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From: General Secretariat of the Council
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Subject: Multiannual Financial Framework (MFF) 2021-2027 and Recovery package
- Proposal for a Regulation of the European Parliament and of the Council
on a general regime of conditionality for the protection of the Union budget

Delegations will find in annex the provisional agreement reached on 5 November 2020 with the European Parliament regarding the Regulation of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget.

Changes compared to the Commission proposal from 2018 are marked in **bold** and ~~striketrough~~.

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~~ **a general regime of conditionality for the protection of the Union budget**

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 procedure

¹ [...] **OJ C 291, 17.8.2018, p. 1.**

Whereas:

(1) ~~The rule of law is one of the essential values upon which the Union is founded.~~ **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). As recalled by Article 2 TEU, those, these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.**

(1a) In its conclusions of 21 July 2020, the European Council stated that the financial interests of the Union shall be protected in accordance with the general principles embedded in the Union Treaties, in particular the values of Article 2 TEU. It also underlined the importance of the protection of the financial interests of the Union and the importance of the respect of the rule of law.

(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 **the respect for fundamental rights as stipulated in the Charter of Fundamental Rights of the European Union and other applicable instruments**, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality², **including a transparent, accountable and democratic process for enacting law**, legal certainty³, prohibition of arbitrariness of the executive powers⁴, separation of powers⁵, **access to justice** and effective judicial protection ~~by~~**before independent and impartial courts**⁶ are respected⁷.

² Judgment of the Court of Justice of 29 April 2004, CAS Succhi di Frutta, C-496/99 PECLI:EU:C:2004:236, paragraph 63.

³ 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 & amp; Figlio and Ditta Vincenzo Divella v Amministrazione delle finanze dello Stato. Joined cases 212 to 217/80, ECLI:EU:C:1981:270, paragraph 10.

⁴ 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.

⁵ 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.

⁶ Judgment of the Court of Justice of 27 February 2018, Associação Sindical dos Juizes Portugueses v Tribunal de Contas C- 64/16, ECLI:EU:C:2018:117, paragraphs 31, 40-41; **judgment of the Court of Justice of 25 July 2018, LM, C-216/18 PPU, ECLI:EU:C:2018:586, paragraphs 63-67.**

⁷ Communication from the Commission "A new EU Framework to strengthen the Rule of Law", COM(2014)158COM(2014)0158 final, Annex I.

(2a) The accession 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. They are now enshrined in Article 49 TEU.

Once a candidate country becomes a member of the Union, it joins a legal structure that is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the Union that implements them will be respected.⁸ Member States' laws and practices should continue to comply with the common values on which the Union is founded.

(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.

(4) Whenever the Member States implement the Union's budget, including resources allocated through the European Union Recovery Instrument established pursuant to Regulation [establishing a European Union Recovery Instrument], and through loans and other instruments guaranteed by the Union 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 cases of fraud, including tax fraud, tax evasion, corruption, conflict of interest or other breaches thereof of the law are effectively pursued by investigative and prosecution services, and if arbitrary or unlawful decisions of public authorities, including law enforcing authorities, can be subject to effective judicial review by independent courts and by the Court of Justice of the European Union.

⁸ **Opinion 2/13, EU:C:2014:2454, paragraph 168**

(6) ~~Judicial bodies should act independently and impartially~~ **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 **financial and human** resources and procedures to act effectively and in full respect of the right to a fair trial, **including the respect of the rights of defence. Final judgments should be implemented effectively**. 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.

(7) The independence of the judiciary presupposes, in particular, that the body concerned is able to exercise **both under the relevant rules and in practice** 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.

(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 where a solid legal and institutional framework is in place.

(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 courts⁹. 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 Union¹⁰. 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.

(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 developed a variety of instruments and processes promoting the rule of law and its application, including financial support to civil society organisations, the European Rule of Law Mechanism and the EU Justice Scoreboard, as well as providing an effective response from the Union institutions to breaches of the rule of law through infringement proceedings and the Article 7 TEU procedure. The proposed mechanism complements these instruments by protecting the Union budget against breaches of the principles of the rule of law affecting its sound financial management or the protection of the financial interests of the Union.

(11) ~~Generalised deficiencies in the Member States as regards~~ **Breaches of the principles of 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. **This is the case for individual breaches of the principles of the rule of law and even more for breaches that are widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by those authorities.**

⁹ Case C-64/16, para 32-36.

¹⁰ Case C-64/16, para 40-41.

