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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Budget Committee
N° Cion doc.:	12551/22 + ADD 1
Subject:	Rule of Law/Conditionality Regulation: COM replies to MS questions

Delegations will find attached the Commission's replies to MS questions on the RoL/Conditionality Regulation as requested in the Budget Committee meeting on 28 September 2022.

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

(doc. 12551/22 + ADD 1)

MS COMMENTS/QUESTIONS

<p>BE</p>	<ul style="list-style-type: none"> • On the extension <p>1. As the Commission has announced it would “kindly ask the Council” for an extension with two months, what exceptional circumstances does it see to justify this extension?</p> <p>Answer: The Commission proposal clearly states that the Commission will keep the Council informed on any development that may have an impact on the assessment of the adequacy of the remedial measures proposed by Hungary. An extension of two months would allow for considering the fulfilment of some of the commitments Hungary has undertaken. This concerns in particular the details and the correct, full and effective implementation of all the “key implementation steps” of the measures as outlined in the Annex to the explanatory memorandum in the Commission’s proposal, to be implemented by 19 November 2022. The Commission will keep the Council informed of any relevant element which may have an effect on its present assessment. However, it is of course for the Council to assess what is an “exceptional circumstance” that would allow it to extend the deadline set in the Regulation, and to take a decision on the extension.</p> <ul style="list-style-type: none"> • On the decision itself <p>2. Did the Commission make the comparison with previous existing institutions in HU (which were similar to the one that is proposed now and were criticized by NGOs such as Transparency International as being unable – and unwilling – to change things), to assess whether the new integrity authority will have sufficient safeguards to be able to protect the rule of law?</p> <p>Answer: The Commission used multiple sources of information and worked across services, e.g. colleagues that are in charge of monitoring the situation and enforcing relevant EU law in the area of anti-corruption, judicial system and public procurement were closely involved in all discussions with Hungary. The Commission has also held various meetings with civil society organisations and took into account any information provided when relevant. We also understand from the comments made at the last meeting in COMBUD on this file that the authority set up in the past lacked real powers: the relevant remedial measures, if correctly transposed into the legal texts and correctly implemented, will provide the new Integrity Authority with extensive powers to enhance the prevention, detection and correction of fraud, corruption, conflict of interests and other irregularities affecting the Union’s financial interests.</p> <p>3. What is meant by ‘suspension of 65% of commitment appropriations’ of the programmes mentioned? Does it concern 65% of the amounts foreseen in the 7-year period, of the yearly amounts?</p> <p>Answer: It concerns 65 % of the overall envelope of the relevant programmes, i.e. the funds foreseen for these programmes for the period 2021-2027. Of course, if measures are adopted by the Council, the Regulation provides for a specific procedure to lift such measures should the conditions for the application of the Regulation no longer be fulfilled (eg if at that time the remedial measures proposed or new ones are fully adequate to address the Commission’s concerns).</p> <p>4. Can the Commission clarify what part of the 65% suspension is proportionate to what remedial measure?</p>
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Answer: As explained in the proposal for a CID, at this stage it is not possible to quantify precisely the potential impact on the Union budget, as the proportion of the funds that will be implemented through procurement under the MFF 2021-2027 period cannot be determined in advance with sufficient accuracy. Therefore, since it is not possible to define precisely the amount of expenditure linked to the serious irregularities that have been detected, the appropriate level of the measures to be applied is determined by a percentage that reflects the estimated ensuing risk for the Union budget. This percentage is determined in the light of the seriousness, frequency and duration of the systemic breaches identified, as well as of the expected financial risk for the sound financial management of the Union budget, taking into account the remedial measures submitted by Hungary in the context of this procedure.

Only part of the funds of the identified operational programmes is expected to be implemented through procurement (in principle between 85% and 90% of funds) and, also in principle, some public procurement procedures may not be affected by those systemic breaches. On the other hand, those breaches could also involve serious risks for other Union programmes which are also, to a lesser extent, implemented through public procurement but would not be affected by the envisaged measures. Taking into account all the foregoing, in its intention letter, the Commission had estimated the risk for the budget to correspond to 70% of the funds of the programmes concerned, in the absence of remedial measures. The slight reduction of 5 percentage points in the proposal for CID takes into account the fact that, compared to July, we now have a package of 17 remedial measures. As outlined in the proposal for CID, if the key steps outlined in the Annex to the explanatory memorandum are taken, i.e. if the remedial measures are fully and correctly transposed into the relevant legal texts, the remedial measures would be considered fully adequate to address the concerns raised by the Commission.

5. Will the Commission adapt its proposal when HU has implemented part of the proposed remedial measures?

Answer: The Commission and the Council are bound to follow the procedure as set out in the Conditionality Regulation. The Commission cannot prejudge the next steps of the procedure. The Commission will continue to monitor the situation and to exchange with the Hungarian authorities and will keep the Council informed of any relevant element which may have an effect on its present assessment.

6. How would the commission react if it notices at some point some of the foreseen and described remedial actions would not be implemented sufficiently or would not have the desired impact? E.g. the creation of an anti-corruption authority, which could appear to have no real impact.

