



Consolidated legislative document

EP-PE_TC1-COD(2018)0136

4.4.2019

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 4 April 2019 with a view to the adoption of
Regulation (EU) .../... 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
(EP-PE_TC1-COD(2018)0136)

PE615.999v01-00

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(1)(a) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 291, 17.8.2018, p. 1.

² Position of the European Parliament of 4 April 2019.

Whereas:

- (1) *The rule of law is one of the essential values upon which 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, enshrined in Article 2 of the Treaty on European Union (TEU) and in the criteria for Union membership.** As recalled by Article 2 of the Treaty on European Union TEU, these **those** 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.** [Am. 1]*
- (1a) *Member States should uphold their obligations and set an example by genuinely fulfilling them and move towards a shared culture of the rule of law as a universal value to be applied by all concerned even-handedly. Full respect for and promotion of those principles is an essential prerequisite for the legitimacy of the European project as a whole and a basic condition for building citizens' trust in the Union and ensuring the effective implementation of its policies. [Am. 2]*

(1b) In accordance with Article 2, Article 3(1) and Article 7 TEU, the Union has the possibility to act in order to protect its constitutional core and the common values on which it was founded, including its budgetary principles. Member States, Union institutions, bodies, offices and agencies, and candidate countries are obliged to respect, protect and promote those principles and values, and they have a duty of sincere cooperation. [Am. 3]

- (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 *respect for* and fundamental rights, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality¹, *including a transparent, accountable and democratic process for enacting law*, legal certainty², prohibition of arbitrariness of the executive powers³, separation of powers⁴, *access to justice* and effective judicial protection *by before* independent *and impartial* courts⁵ are respected⁶. *Those principles are reflected inter alia at the level of the Venice Commission of the Council of Europe and also on the basis of the relevant case law of the European Court of Human Rights*⁷. [Am. 4]

¹ Judgment of the Court of Justice of 29 April 2004, CAS Succhi di Frutta, C-496/99 PECLI:EU:C:2004:236, paragraph 63.

² 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.

³ 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.

⁴ 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.

⁵ Judgment of the Court of Justice of 27 February 2018, Associação Sindical dos Juízes Portugueses v Tribunal de Contas C-64/16, ECLI:EU:C:2018:117, paragraphs 31, 40-41; *judgment of the Court of Justice of 25 July 2018, LM, C-216/18 PPU, ECLI:EU:C:2018:586, paragraphs 63-67.*

⁶ Communication from the Commission "A new EU Framework to strengthen the Rule of Law", COM(2014) 158 final, Annex I.

⁷ *Report of the Venice Commission of 4 April 2011 Study No. 512/2009 (CDL-AD(2011)003rev).*

- (2a) *The accession criteria, or Copenhagen criteria, established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995, are the essential conditions that all candidate countries must satisfy to become a Member State. Those criteria include the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces; and the ability to meet the obligations of Union membership. [Am. 5]*
- (2b) *The failure of a candidate country to meet the required standards, values and democratic principles results in that country's accession to the Union being delayed until it fully meets those standards. The obligations incumbent on candidate countries under the Copenhagen criteria continue to apply to Member States after joining the Union by virtue of Article 2 TEU and the principle of sincere cooperation enshrined in Article 4 TEU. Member States should therefore be assessed on a regular basis in order to verify that their laws and practices continue to comply with those criteria and the common values on which the Union is founded, thereby providing a sound legal and administrative framework for the implementation of Union policies. [Am. 6]*

- (3) *While there is no hierarchy among Union values, respect for* the rule of law is a prerequisite **essential** 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. ***Coherence and consistency of internal and external democracy, rule of law and fundamental rights policy is key to the credibility of the Union.*** [Am. 7]
- (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.
- (5) Sound financial management can only be ensured by the Member States if public authorities act in accordance with the law, and if breaches thereof are effectively pursued by investigative and prosecution services, and if decisions of public authorities can be subject to effective judicial review by independent courts and by the Court of Justice of the European Union.

