



2018/0136(COD)

23.11.2018

OPINION

of the Committee on Regional Development

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: Iskra Mihaylova

PA_Legam

AMENDMENTS

The Committee on Regional Development 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

Recital 3

Text proposed by the Commission

(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. 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

(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, ***non-discrimination***, equality and respect for human rights. 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. ***Democracy, rule of law and respect for fundamental human rights are key to the credibility of the Union.***

Amendment 2

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) On 25 October 2016, the European Parliament adopted a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. Furthermore, on 11-12 March 2016, the European Commission for democracy through law (the 'Venice Commission') adopted the Rule of Law Checklist (CDL-AD(2016)007).

Amendment 3

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 which affect in particular the proper functioning of public authorities and effective judicial review, can seriously harm the financial interests of the Union. ***Efficient investigations into such deficiencies, and the application of effective and proportionate measures when a generalised deficiency is established, are needed not only to secure the financial interests of the Union, including the effective collection of revenue, but also to ensure public trust in the Union and its institutions. Only an independent judiciary that upholds the rule of law and legal certainty in all Member States can ultimately guarantee that money from the EU budget is sufficiently protected.***

Amendment 4

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

Amendment

(12) The identification of a generalised deficiency requires a ***transparent, impartial*** 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, ***expert opinions of the relevant European Union Agencies,***

organisations and networks, such as the bodies of the Council of Europe and the European networks of supreme courts and councils for the judiciary.

recommendations made by any independent panel of experts as referred to in the resolution of the European Parliament of 25 October 2016, 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 5

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The possible measures to be adopted in the event of generalised deficiencies and the procedure to be followed to adopt them should be determined. Those measures should include the suspension of payments and of commitments, a reduction of funding under existing commitments, and a prohibition to conclude new commitments with recipients.

Amendment

(13) The possible measures to be adopted in the event of generalised deficiencies and the procedure to be followed to adopt them should be determined ***and should apply the same criteria and ensure equal treatment among all Member States.*** Those measures should include the suspension of payments and of commitments, a reduction of funding under existing commitments, and a prohibition to conclude new commitments with recipients. ***Any decision to impose these measures should provide serious guarantees, based on impact assessments, to ensure that final beneficiaries of EU funds are not adversely affected.***

Amendment 6

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) The principle of proportionality should apply when determining the measures to be adopted, in particular taking

Amendment

(14) The principle of proportionality should apply when determining the measures to be adopted, in particular taking

into account the seriousness of the situation, the time which has elapsed since the relevant conduct started, its duration and its recurrence, the intention, and the degree of cooperation of the Member State concerned in putting an end to the generalised deficiency as regards the rule of law, and the effects of that deficiency on the respective Union funds.

into account the seriousness of the situation, the time which has elapsed since the relevant conduct started, its duration and its recurrence, the intention, and the degree of cooperation of the Member State concerned in putting an end to the generalised deficiency as regards the rule of law, and the effects of that deficiency on the respective Union funds. ***The scope and level of the suspension of commitments to be imposed should be proportionate, should respect the equality of treatment between Member States, and should take into account the economic and social circumstances of the Member State concerned and the impact of the suspension on the economy of the Member State concerned. The impact of suspensions on programmes of critical importance to address rule-of-law conditions should be a specific factor to be taken into account.***

Amendment 7

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) It is essential that the legitimate interests of final recipients and beneficiaries are properly safeguarded when measures are adopted in the event of generalised deficiencies. When considering the measures to be adopted, the Commission should take into account their potential impact on final recipients and beneficiaries. To strengthen the protection of the final recipients or beneficiaries, the Commission should actively monitor the respect of the legal obligation of government entities and Member States to continue making payments after adopting measures on basis of this regulation, and inform the final recipients or beneficiaries of their

rights in case any infringements occur.

Amendment 8

Proposal for a regulation

Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) It is essential that individual recipients of scholarships through programmes such as Erasmus, research grants and similar individual grants should not be affected if measures are adopted concerning a Member State in the event of generalised deficiencies.

Amendment 9

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

(15) In order to ensure uniform implementation of this Regulation and in view of the importance of the financial effects of measures being imposed pursuant to this Regulation, implementing powers should be conferred on the Council which should act on the basis of a Commission proposal. To facilitate the adoption of decisions which are required to protect the financial interests of the Union, ***reversed qualified majority*** voting should be used.