Answer: The Commission is monitoring the situation and the fulfilment of all commitments by Hungary very closely. The services are in regular contact with the Hungarian authorities and insist on the proper implementation of all remedial measures. The Commission cannot speculate about what will happen in the future. However, in general terms, in case any commitment is not implemented satisfactorily or should it not have the desired impact on the practices that raised concerns in this procedure, depending on the situation it could act as follows:

- If the measures proposed by the Commission to the Council are imposed, the Commission will not propose the lifting of the relevant measures on the basis of Article 7 of the Regulation (or may propose a partial lifting, depending on its assessment),
- In case the measures proposed by the Commission are not adopted by the Council and the procedure is closed, the Commission reserves its right to start a new procedure under the Conditionality Regulation.

7. How will the suspension work in practice, if the MS can lose its appropriations after 2 years suspension but it has the possibility to implement the measures until 2026?

Answer: The key implementation steps are to be implemented by 19 November 2022. If the Council were to adopt the proposed measures, the Conditionality Regulation would provide for the possibility of the Member State to adopt new remedial measures and submit to the Commission a

	<p>written notification including evidence to show that the conditions of Article 4 are no longer fulfilled. The Commission can on its own initiative, at the request of the Member State concerned or at the latest one year after the adoption of measures by the Council reassess the situation and propose the lifting or adaptation, or decide on the maintenance of measures. This procedure is set out in Article 7 of the Regulation.</p> <p>In the Commission's view, it is logical that some measures have longer time horizons, as implementation on the ground requires more time.</p> <p>Indeed, if measures are adopted and not adapted or lifted after two years, the relevant appropriations would expire. This follows from Article 6 of the MFF regulation, which clearly sets out that suspended commitments of year n may not be entered in the budget beyond year n+2.</p> <p>8. Will the Commission immediately propose additional measures when it appears some remedial measures of Hungary are delayed or weakened in their implementation?</p> <p>Answer: See answer in question 6 above.</p>
<p>BG</p>	<p>9. According to the Explanatory memorandum, the findings of the Commission following the audits conducted in Hungary for both the 2007-2013 and the 2014-2020 programming periods gave the Commission grounds to perform various measures in order to protect the EU budget such as making relevant recommendations, requesting financial corrections and conducting specific studies. It is also clear that Hungary has taken into account the recommendations and has put large efforts in order to achieve positive results in the framework of the applicable European and national Cohesion policy legislation. In general, we find that the Cohesion policy sectoral legislation and the Financial Regulation have proven that both give enough opportunities to address deficiencies in the field of shared management programmes. In that perspective, they should have been fully explored, even for the programmes from previous financial periods (2007-2013 and 2014-2020 periods).</p> <p>Answer: See section 5 of the explanatory memorandum which includes the Commission's assessment on whether other procedures under other rules allow to protect the Union budget more effectively.</p> <p>10. Since there is no sufficient information presented in the current draft Implementing decision, we would be grateful if the Commission could clarify whether eventual interruption or suspension of funds were made by the Commission, as first steps in the ordinary procedure, envisaged in the Common Provisions Regulation.</p> <p>Answer: As described in section 5 of the explanatory memorandum accompanying the CID proposal, the Commission considers that no other procedure under Union law would allow it to protect the Union budget more effectively than the procedure set out by the Conditionality Regulation, i.a. as the identified deficiencies, weaknesses, limits and risks are widespread and intertwined. The preventive nature of the procedure has to be noted, in particular. Even if the use of certain other means available under sectoral rules could be envisaged, such as audits by the Commission services, which may identify irregularities not prevented, identified or corrected by the Hungarian authorities, those measures generally relate to expenditure already declared to the Commission. Financial corrections are not a sufficient remedy either in this case, as in principle they are not of a preventive nature and they may not always relate to systemic issues. Moreover, as regards the application of the financial measures provided in Regulation 1060/2021 (CPR), the Commission notes that those measures are by definition limited to the scope and criteria contained in that sectorial regulation and cannot achieve the general preventive and systemic protection that is possible under the Conditionality Regulation.</p>
<p>DE</p>	<p>11. What are the next steps, specifically regarding any plea for extension of the deadline, and beyond?</p> <p>Answer: As regards the procedure in the Council, this is for the Presidency to clarify. The Commission will inform the Council of its assessment of the implementation of the key elements</p>

