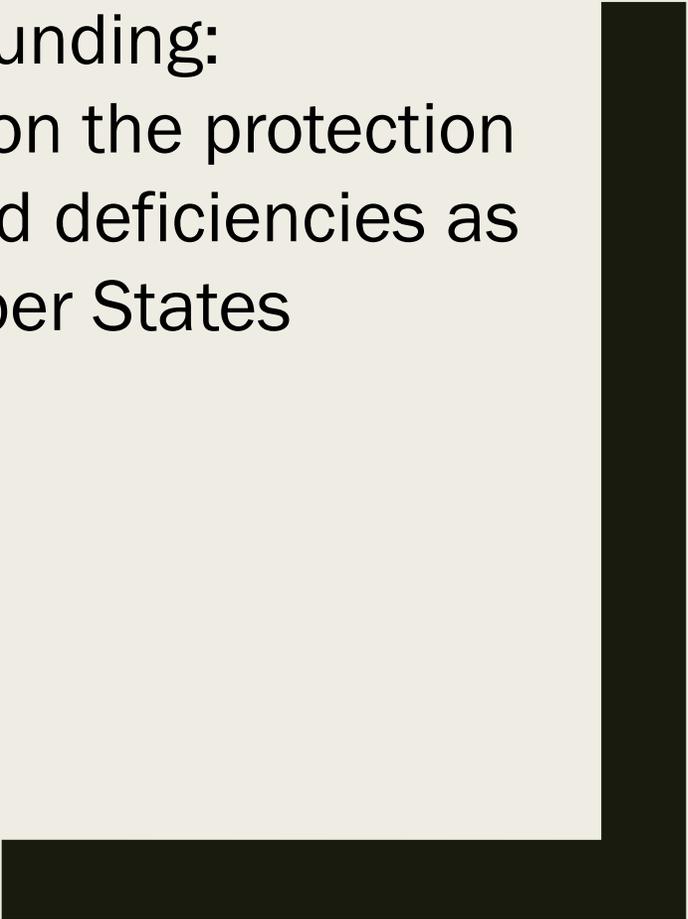


Rule of law as a condition of EU funding:
Comments on a Proposal for a Regulation on the protection
of the Union's budget in case of generalised deficiencies as
regards the rule of law in the Member States

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Agenda

- I. Research question, hypotheses, limitations
- II. Arguments:
 - I. The Proposal as a EU financial interests protection mechanism*
 - II. The Proposal as a mechanism bolstering the rule of law*
- III. Conclusions

*„There have been new suggestions in the public debate to link the disbursement of EU budget funds to the state of the rule of law in Member States. **Respect for the rule of law is important for European citizens, but also for business initiatives, innovation and investment, which will flourish most where the legal and institutional framework adheres fully to the common values of the Union. There is hence a clear relationship between the rule of law and an efficient implementation of the private and public investments supported by the EU budget.**”*

European Commission. 2017. “Reflection Paper on the Future of the EU Financies”.
doi:10.2775/94244.

Treaties

*The **European Regional Development Fund** is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.*

Article 176 TFEU

*(...)The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 174 and shall contribute to their achievement. **The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds** (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.*

Article 175 TFEU

Secondary law

*The **ESI Funds** shall provide support, through multi-annual programmes, which complements national, regional and local intervention, to deliver the Union strategy for smart, sustainable and inclusive growth, as well as the Fund-specific missions pursuant to their Treaty-based objectives (...)*

Article 4, Common Provisions Regulation 2013

Article 3

Appropriate measures shall be taken where a generalised deficiency as regards the rule of law in a Member State affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union, in particular:

*(a) the proper functioning of the authorities of that Member State implementing the Union budget, in particular in the context of public procurement or grant procedures, and when **carrying out monitoring and controls**;*

*(b) the proper functioning of **investigation and public prosecution services** in relation to the **prosecution of fraud, corruption** or other breaches of Union law relating to the implementation of the Union budget;*

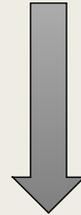
*(c) the **effective judicial review** by independent courts of actions or omissions by the authorities referred to in points (a) and b);*