(15) In order to ensure uniform implementation of this Regulation and in view of the importance of the financial effects of measures being imposed pursuant to this Regulation, implementing powers should be conferred on the Council which should act on the basis of a Commission proposal. To facilitate the adoption of decisions which are required to protect the financial interests of the Union, ***unanimous*** voting should be used ***with the non-participation of the Member State concerned.***

Amendment 10

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) Before proposing the adoption of any measure pursuant to this Regulation, the Commission should inform the Member State concerned why it considers that a generalised deficiency regarding the rule of law might exist in that Member State. The Member State should be allowed to submit its observations. The Commission **and the Council** should take those observations into account.

Amendment

(16) Before proposing the adoption of any measure pursuant to this Regulation, the Commission should inform the Member State concerned ***of the outcome of its evaluations, either undertaken by an independent panel of experts or by the Commission and*** why it considers that a generalised deficiency regarding the rule of law might exist in that Member State. The ***Commission should inform the European Parliament and the Council of the notification and its contents. The*** Member State ***concerned*** should be allowed to submit its observations. The Commission should take those observations into account.

Amendment 11

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) ***The Council should lift measures with suspensive effect on a proposal from the Commission, if the situation leading to the imposition of those measures has been sufficiently remedied.***

Amendment

deleted

Amendment 12

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) The Commission should keep the European Parliament informed of any measures proposed and adopted pursuant to this Regulation,

Amendment

(18) The Commission should keep the European Parliament ***and the Council*** informed of any measures proposed and adopted pursuant to this Regulation,

Amendment 13

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 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 ***as described in Article 3;***

Amendment 14

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Measures

Amendment

Generalised deficiency as regards the rule of law

Amendment 15

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. Generalised ***deficiencies*** as regards the rule of law ***in a*** Member State ***that*** affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union ***are***, in particular:

Amendment 16

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

Text proposed by the Commission

Amendment

(fa) the freedom of opinion and expression including the freedom of the press, freedom of association and academic freedom;

Amendment 17

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

Text proposed by the Commission

Amendment

(fb) the fiscal discipline of that Member State, in particular the avoidance of excessive government deficit in line with Article 126 TFEU.

Amendment 18

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

Text proposed by the Commission

Amendment

(c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules, lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

(c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules, lack of implementation of judgments **with a particular focus on decisions of the Court of Justice of the European Union deriving from infringement procedures**, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

Amendment 19

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

Text proposed by the Commission

Amendment

(ca) disproportionately restricting the freedom of the press, freedom of association and academic freedom;

Amendment 20

Proposal for a regulation

Article 3 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) failing that to ensure that the government is accountable under the law, as are private actors;

Amendment 21

Proposal for a regulation

Article 3 – paragraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(cc) failing to ensure that laws are publicised and just, and protect fundamental rights, including the security of persons and property and certain core human rights;

Amendment 22

Proposal for a regulation

Article 3 – paragraph 2 – point c d (new)

Text proposed by the Commission

Amendment

(cd) failing to ensure that the processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient;

Amendment 23

Proposal for a regulation

Article 3 – paragraph 2 – point c e (new)

Text proposed by the Commission

Amendment

(ce) failing to ensure that justice is delivered timely by competent, ethical, and independent representatives and neutral parties who are accessible, have adequate resources, and reflect the make-up of the communities they serve;

Amendment 24

Proposal for a regulation

Article 3 – paragraph 2 – point c f (new)

Text proposed by the Commission

Amendment

(cf) failing to ensure that government powers are subject to non-governmental checks, and that government officials are sanctioned for misconduct.

Amendment 25

Proposal for a regulation

Article 4 – title

Text proposed by the Commission

Amendment

Content of measures

Measures

Amendment 26

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. ***One or more of the*** following appropriate measures may be adopted

1. ***The*** following appropriate measures may be adopted ***in the case of a generalised deficiency as regards the rule of law:***

Amendment 27

Proposal for a regulation

Article 4 – paragraph 1 – point b – introductory part

Text proposed by the Commission

Amendment

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

(b) where the Commission implements the Union's budget in shared management pursuant to [point (b) of Article 62] of the Financial Regulation, ***in the case of a generalised deficiency as regards the rule of law, save where point ba applies:***

Amendment 28

Proposal for a regulation

Article 4 – paragraph 1 – point b – point 4

Text proposed by the Commission

Amendment

(4) ***a reduction of pre-financing;***

deleted

Amendment 29

Proposal for a regulation

Article 4 – paragraph 1 – point b – point 5

Text proposed by the Commission

Amendment

(5) ***an interruption of payment deadlines;***

deleted

Amendment 30

Proposal for a regulation
Article 4 – paragraph 1 – point b – point 6

Text proposed by the Commission

Amendment

(6) a suspension of payments.

deleted

Amendment 31

Proposal for a regulation
Article 4 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) as far as ESI Funds are concerned, where the Commission implements the Union's budget in shared management pursuant to [point (b) of Article 62] of the Financial Regulation, the measures defined in the Common Provisions Regulation should apply in the case of a generalised deficiency as regards the rule of law.