(6) Judicial bodies ***Independence and impartiality of the judiciary*** should act independently and impartially ***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 and*** harm the financial interests of the Union.

[Am. 8]

(7) The independence of the judiciary presupposes, in particular, that the body concerned is able to exercise its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for rejection and dismissal of its members, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it.

- (7a) *The independence of the prosecution and the judiciary comprises both the formal (de jure) and actual (de facto) independence of the prosecution and the judiciary and the individual prosecutors and judges.* [Am. 9]
- (8) Respect for the rule of law is not only important **essential** for citizens of the Union, but also for business initiatives, innovation, investment, **economic, social and territorial cohesion** and the proper functioning of the internal market, which will flourish ~~most~~ **sustainably only** where a solid legal and institutional framework is in place. [Am. 10]
- (8a) *Integrating existing Union monitoring mechanisms, such as the Cooperation and Verification Mechanism, the Justice Scoreboard and the Anti-Corruption reports, into a broader rule of law monitoring framework could provide more efficient and effective control mechanisms for the protection of the financial interest of the Union.* [Am. 11]

- (8b) *Lack of transparency, arbitrary discrimination, distortion of competition and an uneven playing field within and outside the internal market, impact on the integrity of the single market and on the fairness, stability and legitimacy of the tax system, increased economic inequalities, unfair competition between states, social dissatisfaction, mistrust and democratic deficit are some of the negative effects of harmful tax practices.* [Am. 12]
- (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 courts¹. Maintaining the independence of the courts is essential, as confirmed by the second subparagraph of Article 47 of the Charter of Fundamental Rights of the European Union². 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.

¹ Case C-64/16, para 32-36.
² Case C-64/16, para 40-41.

- (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.
- (10a) *The Union has at its disposal a multitude of instruments and processes for ensuring full and proper application of the principles and values laid down in the TEU, but there is currently no swift, effective response coming from the Union institutions, in particular to ensure sound financial management. The existing instruments should be enforced, evaluated and complemented in the framework of a rule of law mechanism to be adequate and effective. [Am. 13]*

- (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 Union budget is sufficiently protected.* [Am. 14]
- (11a) *The scale of tax evasion and avoidance is estimated by the Commission to be up to EUR 1 trillion a year. The negative impacts of such practices on the Member States' and Union budgets and on citizens are evident and could undermine trust in democracy.* [Am. 15]
- (11b) *Corporate tax avoidance has a direct impact on Member States' and Union budgets and on the breakdown of the tax effort between categories of tax payers as well as between economic factors.* [Am. 16]

- (11c) *Member States should fully apply the principle of sincere cooperation in matters of tax competition.* [Am. 17]
- (11d) *The Commission, as the guardian of the Treaties, should ensure that Union law and the principle of sincere cooperation between Member States are fully complied with.* [Am. 18]
- (11e) *Assessing and monitoring Member States' tax policies at Union level would ensure that no new harmful tax measures are implemented in Member States. Monitoring compliance of Member States, their jurisdictions, regions or other administrative structures with the common Union list of non-cooperative jurisdictions would safeguard the single market and ensure its proper and coherent functioning.*
[Am. 19]

- (12) The identification of a generalised deficiency requires a ***thorough*** qualitative assessment by the Commission. That assessment ~~could~~ ***should be objective, impartial and transparent and*** be based on the information from all available ***relevant*** sources, ***taking into account the criteria used in the context of Union accession negotiations, in particular the chapters of the acquis on judiciary and fundamental rights, on justice, freedom and security, on financial control and on taxation, as well as the guidelines used in the context of the Cooperation and Verification Mechanism to track the progress of a Member State,*** and recognized ***from recognised*** institutions, including judgments of the Court of Justice of the European Union ***and the European Court of Human Rights, resolutions of the European Parliament,*** 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 including in particular the Venice Commission's Rule of Law Checklist, and of relevant international networks, such as*** the European networks of supreme courts and councils for the judiciary. [Am. 20]

(12a) An advisory panel of independent experts in constitutional law and financial and budgetary matters should be established with the objective to assist the Commission in its assessment of generalised deficiencies. That panel should undertake an independent annual assessment of the issues as regards the rule of law in all Member States that affect or risk affecting the sound financial management or the protection of the financial interests of the Union, taking into account information from all relevant sources and recognised institutions. The Commission, when taking a decision about adopting or lifting of possible measures, should take relevant opinions expressed by that panel into account.