(12) The identification of a ~~generalised deficiency~~ **breaches of the principles of the rule of law** requires a **thorough** qualitative assessment by the Commission. That assessment ~~could be based on the~~ **should be objective, impartial and fair and take into account relevant** information from all available sources and ~~recognized~~ **recognised** institutions, including judgments of the Court of Justice of the European Union, reports of the Court of Auditors, **the Commission's annual Rule of Law Report and EU Justice Scoreboard, reports of the European Anti-Fraud Office, the European Public Prosecutor's Office as relevant**, and conclusions and recommendations of relevant international organisations and networks, such as the bodies of the Council of Europe **like the Council of Europe Group of States against Corruption (GRECO) and the Venice Commission including its rule of law checklist**, and the European networks of supreme courts and councils for the judiciary. **The Commission could consult the Fundamental Rights Agency and the Venice Commission if necessary for the thorough qualitative assessment.**

(13) **Measures under this Regulation are necessary in particular in cases where other procedures set out in Union legislation would not allow to protect the Union budget more effectively. Union financial legislation and the applicable sector-specific and financial rules¹¹ provide for various possibilities to protect the Union budget, including interruptions, suspensions or financial corrections, linked to irregularities or serious deficiencies in management and control systems. The** ~~The possible~~ measures to be adopted in the event of **breaches of the principles of the rule of law** ~~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, **the suspension of disbursement of instalments or the early repayment of loans**, a reduction of funding under existing commitments, and a prohibition to conclude new commitments with recipients **or to enter into new agreements on loans or other instruments guaranteed by the Union budget.**

¹¹ For example, [Financial Regulation] [CPR]

(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~~ **breaches of the principles of the rule of law**, and the effects of ~~that deficiency~~ **those breaches** 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 breaches of the principles of the rule of law. When considering the adoption of measures, the Commission should take into account their potential impact on final recipients and beneficiaries. Taking into consideration that in shared management payments from the Commission to Member States are legally independent from payments by national authorities to beneficiaries, appropriate measures under this regulation should not be considered as affecting the availability of funding for payments towards beneficiaries according to the payment deadlines set out under the applicable sector-specific and financial rules. Decisions adopted under this Regulation and obligations towards final recipients or beneficiaries set out in this regulation are part of applicable Union law with respect to implementing funding in shared management. The Member States concerned by the measures should regularly report to the Commission on compliance with their obligations towards final recipients or beneficiaries. Reporting on compliance with payment obligations towards beneficiaries set out in the applicable sector-specific and financial rules should allow the Commission to verify that decisions under this regulation do not impact in any way, directly or indirectly, payments to be made under the applicable sector-specific and financial rules. 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. The Commission should follow up on such information to verify whether the applicable rules have been respected, in particular Article 63, point (b) of Article 68 (1) and Article 98 of Regulation (EU) 2020/... of the European parliament and of the Council (Common Provisions Regulation).

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 recover payments made, or, as appropriate, make a financial correction by reducing Union support to a programme in line with the applicable sector-specific and financial rules.

(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.~~

(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~~ **breaches of the principles of 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.

(16a) When setting time limits in accordance with this Regulation for the Member State concerned, the Commission should take into account, in particular, the amount of information provided and requested, the complexity of the relevant facts and of their assessment, as well as the administrative capacity of that Member State.

(16b) Where the Commission, after analysing the observations by the Member State concerned, considers that the conditions for the adoption of measures are fulfilled, it should submit a proposal for the adoption of appropriate measures to the Council. The Council should act upon the Commission's proposal to adopt appropriate measures by means of an implementing decision within a period of one month, which may exceptionally be extended by a maximum of two additional months. With a view to ensuring that the Council takes the decision within these time limits, the Commission should make the most appropriate use of its rights under Article 237 TFEU and the Council's Rules of Procedure.

(17) After any measures pursuant to this Regulation are adopted, the Commission should regularly monitor the situation in the Member State concerned. The Commission should reassess the situation when the Member State concerned adopts new remedial measures, or in any case after a maximum period of one year from the adoption of the measures.

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.

(17a) The procedure for adopting and lifting the measures should respect the principles of objectivity, non discrimination and equal treatment of Member States and should be conducted on a non partisan and evidence based approach.

If, exceptionally, the Member State concerned considers that there are serious breaches of the above principles it may request the President of the European Council to refer the matter to the next European Council. In such exceptional circumstances, no decision concerning the measures should be taken until the European Council has discussed the matter. This process shall, as a rule, not take longer than three months after the Commission has submitted its proposal to the Council.

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

(18a) The Commission should report to the European Parliament and the Council on the application of this Regulation. When reporting to the European Parliament and the Council, in addition to the effectiveness of the measures adopted, the Commission should consider the overall effectiveness of the procedure set out in this Regulation and on the complementarity of this instrument with others.

