella' of the Rule of Law Report (which, in its Chapeau Communication, contains a section summarising developments at EU level).

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 conditions 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 MFF).

The Commission partially accepts this recommendation and refers to the report to the European Parliament and the Council on the application of the Conditionality Regulation, adopted on 12 January 2024¹⁹.

It must be noted that the Conditionality Regulation is a relatively recent legislative tool. As such, the Commission does not consider that there are significant issues to be addressed at this stage. That being said, if and when the Commission identifies such issues, also based on the experience gained from the case practice in the coming years, it will take the necessary steps to correct them. This may include a proposal to revise the regulatory framework and the guidelines as appropriate, as also stated in the said report to the European Parliament and the Council.

However, the Commission would like to point out that it is not in a position to make specific commitments in relation to possible legislative proposals. The Commission recalls that under its rights of initiative, before any legislative proposal can be made, some steps might need to be undertaken in line with the better regulation principles (public consultations, impact assessment...). The outcome of this process can therefore not be prejudged.

¹⁹ See Communication from the Commission to the European Parliament and the Council on the application of Regulation (EU, Euratom) 2020/2092 (https://commission.europa.eu/document/cc49fe91-bc67-4067-8100-03b134bdf19c_en)