



Council of the European Union
General Secretariat

Brussels, 22 September 2022

**DOCUMENT PARTIALLY ACCESSIBLE
TO THE PUBLIC (09.01.2024)**

WK 12444/2022 INIT

LIMITE

FIN

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Budget Committee
N° Cion doc.:	12551/22 + ADD 1
Subject:	Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary: PPT presentation

Delegations will find attached the slides that were used by the Commission for presenting its proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary at the Budget Committee meeting on 22 September 2022.



Rule of law conditionality regulation

Hungary

22 September 2022

Overview



- Conditionality regulation: **key features**
- **Ongoing procedure**
- **Remedial measures** submitted by Hungary
- **College decision** of 18 September 2022
- **Next steps**
- **Q&A**

Conditionality regulation: key features (1)

- The Regulation on a general regime of conditionality applies since **1 January 2021**
- Applies to **breaches of the principles of the rule of law** that affect or seriously risk affecting the **sound financial management** of the Union budget or the protection of the **financial interests** of the Union in a sufficiently direct way
- **Link with the EU budget is needed** for the application of the Conditionality Regulation
- Only if no other instruments can protect the Union budget **more effectively**

Conditionality regulation: key features (2)

- The Commission assesses cases **in an objective, impartial and fair manner**
- Following this assessment and several opportunities for the Member State to be heard, the Commission can propose **proportionate measures** for adoption by the Council by qualified majority
- The Member States can also propose **remedies** to address the concerns raised by the Commission; measures can be suspended or lifted
- **Beneficiaries of EU funding** in the Member State(s) concerned will not be negatively affected

Ongoing procedure

- **27 April 2022** • The Commission **sent a written notification** to Hungary under the Conditionality Regulation
- **27 June 2022** • Hungary **replied to the written notification**
- **20 July 2022** • **Commission sent an intention letter** to inform Hungary of the measures the Commission envisaged to propose to the Council
- **July & August 2022** • Intensive dialogue between **the Commission and Hungary**
- **22 August 2022** • Hungary **submitted a reply** to the Intention Letter
- **13 September 2022** • Hungary **complemented the reply** with further commitments
- **18 September 2022** • The Commission proposed **to the Council** to adopt budgetary protection measures

Concerns raised in the written notification

- Systemic irregularities, deficiencies and weaknesses in public procurement, including
 - high rate of single bidding procedures and low intensity of competition in procurement procedures
 - issues related to the use of framework agreements
- Detection, prevention and correction of conflicts of interest; concerns regarding 'public interest trusts'
- Addition grounds related to investigation, prosecution, and the anti-corruption framework
- Aspects in the area of independence of the judiciary as potential future issues under this regulation should a sufficiently direct link to the budget be established.

The remedial measures proposed by Hungary (1)

- A total of 17 remedial measures – **an important commitment in the right direction**
- Commitments to:
 - Establish a new and independent **Integrity Authority** with extensive powers
 - Establish an **Anti-Corruption Task Force** with safeguards for a representative involvement of civil society
 - Strengthen the **Anti-corruption framework**
 - **Ensure transparency** of the use of EU support by public interest asset management foundations
 - **Modify the criminal code** to allow judicial review of prosecutorial decisions
 - Strengthen **audit and control mechanisms**
 - Reduce share of tender procedures with single bids financed from national funds
 - Reduce share of tender procedures with single bids financed from EU funds

The remedial measures proposed by Hungary (2)

- Commitments to:
 - Develop a **single-bid reporting tool**
 - Develop an **Electronic Public Procurement System**
 - Develop a **performance measurement framework for public procurements**
 - Adopt an action plan to **increase level of competition in public procurement**
 - Provide **training to SMEs and micro enterprises** on public procurement practices
 - Set up a **support scheme** for compensating the costs related to participation in public procurement for **SMEs and micro enterprises**
 - **Use systematically** the Commission's datamining and risk scoring tool **Arachne**
 - Strengthen the **cooperation with OLAF**
 - Ensure the **transparency of public spending**

The Integrity Authority



- Independent body
- Annual reports with recommendations
- Extensive powers
- Clear timeline

The Anticorruption Task Force and Anticorruption framework

PUBLIC

- Anticorruption Task Force
 - Meaningful representation of civil society
 - Annual report
- Anticorruption framework
 - New national anticorruption strategy and action plan
 - Asset declaration system

Judicial Review of prosecutors' decisions

- Introduction of a new procedure allowing for a judicial review of prosecutors' decisions (or decisions by the investigating authority) to dismiss a crime report or terminate criminal proceedings.
- An investigating judge (sitting in the Buda Central District Court – highly specialized in pretrial criminal proceedings) will decide whether criminal proceedings should commence or continue.
- Available to all (individuals and legal entities).

