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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

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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.

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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.

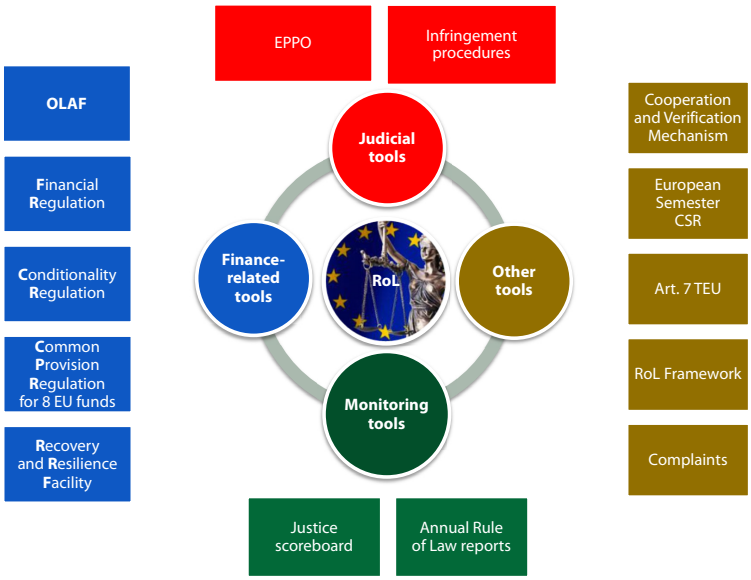
Tools to protect the EU budget against rule of law breaches

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.

Figure 1 – EU tools for enforcing the rule of law



Source: ECA.

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[3]. 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[4].

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[5].

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.

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

[1] 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, pp. 1-10.

[2] Opinion 1/2018 concerning the proposal of 2 May 2018 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. https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=46669

[3] COM(2022) 485 final: Proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary. https://ec.europa.eu/info/files/college-decision-18-september-2022_en

[4] Council implementing decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, OJ L 325, 20.12.2022, pp. 94-109. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D2506

[5] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.6.2021, pp. 159-706.

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