[Am. 21]

(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. **[Am. 22]**

- (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.

(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 adoption of measures, 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 provide information and guidance via a website or internet portal, together with adequate tools to inform the Commission about any breach of the legal obligation of government entities and Member States to continue making payments after measures on the basis of this Regulation are adopted. Where necessary, in order to ensure that any amount due by government entities or Member States is effectively paid to final recipients or beneficiaries, the Commission should be able to recover payments made to those entities, or, as appropriate, to make a financial correction by reducing support to a programme, and to transfer an equivalent amount to the Union reserve to be used for the benefit of final recipients or beneficiaries.* [Am. 23]

- (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. [Am. 24]
- (15a) *In view of their effect on the Union budget, measures imposed pursuant to this Regulation should only enter into force after the European Parliament and the Council have approved a transfer to a budgetary reserve of an amount equivalent to the value of the measures adopted. To facilitate the adoption of decisions which are required to protect the financial interests of the Union, such transfers should be considered to be approved unless, within a set period, the European Parliament or the Council, the latter acting by qualified majority, amend or reject them.*
- [Am. 25]

- (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 Commission should without delay inform the European Parliament and the Council about any such notification and its contents.* The Member State *concerned* should be allowed to submit its observations. The Commission and the Council should take those observations into account. [Am. 26]
- (17) The Council *Commission* should lift measures with suspensive effect ~~on a proposal from the Commission and propose to the European Parliament and the Council to lift in full or in part the budgetary reserve of the measures in question~~, if the situation leading to the imposition of those measures has been sufficiently remedied. [Am. 27]
- (18) ~~The Commission should keep the European Parliament informed of any measures proposed and adopted pursuant to this Regulation;~~ [Am. 28]

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

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 2
Definitions

For the purposes of this Regulation, the following definitions apply:

- a) 'the rule of law' refers ***shall be understood having regard*** to the Union value ***values*** enshrined in Article 2 of the Treaty on European ***TEU and in the criteria for*** Union which ***membership referred to in Article 49 TEU; it*** includes the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting ***laws-law***; legal certainty; prohibition of arbitrariness of the executive powers; ***access to justice and*** effective judicial protection by ***before*** independent ***and impartial*** courts, including of fundamental rights ***as stipulated in the Charter of Fundamental Rights of the European Union and in international human rights treaties;*** separation of powers; ***non-discrimination*** and equality before the law;
[Am. 29]

- 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, *where it affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union; a generalised deficiency as regards the rule of law may also be the consequence of a systemic threat to the Union values enshrined in Article 2 TEU that affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union;* [Am. 30]
- c) 'government entity' means all *any* public authorities **authority** at all levels of government, including national, regional and local authorities, as well as Member State organisations within the meaning of [point 42 of Article 2] of Regulation (EU, Euratom) № [...] 2018/1046 of the European Parliament and of the Council¹ (the 'Financial Regulation'). [Am. 31]

¹ *Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).*

Article 2a
Generalised deficiencies

The following shall, in particular, be considered generalised deficiencies as regards the rule of law where they affect or risk affecting the principles of sound financial management or the protection of the financial interests of the Union:

- a) endangering the independence of judiciary, including 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 personnel, by influencing judicial staff in any way that jeopardises their impartiality or by interfering with the independence of attorneyship;*
- b) failing to prevent, correct and sanction arbitrary or unlawful decisions by public authorities, including by law enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interests;*