(19) This Regulation should not affect the competence of the European Public Prosecutor's Office or the obligations of the Member States which do not participate in the enhanced cooperation established by Council Regulation (EU) 2017/1939,

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~~ **breaches of the principles of 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 to the Union value enshrined in Article 2 ~~of the Treaty on European Union which~~ **TEU. The rule of law** includes the principles of legality, implying a transparent, accountable, democratic and pluralistic ~~process for enacting laws~~ **law-making process**; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, **including access to justice**, by independent **and impartial** courts, ~~including of~~ **also as regards** fundamental rights; separation of powers; **and non-discrimination** and equality before the law; **The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU.**
- (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;~~

(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) No ~~[...]~~ **2018/1046 of the European Parliament and of the Council**¹² (the 'Financial Regulation').

Article 2a

Breaches of the principles of the rule of law

1. For the purposes of the application of this Regulation, the following may be indicative of breaches of the principles of 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.

Article 3

Conditions for the adoption of measures

1. Appropriate measures shall be taken where ~~a generalised deficiency as regards~~ **it is established according to Article 5 that breaches of the principles of** the rule of law in a Member State ~~affects or risks~~ **affect or seriously risk** affecting the ~~principles of~~ **sound financial management of the EU budget** or the protection of the financial interests of the Union **in a sufficiently direct way.**

¹² **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).**

2. For the purposes of the application of this Regulation, breaches of the principles of the rule of law shall concern one or more of the following, in particular:

(a) the proper functioning of the authorities of that Member State implementing the Union budget, **including loans and other instruments guaranteed by the Union budget**, in particular in the context of public procurement or grant procedures, ~~and when carrying out monitoring and controls;~~

(ab) the proper functioning of the authorities carrying out financial control, monitoring and audit, and the proper functioning of effective and transparent financial management and accountability systems;

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

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

(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 **or to the protection of the financial interests of the Union**, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities;

(e) the recovery of funds unduly paid;

(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-;

(g) other situations or conducts of the authorities of the Member States relevant for the sound financial management of the Union budget or the protection of the financial interests of the Union.

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.~~

Article 4

~~Content of measures~~ **Measures for the protection of the Union budget**

1. **Provided that the conditions foreseen in Article 3 are fulfilled and following the procedure foreseen in Article 5**, one or more of the following appropriate measures may be adopted:

(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 **Regulation (EU, Euratom) No 2018/1046**;

(2) a prohibition to enter into new legal commitments;

(3) a suspension of disbursement of instalments in full or in part or a early repayment of loans guaranteed by the Union budget;

(4) a suspension or reduction of the economic advantage under an instrument guaranteed by the Union budget;

(5) a prohibition to enter into new agreements on loans or other instruments guaranteed by the Union budget.

(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~~**obligations** 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 **obligations they have towards final recipients or beneficiaries, including the obligation to make payments to final recipients or beneficiaries under this regulation and sector-specific or financial rules. When implementing Union funds in shared management, Member States concerned by measures adopted pursuant to this Regulation shall report to the Commission on their compliance with these obligations every three months from the adoption of those measures.**

The Commission shall verify whether applicable law has been complied with and where necessary take all appropriate measures to protect the Union budget, in line with sector-specific and financial rules.

3. The measures taken shall be proportionate. **They shall be determined in light of the actual or potential impact of the breaches of the principles of the rule of law on the sound financial management of the EU budget or the financial interests of the Union.** ~~to~~ The nature, **duration**, gravity and scope of the ~~generalised deficiency as regards~~ **breaches of the principles of the rule of law shall be duly taken into account. The measures.** ~~They shall, insofar as possible, target the Union actions affected or potentially affected by that deficiency~~ **by the breaches.**

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 (EU) 2019/1983, of the European Parliament and of the Council¹³. Information provided by final recipients or beneficiaries in accordance with this paragraph shall be accompanied by a proof that the concerned final recipient or beneficiary has lodged a formal complaint to the competent authority.

3b. On the basis of the information provided by the final recipients or beneficiaries in accordance with paragraph 3a, the Commission shall do its utmost to ensure that any amount due by government entities or Member States in accordance with paragraph 2 is effectively paid to final recipients or beneficiaries, in line with in particular Article 63, point (b) of Article 68 (1) and Article 98 of Regulation (EU) 2020/...(Common Provisions Regulation).

¹³ [Title of the regulation on the protection of persons reporting on breaches of Union law]

Article 5

Procedure

1. Where the Commission finds that it has reasonable grounds to ~~believe~~**consider** that the conditions of Article 3 are fulfilled, it shall, **unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively**, send a written notification to that Member State, setting out the **factual elements and specific** 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.**

1a. In light of the information received according to paragraph 1, the European Parliament may invite the Commission for a structured dialog on its findings.

