



2018/0136(COD)

5.12.2018

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Budgets and the Committee on Budgetary Control

on the 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)0324 – C8-0178/2018 – 2018/0136(COD))

Rapporteur for opinion (*): Josep-Maria Terricabras

(*) Associated committee – Rule 54 of the Rules of Procedure

PA_Legam

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Budgets and the Committee on Budgetary Control, as the committees responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Title

Text proposed by the Commission

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

Amendment

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 **and fundamental rights** in
the Member States
*(This amendment applies throughout the
text. Adopting it will necessitate
corresponding changes throughout.)*

Amendment 2

Proposal for a regulation Recital 1

Text proposed by the Commission

(1) ***The rule of law is one of the essential values upon which the*** Union is founded. As recalled by Article 2 of the Treaty on European Union, these values are common to the Member States.

Amendment

(1) ***The*** Union is founded ***on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.*** As recalled by Article 2 of the Treaty on European Union (***TEU***), these values are common to the Member States ***in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.***

Amendment 3

Proposal for a regulation Recital 1a (new)

Text proposed by the Commission

Amendment

(1a) Democracy, the rule of law and fundamental rights are in a triangular relationship, reinforcing each other and together safeguarding the constitutional core of the Union and the Member States. There can be no hierarchy of values within the Union. The interdependence between a functioning democracy, strong and accountable institutions, transparent and inclusive decision-making and effective rule of law is essential for an effective respect for human rights and vice versa. Articles 2 and 6 TEU require the Member States to fully respect, protect and promote the principles of rule of law, fundamental rights and democracy.

Amendment 4

Proposal for a regulation Recital 2

Text proposed by the Commission

Amendment

(2) The rule of law requires that all public powers act within the constraints set out by law, in accordance with the **values** of democracy and fundamental rights, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality⁷, legal certainty⁸, prohibition of arbitrariness of the executive powers⁹, separation of powers¹⁰, and effective judicial protection **by** independent courts¹¹ are respected¹².

(2) The rule of law requires that all public powers act within the constraints set out by law, in accordance with the **principles** of democracy and **respect for** fundamental rights, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality⁷, **including a transparent, accountable and democratic process for enacting legislation**, legal certainty⁸, prohibition of arbitrariness of the executive powers⁹, separation of powers¹⁰, **access to justice** and effective judicial protection **before** independent **and impartial** courts¹¹ are respected¹².

⁷ Judgment of the Court of Justice of 29 April 2004, CAS Succhi di Frutta, C-496/99 PECLI:EU:C:2004:236, paragraph 63.

⁸ Judgment of the Court of Justice of 12 November 1981, Amministrazione delle finanze dello Stato v Srl Meridionale Industria Salumi and others Ditta Italo Orlandi & Figlio and Ditta Vincenzo Divella v Amministrazione delle finanze dello Stato. Joined cases 212 to 217/80, ECLI:EU:C:1981:270, paragraph 10.

⁹ Judgment of the Court of Justice of 21 September 1989, Hoechst, Joined cases 46/87 and 227/88, ECLI:EU:C:1989:337, paragraph 19.

¹⁰ Judgment of the Court of Justice of 10 November 2016, Kovalkovas, C-477/16, ECLI:EU:C:2016:861, paragraph 36; Judgment of the Court of Justice of 10 November 2016, PPU Poltorak, C-452/16, ECLI:EU:C:2016:858, paragraph 35; and Judgment of the Court of Justice of 22 December 2010, DEB, C-279/09, ECLI:EU:C:2010:811, paragraph 58.

¹¹ Judgment of the Court of Justice of 27 February 2018, Associação Sindical dos Juizes Portugueses v Tribunal de Contas C-64/16, ECLI:EU:C:2018:117, paragraphs 31, 40-41.

¹² Communication from the Commission "A new EU Framework to strengthen the Rule of Law", COM(2014) 158 final, Annex I.

⁷ Judgment of the Court of Justice of 29 April 2004, CAS Succhi di Frutta, C-496/99 PECLI:EU:C:2004:236, paragraph 63.