- 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;*
- d) *endangering the administrative capacity of a Member State to respect the obligations of Union membership, including the capacity to effectively implement the rules, standards and policies that make up the body of Union law;*
- e) *measures that weaken the protection of the confidential communication between lawyer and client.* [Am. 32]

Article 3

Measures-Risks for the financial interests of the Union [Am. 33]

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 *may be established when one or more* of the financial interests of the Union *following*, in particular, *are affected or risk being affected:*
[Am. 34]

- 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~~; [Am. 35]
 - aa) the proper functioning of the market economy, thereby respecting competition and market forces in the Union as well as implementing effectively the obligations of membership, including adherence to the aim of political, economic and monetary union; [Am. 36]*
 - ab) the proper functioning of the authorities carrying out financial control, monitoring and internal and external audits, and the proper functioning of effective and transparent financial management and accountability systems; [Am. 37]*
- b) the proper functioning of investigation and public prosecution services in relation to the prosecution of fraud, *including tax fraud*, corruption or other breaches of Union law relating to the implementation of the Union budget; [Am. 38]
- c) the effective judicial review by independent courts of actions or omissions by the authorities referred to in points a), *ab)* and b); [Am. 39]

- d) the prevention and sanctioning of fraud, *including tax 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; [Am. 40]
- e) the recovery of funds unduly paid;
- ea) *the prevention and sanctioning of tax evasion and tax competition and the proper functioning of authorities contributing to administrative cooperation in tax matters*; [Am. 41]
- f) the effective and timely cooperation with the European Anti-fraud Office and, *subject to the participation of the Member State concerned*, 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; [Am. 42]
- fa) *the proper implementation of the Union budget following a systemic violation of fundamental rights.* [Am. 43]

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

- (a) endangering the independence of judiciary;
- (b) failing to prevent, correct and sanction arbitrary or unlawful decisions by public authorities, including by law enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interests;
- (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.

[Am. 44]

Article 3a
Panel of independent experts

1. *The Commission shall establish a panel of independent experts ('the Panel').*

The Panel shall be composed of independent experts in constitutional law and financial and budgetary matters. One expert shall be appointed by the national parliament of each Member State and five experts shall be appointed by the European Parliament. The composition of the Panel shall ensure gender balance.

Whenever appropriate, representatives of relevant organisations and networks, such as the European Federation of Academies of Sciences and Humanities, the European Network of National Human Rights Institutions, the bodies of the Council of Europe, the European Commission for the efficiency of justice, the Council of Bars and Law Societies of Europe, the Tax Justice Network, the United Nations, the Organization for Security and Co-operation in Europe and the Organisation for Economic Co-operation and Development, may be invited as observers to the Panel in accordance with the rules of procedures referred to in paragraph 6.

2. *The advisory tasks of the Panel shall have as their objective to assist the Commission in identifying generalised deficiencies as regards the rule of law in a Member State that affect or risk affecting the principles of sound financial management or the protection of the financial interests of the Union.*

The Panel shall assess the situation in all Member States annually on the basis of quantitative and qualitative criteria and information, having due regard to the information and guidance referred to in Article 5(2).

3. *Each year the Panel shall make public a summary of its findings.*
4. *As part of its advisory task and taking into account the outcome of the considerations under paragraph 2, the Panel may express an opinion about a generalised deficiency as regards the rule of law in a Member State.*

When expressing an opinion the Panel shall endeavour to reach a consensus. If no such consensus can be reached, the Panel shall express its opinion by a simple majority of its members.

5. *When adopting implementing acts pursuant to Article 5(6) and Article 6(2), the Commission shall take into account any relevant opinion expressed by the Panel in accordance with paragraph 4 of this Article.*
6. *The Panel shall elect its chairperson from among its members. The Panel shall establish its rules of procedure. [Am. 45]*

Article 4

Content of Measures *for the protection of the Union budget* [Am. 46]

1. ***When the conditions of Article 3 are fulfilled***, one or more of the following appropriate measures may be adopted: **[Am. 47]**

- a) where the Commission implements the Union's budget in direct or indirect management pursuant to points (a) and (c) of Article 62 of the Financial Regulation, 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.

