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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	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 - Outcome of the European Parliament's proceedings (Strasbourg, 14 to 17 January 2019)

I. INTRODUCTION

The rapporteurs, Eider GARDIAZABAL RUBIAL (S&D, ES) and Petri SARVAMAA (EPP, FI), presented a report consisting of 68 amendments (amendments 1-68) to the proposal for a Regulation on behalf of the Committee on Budgets and the Committee on Budgetary Control.

In addition, the ALDE political group tabled 1 amendment (amendment 69), the Verts/ALE political group tabled 4 amendments (amendments 70-73), the EFDD Group tabled 1 amendment (amendment 74), the ENF Group tabled 3 amendments (amendments 75-77), a group of 40 MEPs tabled an amendment (amendment 78) and the GUE/NGL group tabled 4 amendments (amendments 79-82).

II. VOTE

When it voted on 17 January 2019, the plenary adopted amendments 1-68 to the proposal for a Regulation. No other amendments were adopted. The amendments adopted are set out in the annex.

At the end of the vote, the proposal was referred back to the Committee, pursuant to Rule 59(4)(4) of the European Parliament's Rules of Procedure, thereby not bringing the Parliament's first reading to a close and opening the negotiations with the Council.

Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States ***I

Amendments adopted by the European Parliament on 17 January 2019 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))¹

(Ordinary legislative procedure: first reading)

Amendment 1

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, enshrined in*** Article 2 of the Treaty on European Union ***(TEU) and in the criteria for Union membership.*** As recalled by Article 2 ***TEU***, ***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.***

¹ The matter was referred back for interinstitutional negotiations to the committees responsible, pursuant to Rule 59(4), fourth subparagraph (A8-0469/2018).

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 3

Proposal for a regulation Recital 1 b (new)

Text proposed by the Commission

Amendment

(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.

Amendment 4

Proposal for a regulation

Recital 2

Text proposed by the Commission

(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.

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,

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 **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 law**, 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. **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^{12a}.**

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 Juízes 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.

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 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.*

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

^{12a} *Report of the Venice Commission of 4 April 2011 Study No. 512/2009 (CDL-AD(2011)003rev).*

Amendment 5

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 6

Proposal for a regulation Recital 2 b (new)

Text proposed by the Commission

Amendment

(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.

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. 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.

(3) ***While there is no hierarchy among Union values, respect for*** the rule of law is ***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.***

Amendment 8

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 and*** harm the financial interests of the Union.

Amendment 9

Proposal for a regulation

Recital 7 a (new)

Text proposed by the Commission

Amendment

(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.

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 is not only **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 **sustainably only** where a solid legal and institutional framework is in place.

Amendment 11

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 12

Proposal for a regulation Recital 8 b (new)

Text proposed by the Commission

Amendment

(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.

Amendment 13

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 14

Proposal for a regulation Recital 11

Text proposed by the Commission

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

(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.

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.

Amendment 15

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 16

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

(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.

Amendment 17

Proposal for a regulation Recital 11 c (new)

Text proposed by the Commission

Amendment

(11c) Member States should fully apply the principle of sincere cooperation in matters of tax competition.

Amendment 18

Proposal for a regulation Recital 11 d (new)

Text proposed by the Commission

Amendment

(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.

Amendment 19

Proposal for a regulation Recital 11 e (new)

Text proposed by the Commission

Amendment

(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.

Amendment 20

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 ***thorough*** qualitative assessment by the Commission. That assessment ***should be objective, impartial and transparent and*** be based on information from all ***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 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, such as the bodies of the Council of Europe, ***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.

Amendment 21

Proposal for a regulation

Recital 12 a (new)

(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.

Amendment 22

Proposal for a regulation Recital 13

(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.

(13) The 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 23

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 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.

Amendment 24

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) In order to ensure uniform implementation of this Regulation and in

(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.*

view of the importance of the financial effects of measures being imposed pursuant to this Regulation, implementing powers should be conferred on the Commission.

Amendment 25

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 26

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) Before proposing the adoption of any measure pursuant to this Regulation, the

(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.

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 should take those observations into account.

Amendment 27

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

(17) The ***Commission*** should lift measures with suspensive effect ***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.

Amendment 28

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

deleted

Amendment 29

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' ***shall be understood having regard*** to the Union ***values*** enshrined in Article 2 ***TEU and in the criteria for Union membership referred to in Article 49 TEU***; ***it*** includes 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, 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;

Amendment 30

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, ***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;

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point c

Text proposed by the Commission

(c) 'government entity' means **all public** authorities 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) No [...] (the 'Financial Regulation').

Amendment

(c) 'government entity' means **any public 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 Council^{1a}** (the 'Financial Regulation').