⁸ Judgment of the Court of Justice of 12 November 1981, Amministrazione delle finanze dello Stato v Srl Meridionale Industria Salumi and others Ditta Italo Orlandi & Figlio and Ditta Vincenzo Divella v Amministrazione delle finanze dello Stato. Joined cases 212 to 217/80, ECLI:EU:C:1981:270, paragraph 10.

⁹ Judgment of the Court of Justice of 21 September 1989, Hoechst, Joined cases 46/87 and 227/88, ECLI:EU:C:1989:337, paragraph 19.

¹⁰ Judgment of the Court of Justice of 10 November 2016, Kovalkovas, C-477/16, ECLI:EU:C:2016:861, paragraph 36; Judgment of the Court of Justice of 10 November 2016, PPU Poltorak, C-452/16, ECLI:EU:C:2016:858, paragraph 35; and Judgment of the Court of Justice of 22 December 2010, DEB, C-279/09, ECLI:EU:C:2010:811, paragraph 58.

¹¹ Judgment of the Court of Justice of 27 February 2018, Associação Sindical dos Juizes Portugueses v Tribunal de Contas C-64/16, ECLI:EU:C:2018:117, paragraphs 31, 40-41.

¹² Communication from the Commission "A new EU Framework to strengthen the Rule of Law", COM(2014) 158 final, Annex I.

Amendment 5

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2 a) The Member States should uphold and cultivate the value of the rule of law and set an example by moving towards a

shared culture of the rule of law, which is an essential condition for the legitimacy of the European project as a whole and the basic condition for building citizens' trust in the Union. Deterioration of the rule of law in one Member State negatively affects the rule of law in the Union as a whole.

Amendment 6

Proposal for a regulation Recital 2 b (new)

Text proposed by the Commission

Amendment

(2 b) Fundamental rights in the Union are stipulated, in particular, in the Charter of Fundamental Rights of the European Union which in accordance with Article 6 TEU has the same legal value as Treaties and, consequently, is to be adhered to in all the Union's legislation, including this Regulation. The obligation to respect, protect and promote fundamental rights is also set out in numerous international human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, the Additional Protocol thereto and the revised version thereof.

Amendment 7

Proposal for a regulation Recital 3

Text proposed by the Commission

Amendment

(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.

deleted

Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.

Amendment 8

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) Whenever the Member States implement the Union's budget, and whatever method of implementation they use, respect for the rule of law is an essential precondition to comply with the principles of sound financial management enshrined in Article 317 of the Treaty on the Functioning of the European Union.

Amendment

(4) Whenever the Member States implement the Union's budget, and whatever method of implementation they use, respect for the rule of law ***and fundamental rights*** is an essential precondition to comply with the principles of sound financial management enshrined in Article 317 of the Treaty on the Functioning of the European Union.

Amendment 9

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) ***Judicial bodies*** should ***act independently and impartially*** and investigation and prosecution services should be able to properly execute their function. ***They*** should be endowed with sufficient resources and procedures to act effectively and in full respect of the right to a fair trial. These conditions are required as a minimum guarantee against unlawful and arbitrary decisions by public authorities that could ***harm the financial interests of the Union***.

Amendment

(6) ***Independence and impartiality of the judiciary*** should ***always be guaranteed*** and investigation and prosecution services should be able to properly execute their function. They should be endowed with sufficient resources and procedures to act effectively and in full respect of the right to a fair trial. These conditions are required as a minimum guarantee against unlawful and arbitrary decisions by public authorities that could ***impair these fundamental principles***.

Amendment 10

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) Respect for the rule of law ***is not only*** important for citizens of the Union, ***but also for*** business initiatives, innovation, investment and ***the proper functioning of*** the internal market, ***which will flourish most where a solid*** legal and institutional framework ***is in place***.