	<p>of the remedial measures (set out in the annex to the explanatory memorandum of the proposal) after 19 November 2022. We cannot speculate at this point on the content or form of this assessment.</p> <p>12. What are the requirements for an extension of the deadline according to Art. 6? How do you interpret “exceptional circumstances”?</p> <p>Answer: See answer to question 1.</p> <p>13. If the Council rejected the proposal given the positive commitments taken by Hungary, could the Commission start a new procedure under Art. 6 when it comes to the conclusion that the commitments are not fully implemented?</p> <p>Answer: In principle yes, the Commission can start the procedure if the conditions of Article 6(1) of the Conditionality Regulation are fulfilled, if it has reasonable grounds to consider that the EU budget or its financial interests in the cases of breaches of the principles of the rule of law is at risk. This may relate to the implementation in practice of the remedial measures in the future (i.e. if they do not achieve the expected results on the ground) or to other elements that may arise.</p>
<p>DK, supported by NL</p>	<p>General questions</p> <p>14. When will the Council be updated on the implementation of the Hungarian authorities when they have to report back to the Commission before the 19th of November? Will the Council in this regard also be updated within the regular one month deadline for adoption following the regulation?</p> <p>Answer: The Commission will inform the Council of its assessment of the implementation of the key elements of the remedial measures (set out in the annex to the explanatory memorandum of the proposal) after 19 November 2022. The annex to the explanatory memorandum provides also the relevant deadlines for implementation.</p> <p>15. Can the Commission confirm that a suspension of the commitments will take effect from Council adoption?</p> <p>Answer: Yes, until adoption by the Council, the Commission proposal would have no legal effects (e.g. no suspension of funds).</p> <p>16. In case of an extension of the deadline for adoption of the decision, it is key that the financial interests of the EU is not compromised. Can the Commission specify the amount of the 7.5 bn euros that are to be committed if the Council do not take a decision within three months?</p> <p>Answer: As the operational programmes have not been adopted yet, this information/ the financial programming is not yet available. In line with Article 6(10) and (11) the Council may adopt the measures proposed, it may amend the proposal or it may reject it.</p> <p>17. If the Council adopts the decision, what will happen to the operational programmes? Are they cancelled or suspended until the measures are lifted?</p> <p>Answer: If the operational programmes concerned are adopted by the time the Council adopts its decision, the proposal foresees a suspension of 65% of the commitments related to those programmes. If the operational programmes are not adopted by the time the Council adopts its decision, there would be technically no commitment to suspend. In such a scenario, the proposal foresees, in the alternative, that the Council could suspend the approval of one or more of the concerned operational programmes in proportion to the identified risk for the budget. [The other programme[s] could then be adopted and implemented.] The lifting of measures is set out in</p>

Article 7 of the Conditionality Regulation.

18. The conditionally regulation only allows for an extension in the case of 'exceptional circumstances'. The explanatory memorandum to the proposal merely underlines that the extension should be granted in order to allow Hungary to implement the proposed remedial measures. Can you elaborate on your assessment on how this constitutes an exceptional circumstance pursuant to art. 6 (10) of the regulation?

Answer: The Commission did not propose an extension, this decision is a prerogative of the Council. The Commission in its proposal rather provides the Council with all necessary information to come to a decision on the proposal, which also includes that Hungary undertook to implement a number of commitments by 19 November 2022, which would fall after the ordinary one-month deadline for the Council. In its proposal, the Commission committed to keep the Council informed of any relevant element that may have an impact on the assessment of the adequacy of the remedial measures to address the Commission's concerns.

19. When will all the remedial measures take effect after their adoption? It is key, that the remedial measures take effect as soon as possible in order to protect and safeguard the EU budget and financial interests, but many frameworks and actions by the Hungarian government are not to be implemented before end of 2022 or in 2023.

Answer: In the remedial measures, Hungary has committed to specific timelines and to unconditionally maintain in force the remedial measures (and the related legislation) without any time limit and to enforce duly the rules set therein. Many remedial measures which provide for legislative acts to be adopted provides will enter into force immediately, and notably before 19 November 2022. The Commission considers that the specific issues identified in Hungary concern both the legal framework and, to a large extent, changes in practice, the latter requiring a more extended timeframe to produce and assess concrete results. This is why an implementation timeline beyond 2022 can be realistic and reasonable. The Commission will be closely monitoring the correct implementation of all remedial measures.

20. What methodology will the Commission apply in order to assess whether the remedial measures have been implemented properly and can you elaborate on the timeframe? It is in this regard recalled that the Commission highlights in its proposal that administrative practice has to a large extent contributed to the issues that the remedial measures aim to fix.

Answer: The Commission will assess if all commitments as outlined in the remedial measures have been implemented and transposed into the relevant legal texts as necessary. For the detailed timeline of each remedial measure, please refer to the relevant text of the measure. The Commission considers that the full and effective implementation of all the key implementation steps as outlined in the annex to the explanatory memorandum is key to reasonably expect that the budget and the financial interests of the Union are no longer at risk. This is of course without prejudice to the actual implementation on the ground through time.

21. In addition to the remedial measures, recital 29 of the proposal underlines that Hungary has also committed that all courts in Hungary hearing civil, administrative and criminal cases comply with requirements of independence, impartiality and being established by law in accordance with Article 19(1) of the Treaty of the European Union and relevant EU acquis. What is the impact of this commitment and how will it be included in the assessment of the Commission on the remedial measures? Can the Commission further elaborate of its inclusion?

Answer: Compliance with Article 19 TEU is a general requirement under EU law, applicable to all national courts. The fact that it is stated in the measure and will be stated in the law transposing the measure does not change this requirement.