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.
3. The measures taken shall be proportionate to the nature, gravity, ***duration*** and scope of the generalised deficiency as regards the rule of law. They shall, insofar as possible, target the Union actions affected or potentially affected by that deficiency. **[Am. 48]**

3a. The Commission shall provide information and guidance for the benefit of final recipients or beneficiaries on the obligations by Member States referred to in paragraph 2 via a website or internet portal.

The Commission shall also provide, on the same website or portal, adequate tools for final recipients or beneficiaries to inform the Commission about any breach of these obligations that, in the view of these final recipients or beneficiaries, directly affects them. This paragraph shall be applied in a manner that ensures protection of persons reporting on breaches of Union law, in line with the principles set out in Directive XXX (Directive on the protection of persons reporting on breaches of Union law). Information provided by final recipients or beneficiaries in accordance with this paragraph may only be taken into account by the Commission if accompanied by a proof that the concerned final recipient or beneficiary has lodged a formal complaint to the competent authority. [Am. 49]

3b. Based on the information provided by the final recipients or beneficiaries in accordance with paragraph 3 a, the Commission shall ensure that any amount due by government entities or Member States in accordance with paragraph 2 is effectively paid to final recipients or beneficiaries.

Where necessary:

- a) with reference to funds from the Union budget managed in accordance with Article 62(1)(c) of the Financial Regulation, the Commission shall:*
 - i) recover the payment made to any of the bodies referred to in points (v) to (vii) of Article 62(1)(c) of the Financial Regulation for an amount equivalent to the amount not paid to final recipients or beneficiaries, in breach of paragraph 2 of this Article;*

ii) transfer an amount equivalent to the amount referred to in the previous point to the Union reserve referred to in Article 12 of Council Regulation XXX (MFF Regulation). Such amount shall be considered margin left available within the meaning of point (a) of Article 12(1) of Council Regulation XXX (MFF Regulation) and shall be mobilised in accordance with Article 12(2) of Council Regulation XXX (MFF Regulation), for the benefit, to the possible extent, of the final recipients or beneficiaries referred to in paragraph 2 of this Article;

- b) *with reference to funds from the Union budget managed in accordance with Article 62(1)(b) of the Financial Regulation:*
- i) *the obligation of government authorities or of Member States referred to in paragraph 2 of this Article shall be considered an obligation of Member States within the meaning of [Article 63] of Regulation XXX (CPR Regulation). Any breach of such obligation shall be treated in accordance with [Article 98] of Regulation XXX (CPR Regulation);*
 - ii) *the amount resulting from reduced support from the Funds to a programme, in application of [Article 98] of Regulation XXX (CPR Regulation) shall be transferred by the Commission to the Union reserve referred to in Article 12 of Council Regulation XXX (MFF Regulation). Such amount shall be considered margin left available within the meaning of point a) of Article 12(1) of Council Regulation XXX (MFF Regulation) and shall be mobilised in accordance with paragraph 2 of Article 12 of Council Regulation XXC (MFF Regulation), for the benefit, to the possible extent, of the final recipients or beneficiaries referred to in paragraph 2 of this Article.*
- [Am. 50]

Article 5
Procedure

1. Where the Commission, *taking into account any opinions of the Panel*, 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. *The Commission shall without delay inform the European Parliament and the Council of such notification and its contents.* [Am. 51]
2. *When assessing whether the conditions of Article 3 are fulfilled*, the Commission *may shall* take into account all relevant information, including *opinions of the Panel*, decisions of the Court of Justice of the European Union, *resolutions of the European Parliament*, reports of the Court of Auditors, and conclusions and recommendations of relevant international organisations *and networks*. *The Commission shall also take into account the criteria used in the context of Union accession negotiations, in particular the chapters of the acquis on judiciary and fundamental rights, justice, freedom and security, financial control and taxation, as well as the guidelines used in the context of the Cooperation and Verification Mechanism to track the progress of a Member State.* [Am. 52]