Amendment

(8) Respect for the rule of law ***and fundamental rights is essential for allowing*** citizens ***to fully participate in the democratic life*** of the Union. ***It is also*** important for ***entrepreneurship***, business initiatives, innovation ***and*** investment and ***for the promotion of a rights-based and smooth-functioning internal market***. The internal market ***needs a stable*** legal and institutional framework ***to ensure trust among all actors, to realise its full potential and to achieve sustainable long-term growth. In situations where a Member State no longer guarantees respect for the rule of law or fundamental rights, the Union and its Member States have a duty to protect the integrity and application of the Treaties and to protect the rights of everyone within their jurisdiction.***

Amendment 11

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, requires the Member States to provide effective judicial protection in the fields covered by Union law, including those relating to the implementation of the Union's budget. The very existence of effective judicial review designed to ensure compliance with Union law is the essence of the rule of law and requires independent courts¹³. Maintaining the independence of the courts is essential, as confirmed by ***the second subparagraph***

Amendment

(9) Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, requires the Member States to provide effective judicial protection in the fields covered by Union law, including those relating to the implementation of the Union's budget. The ***effectiveness of justice systems is a key aspect of the rule of law and is essential for ensuring equal treatment, sanctioning government abuses and preventing arbitrariness. The*** very existence of effective judicial review designed to ensure

of Article 47 of the Charter of Fundamental Rights of the European Union¹⁴. This **is true**, in particular, **for the** judicial review of the **validity of the** measures, contracts or other instruments **giving rise to** public expenditure or debts, inter alia in the context of **public** procurement procedures which may also be **brought before the courts**.

¹³ Case C-64/16, para 32-36.

¹⁴ Case C-64/16, para 40-41.

compliance with Union law is the essence of the rule of law and requires independent courts¹³. **Ensuring the right to an effective remedy and to a fair trial and** maintaining the independence of the courts is essential, as confirmed by Article 47 of the Charter of Fundamental Rights of the European Union¹⁴. This **applies** in particular **to** judicial review of the **legality of** measures, contracts or other instruments **that result in** public expenditure or debts, inter alia in the context of procurement procedures **in respect of** which **the courts** may also be **seized**.

¹³ Case C-64/16, para 32-36.

¹⁴ Case C-64/16, para 40-41.

Amendment 12

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) There is hence a clear relationship between respect for the rule of law and an efficient implementation of the Union budget in accordance with the principles of sound financial management.

Amendment

(10) There is hence a clear relationship between respect for the rule of law **and fundamental rights** and an efficient implementation of the Union budget in accordance with the principles of sound financial management.

Amendment 13

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) Generalised deficiencies in the Member States as regards the rule of law **which affect in particular the proper functioning of public authorities and effective judicial review**, can seriously harm the financial interests of the Union.

Amendment

(11) Generalised deficiencies in the Member States as regards the rule of law **and fundamental rights** can seriously harm the financial interests of the Union, **in particular as regards irregularities related to the spending of the Union**

budget and the rights and interests of the citizens, regardless of where they live.

Amendment 14

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) The identification of a generalised deficiency requires a qualitative assessment by the Commission. ***That*** assessment ***could*** be based on the information from all available sources and recognized institutions, including judgments of the Court of Justice of the European Union, reports of the Court of Auditors, ***and*** conclusions and recommendations of relevant international organisations and networks, such as the bodies of the Council of Europe and the European networks of supreme courts and councils for the judiciary.

Amendment

(12) The identification of a generalised deficiency requires a qualitative, ***objective, transparent, non-politicised and impartial*** assessment, ***based on specific evidence***, by the Commission, ***assisted by a representative panel of independent experts. The annual*** assessment ***of all Member States should*** be based on the information from all available sources and recognized institutions, including judgments of the Court of Justice of the European Union ***and the European Court of Human Rights***, reports of the Court of Auditors, ***reports and opinions of other institutions, bodies, offices or agencies of the Union, such as the Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Union Agency for Fundamental Rights***, conclusions and recommendations of relevant international organisations and networks, such as the bodies of the Council of Europe and the European networks of supreme courts and councils for the judiciary, ***as well as reporting from non-governmental and civil society organisations. This assessment should replace existing instruments and mechanisms such as the Cooperation and Verification Mechanism for Bulgaria and Romania.***

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***and fundamental rights*** in the Member States.