This wider commitment from Hungary is relevant for the assessment of the effectiveness of certain remedial measures. It should be recalled in that context that the Court of Justice held that

the financing conditions laid down by EU law and the objectives pursued by the European Union when it finances expenditure “cannot be fully guaranteed in the absence of effective judicial review designed to ensure compliance with EU law; the existence of such review, both in the Member States and at EU level, by independent courts and tribunals, is of the essence of the rule of law” (Case C-156/21, paragraph 132). The Commission will need to check how this commitment is reflected in the measures to be adopted and submitted by Hungary in the coming weeks;

[REDACTED]

22. If one or more remedial measures are deemed not to be implemented properly, what will the consequence be? Has or will the Commission establish a threshold?

Answer: The Commission is monitoring the implementation of the remedial measures by Hungary very closely. The services are in regular contact (almost daily) with the Hungarian authorities and insist on the proper implementation of all remedial measures. The Commission cannot speculate at this stage and will keep the Council informed of any element that may have an impact on its assessment. In any case, the Commission would be bound to start a new procedure under the Conditionality Regulation should any commitment not be implemented satisfactorily and a risk for the EU budget materialize, if all the conditions of the Conditionality Regulation are fulfilled. See also reply to question 6.

Questions to remedial measures:

- Integrity Authority

23. How is the Integrity Authority’s control of asset declarations ensured in case of assets that are not under national jurisdiction, e.g. letter-box-entities?

Answer: Implementation details should be defined by the Integrity Authority in line with the best international practices

24. Is it correctly understood that the Integrity Authority cannot be considered properly implemented before all courts in Hungary live up to the requirements of independence, impartiality and being established by law in accordance with Article 19(1) of the Treaty of the European Union and relevant EU acquis? Will the Commission assess whether this commitment is fulfilled?

Answer: The measure relevant to the Integrity Authority may be considered as implemented once all implementing steps included in the text of the remedial measure (see the text of the remedial measure) are effectively implemented. See also answer to question 21.

- Anti-corruption Task Force

25. Can the Commission or the Hungarian government explain what is meant by ‘extensive consultations’ with national and international stakeholders during the preparation of the draft legislation, cf. recital 31 and 89? Can you provide examples of national and international stakeholders?

Answer: Please refer to the text of the relevant remedial measure and the Commission’s proposal.

26. How does the Anti-corruption Task Force contribute to protection of the EU budget?

Answer: In the Commission’s view, the remedial measure in question, if correctly specified in

detailed rules and implemented accordingly, and together with other remedial measures, would address in principle the issues raised as regards ineffective investigation and prosecution or sanctioning of breaches of law linked to the protection of the financial interests of the Union, as well as those related to systemic weaknesses of the public procurement system. For more details on the tasks and activities of the Anti-corruption Task Force, please refer to the text of the relevant remedial measure.

27. Why is the deadline for establishment of the Anti-corruption Task Force the 1st of December 2022 and first meeting before 15th of December 2022? How does the task force contribute to the protection of the EU budget when the first meeting is after Council decision?

Answer: As regards the deadlines, please refer to the text of the relevant remedial measure. The Commission also notes that the submission to the National Assembly of a draft Act on the establishment of the Authority by 30 September 2022 is a key implementation step for this remedial measure, as set out in the Annex to the Commission's proposal: this same Act will also set out the regulatory framework for the Task Force.

- Strengthening the Anti-Corruption Framework

28. How does the National Anti-Corruption Strategy (NACS) and Action Plan protect the EU budget?

Answer: The Commission in its assessment took into consideration all commitments by the Hungarian government included in the remedial measure on Strengthening the Anti-Corruption Framework, which includes the adoption of the National Anti-Corruption Strategy (NACS) and Action Plan. In the Commission's view, the remedial measure, if correctly specified in detailed rules and implemented accordingly, and together with other remedial measures, would address in principle the issues raised as regards ineffective investigation and prosecution or sanctioning of breaches of law linked to the protection of the financial interests of the Union, as well as those related to systemic weaknesses of the public procurement system. For more details relating to the commitments under the NACS and the Action Plan, please refer to the text of the relevant remedial measure.

29. Why is the deadline for adoption not earlier than 30 of June 2023 and implementation the 1st October 2023?

Answer: The adoption of a new NACS and Action Plan needs to take into account the Action Plan for the implementation of the NACS for the period 2020-2022 which is on-going. Please refer to the text of the relevant remedial measure. Please also note that the date of 1st October 2023 in the Commission's proposal relates to the specific commitment by the Hungarian government to include in the Action Plan specific actions aimed at introducing an effective, proportionate and dissuasive sanctioning regime, including administrative and criminal sanctions with regard to serious violations related to obligations under the asset declaration system (no later than 1 October 2023). It does not refer to implementation of the NACS and the Action Plan in general.

30. Will the database with asset declarations with regards to the Anti-Corruption Framework be accessible for the EU public?

Answer: Regarding the conditions of accessibility of this database, please refer to the text of the relevant remedial measure.

- Public Interest Management Foundations (or Public Interest trusts)



- Judicial Review of prosecutors decisions

32. What are the consequences in case the ex ante review by the Constitutional Court find issues related to the Rule-of-Law?

Answer: What is important is that Hungary has committed to the entry into force of the relevant law for the implementation of the measure relevant to the judicial review.