^{1a} **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).**

Amendment 32

Proposal for a regulation

Article 2 a (new)

Article 2 a

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.*

Amendment 33

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Measures

Amendment

***Risks for the financial interests of the
Union***

Amendment 34

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. A generalised deficiency as regards
the rule of law in a Member State ***may be
established when one or more*** of the
following, in particular, ***are affected or
risk being affected***:

Amendment 35

Proposal for a regulation

Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) the proper functioning of the

Amendment

(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;***

authorities of that Member State implementing the Union budget, in particular in the context of public procurement or grant procedures;

Amendment 36

Proposal for a regulation

Article 3 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(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;

Amendment 37

Proposal for a regulation

Article 3 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(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;

Amendment 38

Proposal for a regulation

Article 3 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(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;

Amendment 39

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(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;

Amendment 41

Proposal for a regulation

Article 3 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the prevention and sanctioning of tax evasion and tax competition and the proper functioning of authorities contributing to administrative cooperation in tax matters;

Amendment 42

Proposal for a regulation

Article 3 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) the effective and timely cooperation with the European Anti-fraud Office and with the European Public Prosecutor's Office in their investigations or prosecutions pursuant to their respective legal acts and to the principle of loyal cooperation.

(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;

Amendment 43

Proposal for a regulation

Article 3 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

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

Amendment 44

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

Amendment

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

Amendment 45

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3 a

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.

Amendment 46

Proposal for a regulation Article 4 – title

Text proposed by the Commission

Content of measures

Amendment

Measures **for the protection of the Union budget**

Amendment 47

Proposal for a regulation Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 48

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

3. The measures taken shall be proportionate to the nature, gravity and scope of the generalised deficiency as regards the rule of law. They shall, insofar

Amendment

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

as possible, target the Union actions affected or potentially affected by that deficiency.

shall, insofar as possible, target the Union actions affected or potentially affected by that deficiency.

Amendment 49

Proposal for a regulation Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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.

Amendment 50

Text proposed by the Commission

Amendment

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.

Amendment 51

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

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.***

Amendment 52

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. ***When assessing whether the conditions of Article 3 are fulfilled,*** the Commission ***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.***

Amendment 53

Proposal for a regulation Article 5 – paragraph 4

Text proposed by the Commission

4. The Member State concerned shall provide ***all*** required information and may make observations within a time limit specified by the Commission, which shall not be less than ***1*** month from the date of notification of the finding. In its observations, the Member State may propose the adoption of remedial measures.

Amendment

4. The Member State concerned shall provide ***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.

Amendment 54

Proposal for a regulation Article 5 – paragraph 5

Text proposed by the Commission

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 a decision on **the appropriate** measures.

Amendment

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 **adopt** a decision on **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.**

Amendment 55

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

Text proposed by the Commission

Amendment

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.

Amendment 56

Proposal for a regulation Article 5 – paragraph 6

Text proposed by the Commission

Amendment

6. Where the Commission considers

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*.

that the generalised deficiency as regards the rule of law is established, it shall ***adopt a decision*** on the measures *referred to in Article 4 by means of an implementing act*.

Amendment 57

Proposal for a regulation Article 5 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

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.

Amendment 58

Proposal for a regulation Article 5 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

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.

Amendment 59

Proposal for a regulation

Article 5 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

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.

Amendment 60

Proposal for a regulation

Article 5 – paragraph 7

Text proposed by the Commission

Amendment

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.

Deleted

Amendment 61

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.

deleted

Amendment 62

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. The Member State concerned may, at any time, submit to the Commission evidence to show that the generalised deficiency as regards the rule of law has been remedied or has ceased to exist.

Amendment

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.

Amendment 63

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

2. The Commission shall assess the situation in the Member State concerned. Once the generalised deficiencies as regards the rule of law which on the grounds of which the **appropriate** measures were adopted cease to exist in full or in part, the Commission shall **submit to the Council a proposal for** a decision lifting those measures in full or in part. The procedure set out in paragraphs 2, 4, 5, 6 **and 7** of Article 5 shall apply.

Amendment

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 measures **referred to in Article 4** were adopted cease to exist in full or in part, the Commission shall, **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, **6b and 6c** of Article 5 shall apply.

Amendment 64

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 (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).***

Amendment 65

Proposal for a regulation Article 7

Text proposed by the Commission

Article 7

Information of the European Parliament
The Commission shall immediately inform the European Parliament of any

Amendment

deleted

*measures proposed or adopted pursuant to
Articles 4 and 5*

Amendment 66

Proposal for a regulation Article 7 a (new)

Text proposed by the Commission

Amendment

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.*

Amendment 67

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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.***

This Regulation shall enter into force on
the twentieth day following that of its
publication in the Official Journal of the
European Union.

Amendment 68

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8 a

Inclusion in the Financial Regulation

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