Amendment 16

Proposal for a regulation

Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) 'the rule of law' ***refers to the Union value*** enshrined in Article 2 of the Treaty on European Union which ***includes*** the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting ***laws***; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection ***by*** independent courts, ***including of fundamental rights***; separation of powers and equality before the law;

Amendment

(a) 'the rule of law ***and fundamental rights' as*** enshrined in Article 2 of the Treaty on European Union ***include*** the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting ***law***; legal certainty; prohibition of arbitrariness of the executive powers; ***access to justice and effective judicial protection before*** independent ***and impartial*** courts; separation of powers; ***non-discrimination*** and equality before the law; ***respect for fundamental rights as stipulated in the Charter of Fundamental Rights of the European Union and in international human rights treaties***;

Amendment 17

Proposal for a regulation

Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) 'generalised deficiency as regards the rule of law' ***means a*** widespread or recurrent ***practice or omission, or measure*** by public authorities ***which*** affects ***the rule of law***;

Amendment

(b) 'generalised deficiency' ***means any situation where a systemic threat to the rule of law and fundamental rights may be established, or where the rule of law and fundamental rights are directly or indirectly undermined in a systemic way, either by the combined impact of***

practices, omissions, measures or inactions by public authorities or by widespread or recurrent practices, omissions, measures or inactions by public authorities, and where this situation affects or risks affecting the proper implementation of the Union's budget, in particular the management and control activities, in accordance with the principles of sound financial management and the protection of the financial interests of the Union;

Amendment 18

Proposal for a regulation Article 3 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Appropriate, balanced and proportionate measures shall be taken where the Commission finds that it has reasonable grounds to believe that the conditions of a generalised deficiency in a Member State are satisfied.

Amendment 19

Proposal for a regulation Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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:

1. *The* measures shall be taken where a generalised deficiency in a Member State affects or risks affecting, in particular

Amendment 20

Proposal for a regulation
Article 3 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) the proper implementation of the Union budget following a systemic violation of fundamental rights.

Amendment 21

Proposal for a regulation
Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The following **may**, in particular, be considered generalised deficiencies as regards the rule of law,

2. The following **shall**, in particular, be considered generalised deficiencies:

Amendment 22

Proposal for a regulation
Article 3 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) endangering the independence of judiciary;

(a) endangering the independence of **the** judiciary, **including by setting any limitations on the ability to exercise judicial functions autonomously by externally intervening in guarantees of independence, by constraining judgement under external order, by arbitrarily revising rules on the appointment or terms of service of judicial staff, or by influencing judicial staff in any way that jeopardises their impartiality;**

Amendment 23

Proposal for a regulation
Article 3 – paragraph 2 a (new)

2 a. In identification of a generalised deficiency, the Commission is assisted by a representative panel of independent experts (the Rule of Law and Fundamental Rights Expert Panel), assessing the situation in all Member States annually on the basis of a quantitative and qualitative criteria and information, including decisions of the Court of Justice of the European Union and the European Court of Human Rights, reports of the Court of Auditors, reports and opinions of other institutions, bodies, offices or agencies of the Union, and conclusions and recommendations of relevant international organisations. The assessment shall be made public.

Amendment 24

**Proposal for a regulation
Article 3 – paragraph 2 b (new)**

2 b. The annual follow-up debate on the assessment by the Democracy, Rule of Law and Fundamental Rights Expert Panel shall be carried out by the European Parliament together with national parliaments. To this end, a specialised Joint Parliamentary Group shall be jointly established by the national parliaments and the competent committee of the European Parliament. The organisation and the rules of procedure of the Joint Parliamentary Group shall be determined jointly by the European Parliament and the national parliaments in line with Article 9 of Protocol No 1 on the role of national parliaments in the European Union, annexed to the TEU and the Treaty on the Functioning of the European Union.