33. When is it expected that the review mechanism will be finalized?

Answer: The commitment undertaken by the Hungarian government is that the new law will enter into force by 15 November 2022. For details, please refer to the text of the relevant remedial measure.

- Strengthening audit and control mechanisms for the implementation of EU funds

34. In what way does strengthening of rules and procedures effectively enforce the obligations protecting the EU budget?

Answer: Please refer to the text of the relevant remedial measure.

- Reduction of single bids in procurement procedures involving Union funds

35. What will be the measures if Hungary has not reduced the single bids below 15 pct. with regard to public procurement by 31st of December?

Answer: Please refer to the text of the relevant remedial measure, in which Hungary took the commitment to adopt additional measures in this respect. The Commission will be monitoring the situation and the fulfilment of all commitments by Hungary very closely. The services are in regular contact with the Hungarian authorities and insist on the proper implementation of all remedial measures.

36. Why is the threshold 15 pct.?

Answer: The 15% has been included in the 2022 CSRs, as an ambitious target set by the government.

37. How is the transparency increased with regards to competition in public procurement?

Answer: Please refer to the text of the relevant remedial measure, as well as the text of the remedial measures relating to the development of a single-bid reporting tool to monitor and report on public procurements closed with single-bids, as well as the Integrity Authority (in relation to the annual reporting) and the performance measurement framework. All these measures taken together will ensure increased transparency as regards competition in public procurement.

38. Why is the deadline for implementation not earlier than 31st of December?

Answer: Because the single bids rate has to be calculated for each year. All results from all public procurement procedures that took place in year 2022 will have to be taken into account.

- Reduction of single bids in public procurement involving national funds

39. What will be the measures if Hungary has not reduced the single bids below 15 pct. with regard to public procurement by 31st of December?

Answer: Please refer to the text of the relevant remedial measure, in which Hungary took the commitment to adopt additional measures in this respect. The Commission will be monitoring the situation and the fulfilment of all commitments by Hungary very closely. The services are in regular contact with the Hungarian authorities and insist on the proper implementation of all remedial measures.

40. Why is the threshold 15 pct.?

Answer: See reply in question 36.

41. How is the transparency increased with regards to competition in public procurement?

Answer: See answer to question 37.

42. Why is the deadline for implementation not earlier than 31st of December?

Answer: See reply in question 38.

- Single-bid reporting tool

43. How will the tool protect the EU budget and financial interests of the EU?

Answer: In the Commission's view, this reporting tool will allow effective public scrutiny of single bid procedures, as well as relevant controls in the context of the other measures, such as the exercise of competences by the Integrity Authority. Such control is necessary in order to ensure the 15% target set by Hungary in the relevant remedial measures. Ensuring reduction of single bids and consequently increasing competition in public contracts will allow more efficient use of EU funds used in public procurement by Hungary. This remedial measure, if correctly developed and implemented accordingly, it will in principle make the remedial measures on reduction of single-bids more effective and transparent. For details on the system, please refer to the text of the remedial measure.

44. If not implemented correctly, will there be any additional remedial measures?

Answer: See answer to question 6.

- Electronic Public Procurement System

45. How will the tool protect the EU budget and financial interests of the EU?

Answer: In the Commission's view, this remedial measure is correctly developed and implemented, it should increase transparency in public procurement procedures and therefore, can be considered as capable of addressing in principle the concerns raised by the Commission as regards systemic weaknesses in the public procurement system, as it will allow public scrutiny and controls which are necessary to achieve increased competition in the market and thus more

efficient use of EU funds through such processes. For details on the system, please refer to the text of the remedial measure.

46. If not implemented correctly, will there be any additional remedial measures?

Answer: See answer to question 6.

- Performance measurement framework

47. Why is the deadline for the implementation of the framework the 30th of November 2022? How does the performance framework contribute to the protection of the EU budget when implementation is after Council decision?

Answer: As regards the deadlines, please refer to the text of the relevant remedial measure. The Commission also notes that the development of the said framework by 30 September 2022, including the adoption of a Government Decision, is a key implementation step for this remedial measure, as set out in the Annex to the explanatory memorandum of the Commission's proposal.

48. How will the performance framework assess the efficiency and cost effectiveness of public procurements?

Answer: Please refer to the text of the relevant remedial measure.

49. How does this tool in general protect the EU budget?

Answer: In the Commission's view, this remedial measure aiming to increase the level of competition in public procurement, together with the other remedial measures related to the public procurement system, if correctly specified in detailed rules and implemented accordingly, it can be considered as capable of addressing in principle the concerns raised by the Commission as regards systemic weaknesses in the public procurement system. For details on this framework, please refer to the text of the relevant remedial measure.

- Action plan to increase level of competition on procurement procedures

50. Why is the deadline for implementation of the action plan the 31st of March? How does the action plan contribute to the protection of the EU budget when implementation is after Council decision?

Answer: As regards the deadlines, please refer to the text of the relevant remedial measure. This measure realistically requires a longer time period of implementation, as it needs to take into account results of the implementation of other remedial measures, such as the performance measurement framework, as well as finding, decisions and recommendations of the Integrity Authority.

51. If not implemented correctly, will there be any additional remedial measures?

Answer: See answer to question 6.