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~~ **When assessing whether the conditions of Article 3 are fulfilled, the Commission shall take into account relevant information from available sources, including decisions, conclusions and recommendations of Union institutions and other relevant international organisations and other recognized institutions.**

3. The Commission may request any additional information required for its assessment, both before and after having ~~made a finding~~ **sent the written notification** pursuant to paragraph 1.

4. The Member State concerned shall provide ~~all~~**the** required information and may make observations **on the findings set out in the notification referred to in paragraph 1** 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 **to address the finding in the Commission's notification.**

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. **The Commission shall carry out its assessment within an indicative time limit of one month, and in any case within a reasonable timeframe from the date of receipt of that information.**

5bis. In the event the Commission envisages to make a proposal pursuant to paragraph 6, it shall beforehand give the Member State the opportunity to submit its observations, in particular on the proportionality of the envisaged measures, within one month.

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.

6. Where the Commission considers that the ~~generalised deficiency as regards the rule of law is established~~ conditions of Article 3 are fulfilled and that remedial measures proposed by the Member State under paragraph 4, if any, do not adequately address the finding in the Commission's notification, it shall submit a proposal for an implementing act on the appropriate measures to the Council within one month of receiving the Member State's observations or, in case no observations are made, without undue delay and in any case within one month of the deadline set in paragraph 5bis. The proposal shall set out the specific grounds and evidence on which the Commission based its finding.

7. The ~~Council shall adopt the decision shall be deemed to have been adopted by the Council,~~ **Council shall adopt the decision within one month of receiving the Commission's proposal. If exceptional circumstances arise, the period for adoption of the decision may be extended by a maximum of two additional months unless it decides, by qualified majority, to reject the Commission proposal within one month of its adoption by the Commission. With a view to ensuring a timely decision, the Commission shall make use of its rights under Article 237 TFEU, where it deems it appropriate.**

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

Article 6

Lifting of measures

1. The Member State concerned may, at any time, **adopt new remedial measures and** 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~~ **a written notification including evidence to show that the conditions of Article 3 are no longer fulfilled.**

2. **At the request of the Member State concerned, or on its own initiative and at the latest after a maximum period of one year after the adoption of measures by the Council,** the Commission shall ~~assess~~**reassess** 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~~ **taking into account any evidence submitted by the Member State concerned, as well as the adequacy of new remedial measures.**

Where the Commission considers that the conditions of Article 3 are no longer fulfilled, it shall submit to the Council a proposal for a decision lifting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has been remedied ~~were adopted cease to exist in full or in part, the Commission~~ **it shall submit to the Council a proposal for a decision** ~~lifting those~~ **adapting the adopted measures.**

Where the Commission considers that the situation leading to the adoption of measures has not been remedied, it shall address to the Member State concerned a reasoned decision and inform the Council thereof.

When the Member State concerned submits a written notification pursuant to paragraph 1, the Commission shall submit its proposal or adopt its decision within one month of receiving that notification. This period could be extended in duly justified circumstances, in which case the Commission shall without delay inform the Member State concerned of the reasons for the extension.

~~in full or in part.~~ **The procedure set out in paragraphs 2, 3, 4, 5, 6, 7 and 8 and 7 of Article 5 shall apply as appropriate.**

3. Where measures concerning the suspension of the approval of one or more programmes or amendments thereof referred to in point ~~(i)~~**(1)** of Article ~~4(2)(b)~~**4(1)(b)** or the suspension of commitments referred to in point ~~(ii)~~**(2)** of Article ~~4(2)(b)~~**4(1)(b)** are lifted, amounts corresponding to the suspended commitments shall be entered in the budget subject to Article ~~75~~ of Council Regulation (EU, Euratom) ~~No XXXX~~**No 2020/...** (MFF Regulation). Suspended commitments of year n may not be entered in the budget beyond year n+2.

Article 7

~~Information of~~**Informing** the European Parliament

The Commission shall immediately inform the European Parliament of any measures proposed, **adopted or lifted** ~~or adopted~~ pursuant to Articles 4, **5 and 6**, ~~and 5~~

Article 7a

Reporting

1. 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 four years after its date of entry into force.¹⁴

¹⁴ To be accompanied by:
- a COMMISSION STATEMENT: "*The Commission agrees to consider accompanying the report to the European Parliament and the Council on the application of this Regulation by appropriate proposals where necessary.*"
- a JOINT STATEMENT: "*Without prejudice to the Commission's right of initiative, the European Parliament, the Council and Commission agree to consider including the content of this Regulation into Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (the "Financial Regulation") upon its next revision.*"

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.

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

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Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*