Public Interest Asset Management Foundations



- Applicability of public procurement rules
- Conflicts of interest

Strengthening Audit and Control mechanisms and related measures

- Conflict of interest rules clearly spelled out in relevant decrees implementing Union funds
- Creation of DIAI
- Access to conflict of interest files by the Integrity Authority
- Cooperation with OLAF
- Extended use of Arachne

Other measures

- Many measures aimed at enhancing transparency and increasing the level of competition in public procurement procedures
 - Reduction of single-bidding
 - Development of EPS
 - Action plan to increase level of competition
 - Performance measurement framework for public procurement
 - Training and support to micro and small enterprises
 - Enhance transparency of public spending

The remedial measures - assessment

- To consider them to be 'adequate' - need to be able to conclude that they will **put an end to the breaches of the principles of the rule of law** and/or to the **risks** they create **for the EU budget** and the Union's financial interests
- **Taken together**, they could in principle be capable of **addressing the issues raised in the notification**, if correctly specified in laws and rules, and implemented accordingly

BUT:

- Commission concerns relate both to the **legal framework** and to a large extent to the **administrative practice**
- Need to see **the details of the concrete measures** (to be included in legislation) and **the correct implementation of the crucial elements on the ground** in due time

College decision of 18 September 2022

- A risk for the EU budget remains
- Propose measures to the Council
 - A suspension of **65% of the commitments for three operational programmes under cohesion policy**, amounting to an estimated €7.5 billion
 - A prohibition to **enter into legal commitments with the so-called public interest trusts** for programmes implemented in direct and indirect management
- The measures are **proportionate and take into account the remedial measures that Hungary submitted**
- The implementation of a number of key steps is fundamental to consider that the remedial measures are adequate to address the concerns raised

Next steps

- On the basis of this proposal, the Council will have **one month to take, by a qualified majority, a decision**
- Under exceptional circumstances, **this period may be extended by two months**
- The Commission will continue to **monitor the situation** in Hungary and act accordingly
- Hungary committed to **fully inform the Commission** about the implementation of the remedial measures by **19 November**
- The Commission will **keep the Council informed** of any relevant element which may have an **effect on its present assessment**

Key implementation steps (1)

Remedial measure	Key implementation step	Implementation date
Integrity Authority	Adoption of a Government Decision providing for the tasking and the timeline for the establishment of the Integrity Authority	by 5 September 2022
	Submission to the National Assembly of a Draft Act on the establishment of the Authority	by 30 September 2022
	Appointment of the board of the Authority	by 4 November 2022
	Beginning of the activities of the Authority	as of 19 November 2022
Anticorruption Task Force	Adoption of the repealing of the Government Decision	by 5 September 2022
	Submission to the National Assembly of a Draft Act on the establishment of the Authority	by 30 September 2022
Strengthening the Anticorruption framework	Adoption of anti-fraud and anti-corruption strategies	by 30 September 2022
	Submission to the National Assembly draft legislation including on: Extension of the personal and material scope of asset declarations (including to relatives living in the same household with the person concerned)	Effective from 1 November 2022

Key implementation steps (2)

Remedial measure	Key implementation step	Implementation date
Public Interest Management Foundations	Adoption of the amending acts (Act CXLIII of 2015 on public procurement and Act IX)	by 30 September 2022
Judicial Review of prosecutors' decisions	Finalisation of the draft text of implementing regulations (necessary for the application of the review procedure) and adoption immediately after the entry into force of the new law	by 31 October 2022
	Entry into force of the new law amending the Criminal Procedure Code following an ex ante review by the Constitutional Court initiated by the Government	15 November 2022
Strengthening audit and control mechanisms for the implementation of EU funds	Establishment of a Working Group	by 31 August 2022
	Establishment of the DIAI (Directorate of Internal Audit and Integrity) in the Prime Minister's Office	by 30 September 2022
	Adoption of amendments of the relevant Government Decrees (413/2021 and 256/2021)	by 30 September 2022

Key implementation steps (3)

Remedial measure	Key implementation step	Implementation date
Reduction of single-bids in procurement procedures involving EU funds	Performance of the first audit by the EUTAF on the compliance with the Single Market Scoreboard methodology (and on individual data provision to the Commission and to the public if applicable)	by 30 September 2022
Single-bid reporting tool	Development of a new monitoring and reporting tool based on data sourced from the EPS	by 30 September 2022
	The Directorate General for Audit of European Funds (EUTAF) shall confirm through its audit that the single-bid reporting tool is fully functional and operational	by 30 September 2022
Electronic Public Procurement System (EPS)	Full operability of newly developed functions allowing for the structured search and export of data in the EPS also in a format processable by machine means	by 30 September 2022
Performance measurement framework	Development of a performance measurement framework, including the adoption of a Government Decision	by 30 September 2022

Key implementation steps (4)

Remedial measure	Key implementation step	Implementation date
Extended use of Arachne	Application of the procedures for the systematic and effective use of ARACHNE	by 30 September 2022
Strengthening cooperation with OLAF	Adoption of an act on the amendment to Act CXXII of 2010 on Nemzeti Adó- és Vámhivatal, by which the National Tax and Customs Administration will be designated as the competent national authority to assist OLAF	by 30 September 2022
	Adoption of an act on the amendment to Act XXIX of 2004 to introduce a dissuasive financial type of sanction to be imposed in case an economic operator refuses to cooperate with OLAF	
Enhanced transparency of public spending	Send to the Commission an advanced draft of the legislative act setting out an obligation for all public bodies to proactively publish a pre-defined set of information on the use of public funds	by 30 September 2022
	Adoption of the above legislative act	by 31 October 2022

Q&A

PUBLIC