- Training for micro, small and medium-sized enterprises in public procurement

52. How will the training of SME's protect the EU budget?

Answer: In the Commission's view, this remedial measure aiming to increase the level of

competition in public procurement, and in particular to facilitate the participation of micro- and small enterprises in procurement procedures, together with other remedial measures related to the public procurement system, if correctly implemented, can be considered as capable of addressing in principle the concerns raised by the Commission in this respect. For details on the training to be provided, please refer to the text of the relevant remedial measure.

53. Why is the deadline 31st of March 2024 for the free-of-charge training?

Answer: Please refer to the text of the relevant remedial measure.

- Support scheme for participation in public procurement by micro, small and medium-sized enterprises

54. How will the training of SME's protect the EU budget?

Answer: The Commission would like to clarify that this remedial measure concerns the setting up of a support scheme for compensating the costs associated with participating in public procurement of micro, small and medium-sized enterprises, and not training of SMEs. Enhancing broader participation of SMEs in public procurement procedures may increase competition in public procurement and thus more efficient use of EU funds through such procedures. For details, please refer to the text of the relevant remedial measure.

55. Why is the deadline 31st of March 2024 for the training?

Answer: The Commission would like to note that the deadline relates to trainings to be provided to 1000 micro and small enterprises "by 31 March 2024". This measure is one that has to be implemented progressively. For details, please refer to the text of the relevant remedial measure.

56. What are the differences between initiative 13 and 14?

Answer: Please see answer to question 54. Please also refer to the text of the relevant remedial measure under 13 and 14.

- Extended use of the Commission's Arachne risk-scoring tool

57. What audit and control bodies have access to the data set up to the Arachne system?

Answer: Please refer to the text of the relevant remedial measure.

- Strengthening cooperation with OLAF

58. Does OLAF assess that the proposed measures are sufficient in order to deliver the necessary controls?

Answer: The Commission's assessment includes the work across services, including OLAF.

59. How will the national authority be appointed?

Answer: Please refer to the text of the relevant remedial measure.

60. If not implemented correctly, will there be any additional remedial measures?

Answer: See answer to question 6.

	<ul style="list-style-type: none"> • <u>Enhanced transparency of public spending</u> <p>61. How does the adoption of legislation on enhanced transparency enforce the rules on public spending?</p> <p>Answer: Please refer to the text of the relevant remedial measure.</p>
FR	<p>Questions générales</p> <p>62. La Commission peut-elle confirmer qu'une suspension des engagements prendra effet à compter de l'adoption de la décision par le Conseil ?</p> <p>Answer: Oui, la suspension des engagements ne prendra effet uniquement qu'à partir de l'entrée en vigueur de la décision par le Conseil, qui est directement applicable.</p> <p>63. La Commission peut-elle préciser la part des 7,5 Md€ qui seront engagés si le Conseil ne prend pas de décision dans les trois mois ?</p> <p>Answer: On se réfère à la réponse à la question 15 ci-dessus.</p> <p>64. Si le Conseil adopte la décision, qu'advient-il des programmes opérationnels ? Sont-ils annulés ou suspendus jusqu'à ce que les mesures soient levées ?</p> <p>Answer: On se réfère à la réponse à la question 16 ci-dessus.</p> <p>65. Quelle méthode la Commission appliquera-t-elle pour évaluer si les mesures correctives ont été correctement mises en œuvre à court, moyen et long terme et pourrait-elle préciser le calendrier ?</p> <p>Answer: On se réfère à la réponse à la question 20 ci-dessus.</p> <p>66. La Commission peut-elle donner plus de détails sur le raisonnement qui l'amène à considérer que le risque pour le budget correspond à 65% des fonds concernés?</p> <p>Answer: On se réfère à la réponse à la question 4 ci-dessus.</p> <p><u>Sur les mesures proposées par la Hongrie :</u></p> <p>La Commission pourrait-elle apporter des précisions et des informations concernant les aspects suivants :</p> <p>67. Concernant l'Autorité pour l'intégrité : quels seront sa composition, son financement et ses pouvoirs ? Comment la nomination du président de l'Autorité garantira-t-elle son indépendance ? Comment ses avis seront-ils pris en compte ? Un recours sera-t-il possible en cas de non-application, notamment par les autorités publiques ou le gouvernement, des recommandations de l'Autorité ?</p> <p>Answer: On se réfère au texte de la mesure spécifique.</p> <p>68. La task-force anti-corruption aura-t-elle des pouvoirs spécifiques de contrôle des fonds européens ? Comment seront pris en compte ses recommandations ? Comment sera assurée la représentation des ONG au sein de la task-force anti-corruption, en particulier vis-à-vis des membres du gouvernement qui pourraient y siéger ?</p> <p>Answer: On se réfère au texte de la mesure spécifique.</p>