Amendment 25

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3 a

Democracy, Rule of Law and Fundamental Rights Expert Panel

***1. The Democracy, Rule of Law and
Fundamental Rights Expert Panel shall
be composed of the following members:***

***(a) one independent expert designated by
the parliament of each Member State,
who shall be a qualified constitutional
court or supreme court judge not
currently in active service;***

***(b) ten further experts designated by the
European Parliament with a two-third
majority, chosen from a list of experts
nominated by:***

***(i) the European Federation of Academies
of Sciences and Humanities (ALLEA);***

***(ii) the European Network of National
Human Rights Institutions (ENNHRI);***

***(iii) the Council of Europe (including the
Venice Commission, the Group of States
Against Corruption (GRECO) and the
Council of Europe Commissioner for
Human Rights);***

***(iv) European Commission for the
efficiency of justice (CEPEJ) and the
Council of Bars and Law Societies of
Europe (CCBE); and***

***(v) the United Nations (UN), the
Organization for Security and Co-
operation in Europe (OSCE) and the
Organisation for Economic Co-operation
and Development (OECD).***

***2. The composition of the Democracy,
Rule of Law and Fundamental Rights
Expert Panel shall ensure gender***

balance.

3. The Democracy, Rule of Law and Fundamental Rights Expert Panel shall elect its chairperson from among its members.

4. In order to facilitate the work of the Democracy, Rule of Law and Fundamental Rights Expert Panel, the Commission shall provide a secretariat to the Expert Panel, enabling it to function efficiently, in particular by gathering data and information sources to be reviewed and assessed, and by providing administrative support.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States		
References	COM(2018)0324 – C8-0178/2018 – 2018/0136(COD)		
Committees responsible Date announced in plenary	BUDG 11.6.2018	CONT 11.6.2018	
Opinion by Date announced in plenary	LIBE 11.6.2018		
Associated committees - date announced in plenary	5.7.2018		
Rapporteur Date appointed	Josep-Maria Terricabras 9.7.2018		
Rule 55 – Joint committee procedure Date announced in plenary	5.7.2018		
Discussed in committee	8.11.2018	19.11.2018	3.12.2018
Date adopted	3.12.2018		
Result of final vote	+: –: 0:	33 10 3	
Members present for the final vote	Heinz K. Becker, Monika Beňová, Malin Björk, Michał Boni, Caterina Chinnici, Cornelia Ernst, Raymond Finch, Romeo Franz, Kinga Gál, Sylvie Guillaume, Monika Hohlmeier, Filiz Hyusmenova, Sophia in ‘t Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, József Nagy, Ivari Padar, Judith Sargentini, Birgit Sippel, Branislav Škripek, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Auke Zijlstra		
Substitutes present for the final vote	Carlos Coelho, Pál Csáky, Gérard Deprez, Anna Hedh, Lívia Járóka, Sylvia-Yvonne Kaufmann, Jeroen Lenaers, Emilian Pavel, Morten Helveg Petersen, Christine Revault d’Allonnes Bonnefoy, Barbara Spinelli, Josep-Maria Terricabras		
Substitutes under Rule 200(2) present for the final vote	Max Andersson, France Jamet		

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

33	+
ALDE	Gérard Deprez, Filiz Hyusmenova, Sophia in 't Veld, Morten Helveg Petersen
ECR	Helga Stevens
GUE/NGL	Malin Björk, Cornelia Ernst, Barbara Spinelli, Marie-Christine Vergiat
PPE	Heinz K. Becker, Michał Boni, Carlos Coelho, Monika Hohlmeier, Barbara Kudrycka, Jeroen Lenaers, Roberta Metsola
S&D	Monika Beňová, Caterina Chinnici, Sylvie Guillaume, Anna Hedh, Sylvia-Yvonne Kaufmann, Dietmar Köster, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Claude Moraes, Ivari Padar, Christine Revault d'Allonnes Bonnefoy, Birgit Sippel, Josef Weidenholzer
VERTS/ALE	Max Andersson, Romeo Franz, Judith Sargentini, Josep-Maria Terricabras

10	-
ECR	Branislav Škripek, Kristina Winberg
EFDD	Raymond Finch
ENF	France Jamet, Auke Zijlstra
NI	Udo Voigt
PPE	Pál Csáky, Kinga Gál, Livia Járóka, Traian Ungureanu

3	0
PPE	József Nagy
S&D	Emilian Pavel, Sergei Stanishev

Key to symbols:

+ : in favour

- : against

0 : abstention