Amendment 32

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Unless the decision adopting the measures provides otherwise, the imposition of appropriate measures shall not affect the obligation of government entities referred to in point (a) of paragraph 1 or of Member States referred to in point (b) of paragraph 1 to implement the programme or fund affected by the measure, and in particular the obligation to make payments to final recipients or beneficiaries.

2. The imposition of appropriate measures shall not affect the obligation of government entities referred to in point (a) of paragraph 1 or of Member States referred to in point (b) of paragraph 1 to implement the programme or fund affected by the measure, and in particular the obligation to make payments to final recipients or beneficiaries. ***Any decision to impose appropriate measures should provide serious guarantees, based on impact assessments, to ensure that final beneficiaries of EU funds are not***

adversely affected.

Amendment 33

Proposal for a regulation

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The scope and level of the suspension of commitments to be imposed shall be proportionate, shall respect the equality of treatment between Member States and shall take into account the economic and social circumstances of the Member State concerned and the impact of the suspension on the economy of the Member State concerned. The impact of suspensions on programmes of critical importance to address rule-of-law conditions shall be a specific factor to be taken into account.

Amendment 34

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Where the Commission finds that it has reasonable grounds to believe that the conditions of Article 3 are fulfilled, it shall send a written notification to that Member State, setting out the grounds on which it based its finding

1. Where the Commission finds that it has **clear and** reasonable grounds to believe that the conditions of Article 3 are fulfilled, it shall send a written notification to that Member State, setting out the grounds on which it based its finding. **The Commission shall promptly inform the Parliament and the Council of the notification and its contents.**

Amendment 35

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall provide necessary guarantees to ensure that the same criteria are applied to all Member States, in line with the principles of equal treatment and non-discrimination, in assessing the rule-of-law situation, by adopting similar and non-discriminatory measures in comparable cases for all Member States.

Amendment 36

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission may take into account all relevant information, including decisions of the Court of Justice of the European Union, reports of the Court of Auditors, and conclusions and recommendations of relevant international organisations.

2. ***When assessing whether the conditions of Article 3 are fulfilled, the Commission may take into account all relevant information, including decisions of the Court of Justice of the European Union, resolutions of the European Parliament, recommendations made by any independent panel of experts as referred to in the resolution of the European Parliament of 25 October 2016, reports of the Court of Auditors, and conclusions and recommendations of relevant international organisations, non-governmental organisations and networks, such as the bodies of the Council of Europe and the European networks of supreme courts and councils for the judiciary and expert opinions of the relevant European Union Agencies.***

Amendment 37

Proposal for a regulation Article 5 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. Where the Commission considers that the generalised deficiency as regards the rule of law ***as defined in Article 3(2)*** is established, it shall submit a proposal for an implementing act on the appropriate measures to the ***European Parliament for opinion and to the Council for decision***.

After taking into account the European Parliament's opinion, 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.

The Council, acting by a qualified majority, may amend the Commission's proposal and adopt the amended text as a Council decision.

Amendment 38

**Proposal for a regulation
Article 5 – paragraph 7**

Text proposed by the Commission

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.***

Amendment

7. ***Where the Commission considers that the generalised deficiency as regards the rule of law as defined in Article 3(1) is established, it shall submit a proposal for a decision on the appropriate measures to the European Parliament and to the Council for opinion. Taking into account the European Parliament and Council opinions, the Commission shall take a decision on the appropriate measures, or a decision not to enforce the rule-of-law conditionality.***

Amendment 39

Proposal for a regulation
Article 5 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Before adopting a decision on the appropriate measures, the Commission shall carry out an assessment of the potential impact of those measures on final recipients or beneficiaries of the payments related to the affected programmes or funds. The Commission shall take into due account the information and guidance referred to in paragraph 2 when assessing the proportionality of the measures.

Amendment 40

Proposal for a regulation
Article 5 – paragraph 8

Text proposed by the Commission

Amendment

8. The Council, acting by **a qualified majority**, may amend the Commission's proposal and adopt the amended text as a Council decision.

8. The Council, acting by **unanimity with the non-participation of the Member State concerned**, may amend the Commission's proposal and adopt the amended text as a Council decision.

Amendment 41

Proposal for a regulation
Article 5 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. When a decision is adopted, the Commission shall simultaneously submit to the European Parliament and the Council a proposal to transfer to a budgetary reserve an amount equivalent to the value of the measures adopted.