	<p>69. Quelles mesures concrètes seront mises en place pour réduire la proportion des marchés publics pour lesquelles un acheteur unique est retenu ? Les formations et financement des PME seront-ils suffisants, et quelle évaluation sera menée de l'effectivité de ces mesures à moyen-terme ?</p> <p>Answer: Concernant les mesures concrètes les autorités Hongroises mettront en place au sujet, veuillez lire le texte des mesures sur la réduction des appels d'offre avec un acheteur unique, ainsi que celle relative au développement d'un outil de reporting de telles procédures. Si nécessaire, la Hongrie pourrait apporter des clarifications au sein des discussions au Conseil. Concernant la suffisance des formations et l'évaluation qui sera menée, veuillez lire le texte de la mesure concernant l'encadrement de performance, ainsi que celle concernant l'Autorité d'intégrité.</p> <p>70. Quelles seront les mesures de transparence qui permettront d'assurer la réduction des appels d'offre avec un acheteur unique ?</p> <p>Answer: Veuillez lire le texte des mesures sur la réduction des appels d'offre avec un acheteur unique, ainsi que celle relative au développement d'un outil de reporting de telles procédures.</p> <p>71. Comment va être élaboré le « Plan » pour augmenter le niveau de concurrence sur les marchés publics ? Comment la société civile sera-t-elle prise en compte, et notamment les entreprises, dans l'élaboration de ce plan ?</p> <p>Answer: On se réfère au texte de la mesure concernant ce plan, ainsi que celles sur l'encadrement de performance et l'Autorité d'Intégrité.</p> <p>72. Quels seront les critères d'éligibilité des PME pouvant bénéficier de formation et de soutien financier aux fins de leur participation aux marchés publics ? Dans quelle mesure la transparence du processus de sélection des acheteurs sera-t-elle assurée, étant entendu que la création d'un registre recensant « une grande partie » des dépenses publiques n'est pas nécessairement de nature à assurer une telle transparence ?</p> <p>Answer: Concernant les critères d'éligibilité des PME pouvant bénéficier de formation et de soutien financier, la Hongrie pourrait apporter des clarifications au sein des discussions au Conseil. Concernant la question sur la transparence du processus de sélection, veuillez lire le texte des mesures sur le développement du « Electronic Public Procurement System », l'acte législatif relatif à l'assurance d'une transparence renforcée aux dépenses publiques, l'application extensive de l'ARACHNE, l'Autorité d'Intégrité (en ce qui concerne ses compétences en matières de procédure de marchés publics), l'encadrement de performance, ainsi que le renforcement des mécanismes de contrôle et audits.</p> <p>73. Quelles garanties concrètes (d'indépendance, de fonctionnement et de financement, notamment) seront accordées à l'opérateur national pour la fiscalité et les douanes qui devra coopérer à l'avenir avec l'OLAF ? Quels seront ses pouvoirs concrets et quel suivi sera opéré de la mise en œuvre des recommandations de l'OLAF ?</p> <p>Answer: Veuillez lire le texte de la mesure concernant le renforcement de la coopération avec OLAF.</p>
LU	<p>74. Article 6(10) of the conditionality regulation provides that the Council shall adopt the implementing decision within one month of receiving the Commission's proposal and only allows for an extension of two months "if exceptional circumstances arise". Does this mean that the Council will have to decide, via vote, whether exceptional circumstances have arisen? Can an implementation of proposed remedial measures within a fixed deadline constitute a circumstance that has not been reasonably foreseeable and for which there is insufficient time</p>

to take the necessary actions?

Answer: Please see answer to question 1.

75. According to article 6(9) the Commission shall submit a proposal for an implementing decision when it considers that the conditions of article 4 are fulfilled and the remedial measures do not adequately address the findings. In light of this provision, can one conclude that the remedial measures so far proposed are not sufficient to remedy the identified problems and that therefore the implementation of these measures does not justify the use of the exception?

Answer: As explained in the explanatory memorandum, the proposed remedial measures, taken together, would in principle be capable of addressing the issues regarding systemic irregularities, deficiencies and weaknesses in public procurement, risks of conflicts of interest, and concerns regarding 'public interest trusts', as well as the additional grounds regarding investigation, prosecution and the anti-corruption framework, provided that all the measures are correctly and effectively implemented. However, the detailed implementing rules for the proposed remedial measures are still to be determined, notably how key elements of the measures will be transposed in the actual legal texts to be adopted for the implementation of the remedial measures. Given that several of the issues identified in Hungary are not only about changes in the legal framework, but more prominently about the concrete implementation of changes in practice, the latter requiring a more extended timeframe to produce concrete results, pending the implementation of at least the key elements of some of the remedial measures at this stage, as indicated in the timelines of the remedial measures submitted by Hungary on 22 August, a risk for the Union budget remains. Pending the entry into force of key legislative texts that would implement many of the proposed remedial measures and taking into account the possibility that the measures may not be correctly implemented, or that their effectiveness is weakened in the details of the measures, a risk for the budget remains.

76. As the issues identified are of a systemic and repetitive nature, which exceptional circumstances could justify an extension of the deadline?

Answer: Please see answer to question 1.

77. What happens if Hungary does not meet the deadlines to implement the remedial measures? In such a case what would be the procedure?