3. The Commission may request any additional information required for its assessment, both before and after having made a finding pursuant to paragraph 1.
 4. The Member State concerned shall provide all *the* required information and may make observations within a time limit specified by the Commission, which shall not be less than + *one* month *nor more than three months* from the date of notification of the finding. In its observations, the Member State may propose the adoption of remedial measures. [Am. 53]
 5. The Commission shall take into account the information received and any observations made by the Member State concerned, as well as the adequacy of any proposed remedial measures, when deciding whether or not to submit a proposal for *adopt* a decision on the appropriate *any* measures *referred to in Article 4. The Commission shall decide on the follow-up to be given to the information received within an indicative time limit of one month, and in any case within a reasonable timeframe from the date of receipt of that information.* [Am. 54]
- 5a. *When assessing the proportionality of the measures to be imposed, the Commission shall have due regard to the information and guidance referred to in paragraph 2.*
[Am. 55]

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 *adopt a decision* on the appropriate measures to the Council *referred to in Article 4 by means of an implementing act.* [Am. 56]
- 6a. *At the same time as it adopts its decision, the Commission shall simultaneously submit to the European Parliament and to the Council a proposal to transfer to a budgetary reserve an amount equivalent to the value of the measures adopted.* [Am. 57]
- 6b. *By way of derogation from Article 31(4) and (6) 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, Article 31(8) of the Financial Regulation shall apply.* [Am. 58]

6c. The decision referred to in paragraph 6 shall enter into force if neither the European Parliament nor the Council reject the transfer proposal within the period referred to in paragraph 6b. [Am. 59]

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. [Am. 60]
8. — The Council, acting by a qualified majority, may amend the Commission's proposal and adopt the amended text as a Council decision. [Am. 61]

Article 6

Lifting of measures

1. The Member State concerned may, at any time, submit to the Commission *a formal notification including* evidence to show that the generalised deficiency as regards the rule of law has been remedied or has ceased to exist. [Am. 62]

2. *At the request of the Member State concerned or on its own initiative*, the Commission, *taking into account any opinions of the Panel*, shall assess the situation in the Member State concerned *within an indicative time limit of one month, and in any case within a reasonable timeframe from the date of receipt of the formal notification*. Once the generalised deficiencies as regards the rule of law which on the grounds of which the appropriate measures *referred to in Article 4* were adopted cease to exist in full or in part, the Commission shall, submit to the Council a proposal for *without delay, adopt* a decision lifting those measures in full or in part. *At the same time as it adopts its decision, the Commission shall simultaneously submit to the European Parliament and to the Council a proposal to lift, in full or in part, the budgetary reserve referred to in Article 5(6a)*. The procedure set out in paragraphs 2, 4, 5, 6, and ~~7~~ 6b and 6c of Article 5 shall apply. [Am. 63]

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.
- As from year n+3, an amount equivalent to the suspended commitments shall be entered in the Union Reserve for Commitments provided for in Article 12 of Council Regulation (EU, Euratom) No XXXX (MFF Regulation). [Am. 64]*

Article 7

Information of the European Parliament

~~The Commission shall immediately inform the European Parliament of any measures proposed or adopted pursuant to Articles 4 and 5~~ [Am. 65]

Article 7a

Reporting

The Commission shall report to the European Parliament and the Council on the application of this Regulation, in particular on the effectiveness of the measures adopted, if any, at the latest five years after its entry into force.

The report shall be accompanied where necessary by appropriate proposals. [Am. 66]

Article 8

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. ~~It shall apply from 1 January 2021.~~ [Am. 67]

Article 8a

Inclusion in the Financial Regulation

The contents of this Regulation shall be inserted into the Financial Regulation upon its next revision. [Am. 68]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the European Parliament

The President

For the Council

The President