*(d) the prevention and **sanctioning of fraud, corruption** or other breaches of Union law relating to the implementation of the Union budget, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities; (...)*

Article 3

1. *The Union's aim is to promote peace, **its values** and the well-being of its peoples.(...)*

Article 3 TEU



(3) *The rule of law is a prerequisite for the protection of the other fundamental **values on which the Union is founded**, such as freedom, democracy, equality and respect for human rights.(...)*

Recital (3) Proposal

Treaty on the European Union

(...) 2. The European Council, acting by **unanimity** on a proposal by one third of the Member States or by the Commission and after obtaining the **consent of the European Parliament**, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a **qualified majority**, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.(...)

Article 7 TEU

Proposal

(...) 6. Where the Commission considers that the generalised deficiency as regards the rule of law is established, it shall submit a proposal for an implementing act on the appropriate measures to the Council.

7. The decision shall be deemed to have been adopted by the Council, **unless it decides, by qualified majority, to reject** the Commission proposal within one month of its adoption by the Commission.(...)

Article 6 Proposal

8. *In order to ensure that Union funds are used in accordance with the applicable rules, the Commission shall:*

- (a) apply procedures for the examination and acceptance of the accounts of the designated bodies, ensuring that the accounts are complete, accurate and true;*
- (b) **exclude from Union financing expenditure for which disbursements have been made in breach of applicable law;***
- (c) interrupt payment deadlines or suspend payments where provided for in sector-specific rules.*

Article 63(8) Financial Regulation

8. *The Commission shall make **financial corrections** on Member States in order to exclude **expenditure incurred in breach of applicable law from Union financing**. The Commission shall base its financial corrections on the identification of amounts unduly spent, and the financial implications for the budget. Where such amounts cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections in accordance with sector-specific rules.*

Article 101(8) Financial Regulation

One or more of the following appropriate measures may be adopted

(a) where the Commission implements the Union's budget in direct or indirect management (...) and where a government entity is the recipient:

(1) a suspension of payments or of the implementation of the legal commitment or a termination of the legal commitment pursuant to Article [131(3)] of the Financial Regulation;

(2) a prohibition to enter into new legal commitments;

(b) where the Commission implements the Union's budget in shared management pursuant to [point (b) of Article 62] of the Financial Regulation:

(1) a suspension of the approval of one or more programmes or an amendment thereof;

(2) a suspension of commitments;

(3) a reduction of commitments, including through financial corrections or transfers to other spending programmes;

(4) a reduction of pre-financing;

(5) an interruption of payment deadlines;

(6) a suspension of payments.

Article 4 Proposal

1. All or part of the interim payments at the level of priorities or operational programmes may be suspended by the Commission if one or more of the following conditions are met:

- (a) there is a **serious deficiency in the effective functioning of the management and control system** of the operational programme, which has put at risk the Union contribution to the operational programme and for which corrective measures have not been taken;(...)
- (d) there is a **serious deficiency in the quality and reliability of the monitoring system** or of the data on common and specific indicators;

Article 142(1) Common Provisions Regulation 2013

1. Appropriate measures shall be taken where a generalised deficiency as regards the rule of law in a Member State affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union, in particular:

- (a) the proper functioning of the authorities of that Member State implementing the Union budget, in particular in the context of public procurement or grant procedures, and when carrying out monitoring and controls;
- (b) the proper functioning of investigation and public prosecution services in relation to the prosecution of fraud, corruption or other breaches of Union law relating to the implementation of the Union budget;
- (d) the prevention and sanctioning of fraud, corruption or other breaches of Union law relating to the implementation of the Union budget, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities;
- (e) the recovery of funds unduly paid;
- (f) the effective and timely cooperation with the European Anti-fraud Office and with the European Public Prosecutor's Office in their investigations or prosecutions pursuant to their respective legal acts and to the principle of loyal cooperation.

Article 3 Proposal

Article 1

This Regulation establishes the rules necessary for the protection of the Union's budget in the case of generalised deficiencies as regards the rule of law in the Member States.

Article 1 Proposal

Q&A session

You are most welcome to address any questions you might have.

Thank you for your attention!