Amendment 42

Proposal for a regulation

Article 5 – paragraph 8 b (new)

Text proposed by the Commission

Amendment

8b. By way of derogation from paragraphs 4 and 6 of Article 31 of the Financial Regulation, the European Parliament and the Council shall deliberate upon the transfer proposal within four weeks of its receipt by both institutions. The transfer proposal shall be considered to be approved unless, within the four-week period, the European Parliament, acting by majority of the votes cast, or the Council, acting by qualified majority, amend or reject it. If the European Parliament or the Council amend the transfer proposal, paragraph 8 of Article 31 of the Financial Regulation shall apply.

Amendment 43

Proposal for a regulation

Article 5 – paragraph 8 c (new)

Text proposed by the Commission

Amendment

8c. The decision shall enter into force if neither the European Parliament nor the Council reject the transfer proposal within the period referred to in paragraph 8b.

Amendment 44

Proposal for a regulation

Article 5 – paragraph 8 d (new)

Text proposed by the Commission

Amendment

8d. Throughout the period of

application of the measures, the Commission shall actively monitor whether the legal entitlements of final recipients or beneficiaries are being respected. The Commission shall also facilitate the submission to it of complaints from final recipients or beneficiaries where they consider their legal entitlements are not being respected. Where the Commission finds that the Member State or the government entity concerned fails to fulfil its legal obligation to make payments, and the legitimate interests of final recipients or beneficiaries are not being respected, it shall take any appropriate measures to assist those final recipients or beneficiaries in enforcing their claims.

Amendment 45

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

3. Where measures concerning the suspension of the approval of one or more programmes or amendments thereof referred to in point **(i)** of Article **4(2)(b)** or the suspension of commitments referred to in point **(ii)** of Article **4(2)(b)** are lifted, amounts corresponding to the suspended commitments shall be entered in the budget subject to Article 7 of Council Regulation (EU, Euratom) No XXXX (MFF Regulation). *Suspended commitments of year n may not be entered in the budget beyond year $n+2$.*

Amendment

3. Where measures concerning the suspension of the approval of one or more programmes or amendments thereof referred to in point **(1)** of Article **4(1)(b)** or the suspension of commitments referred to in point **(2)** of Article **4(1)(b)** are lifted, amounts corresponding to the suspended commitments shall be entered in the budget subject to Article 7 of Council Regulation (EU, Euratom) No XXXX (MFF Regulation).

Amendment 46

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

The Commission shall immediately inform the European Parliament of any measures proposed or adopted pursuant to Articles 4 and 5

Amendment

The Commission shall immediately inform the European Parliament ***and the Council*** of any measures proposed or adopted pursuant to Articles 4 and 5.

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 CONT 11.6.2018 11.6.2018
Opinion by Date announced in plenary	REGI 11.6.2018
Rapporteur Date appointed	Iskra Mihaylova 22.9.2018
Previous rapporteur	Matthijs van Miltenburg
Rule 55 – Joint committee procedure Date announced in plenary	5.7.2018
Discussed in committee	9.10.2018
Date adopted	22.11.2018
Result of final vote	+: 17 –: 6 0: 4
Members present for the final vote	Pascal Arimont, Franc Bogovič, Victor Boştinaru, John Flack, Krzysztof Hetman, Marc Joulaud, Constanze Krehl, Iskra Mihaylova, Andrey Novakov, Mirosław Piotrowski, Stanislav Polčák, Fernando Ruas, Monika Smolková, Maria Spyrali, Ruža Tomašić, Monika Vana, Matthijs van Miltenburg, Lambert van Nistelrooij, Kerstin Westphal, Joachim Zeller
Substitutes present for the final vote	Martina Anderson, Petras Auštrevičius, John Howarth, Ivana Maletić, Dimitrios Papadimoulis, Bronis Ropė, Milan Zver

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

17	+
PPE	Pascal Arimont, Franc Bogovič, Krzysztof Hetman, Marc Joulaud, Ivana Maletić, Lambert van Nistelrooij, Andrey Novakov, Stanislav Polčák, Fernando Ruas, Maria Spyraiki, Joachim Zeller, Milan Zver
S&D	Victor Boştinaru, John Howarth, Constanze Krehl, Monika Smolková, Kerstin Westphal

6	-
ALDE	Petras Auštrevičius, Iskra Mihaylova, Matthijs van Miltenburg
ECR	John Flack, Mirosław Piotrowski, Ruža Tomašić

4	0
GUE/NGL	Martina Anderson, Dimitrios Papadimoulis
VERTS/ALE	Bronis Ropė, Monika Vana

Key to symbols:

+ : in favour

- : against

0 : abstention