Answer: There is no automatic procedure for such cases and it might have to be decided on a case-by-case basis. The key implementation steps listed in the Annex to the explanatory memorandum are to be implemented by 19 November 2022. If the Council were to adopt the proposed measures, the Conditionality Regulation provides for the possibility of the Member State to adopt new remedial measures and submit to the Commission a written notification including evidence to show that the conditions of Article 4 are no longer fulfilled. The Commission can on its own initiative, at the request of the Member State concerned or at the latest one year after the adoption of measures by the Council reassess the situation and propose the lifting or adaptation, or decide on the maintenance of measures.

In the Commission's view, it is logical that some measures have longer time horizons, as implementation on the ground require more time. This, however, does not prevent the Commission to conclude that, if the key implementing steps (notably the transposition into the relevant legal texts of the key elements of many remedial measures) are taken, the remedial measures would be considered fully adequate to address the concerns of the Commission.

78. Could the Commission elaborate on the criteria and timeframe set out for monitoring the correct and effective implementation of the remedial measures?

Answer: Please see answer to question 20.

79. As has been highlighted in recital 28 of the proposed implementing decision, the key steps for many of the proposed remedial measures still need to be taken by Hungary, does the Commission have any overview of the next key steps?

Answer: Yes, these are listed in the annex to the explanatory memorandum.

80. Does the Commission intend to inform the Council about the implementation of the remedial measures every 3 months?

Answer: Under the proposed CID, Hungary shall inform the Commission every three months of the implementation of the remedial measures, which is important for the Commission to be able to enforce the Regulation. However, the Commission will provide updates to the Council when appropriate given the evolution in the implementation of the remedial measures. It stands also ready to do so if requested by the Council.

81. Would the Commission agree with the view that by definition the proposed remedial measures put forward in September 2022 by Hungary were missing in previous MFF programming periods ? Hence there is a potential stockpile of commitment appropriations taken at a moment in time where the regulation had not been activated, with major risks for the financial interests of the EU. These commitment appropriations will lead to payment appropriations during the current MFF period. Can the Commission explain how it intends to apply oversight and detect potential fraud for those commitments that are already in the pipeline before they materialize in payment appropriations in the current MFF period ?

Answer: In devising the proportionate and effective protective measures that are necessary to protect the budget from the risks identified in the procedure, the Commission has a margin of assessment. In light of this, and taking all elements at its disposal into account, the Commission considered that as regards the outstanding commitments the budget can be effectively protected with existing instruments (such as financial corrections under Cohesion policy) if necessary, while the protective measures proposed to the Council would focus on the protection of the budget from future risks. As described in the Commission's proposal, the proposed remedial measures would be fully adequate to address such risks if transposed correctly into the relevant legal texts. It should be added that the proposed remedial measures would also address outstanding risks of prior commitment appropriations.

82. Can the Commission set out if and how it has used past OLAF judicial recommendations for Hungary as evidence for assessing irregularities and fraud patterns in other MFF headings than Cohesion ?

Answer: The Commission has used OLAF reports to feed its assessment. The number of investigations in Hungary in the period 2016-2020 in the area of European Structural and Investment Funds and Agriculture and Rural Development Funds that were closed with an OLAF recommendation was among the highest (see OLAF report 2020, available at https://ec.europa.eu/anti-fraud/document/download/73e011db693b-4b87-9e8a-5858cc3c3c2d_en, page 46). According to OLAF, the most prominent category of irregularities was in the field of public procurement and OLAF reports contain examples of such irregularities in Hungary. This data was taken into account in the Commission assessment.

83. The Commission Rule of Law Report for Hungary (13 July 2022, https://ec.europa.eu/info/sites/default/files/40_1_193993_coun_chap_hungary_en.pdf) states the following :

“Some measures to improve corruption investigations involving EU funds have been taken.

Concerns exist regarding the frequent practice of the Hungarian authorities to withdraw EU-funded projects in case of financial recommendations issued by the EU AntiFraud Office

	<p><i>(OLAF) or the opening of OLAF investigations, while amounts due are not systematically recovered from the economic operator who committed the irregularity or fraud . Similarly, the refusal of economic operators to cooperate during on-the-spot checks conducted by OLAF have been in focus. <u>In order to better protect the EU funds from potential fraud and corruption, the Prosecutor General’s Office and OLAF have signed a cooperation agreement in February 2022, which commits both parties to closer cooperation. However, as it was recently signed, the effectiveness of the cooperation agreement will still have to be seen in practice. The recent allegations regarding the existence of a corruption ring in management authorities linked to national and EU funds raise concerns as to the lack of systemic oversight .</u></i></p> <p><i>Despite good inter-institutional cooperation and adequate levels of resources, challenges remain in establishing a track-record of investigations, prosecutions and final judgments in high-level corruption cases.</i></p> <p><i>The prosecution service reports adequate levels of human and financial resources, and of specialisation to carry out their tasks, and the legal framework provides the conditions for effective investigation and prosecution of corruption. Cooperation between the relevant anti-corruption entities, including the prosecution service, police, tax and custom authorities, and the National Protection Service, is considered good. To facilitate more effective investigations, including in corruption cases, new IT systems for the prosecution service are under development. The planned IT cooperation system for the handling and sharing of sensitive data among investigative authorities aims at addressing by 1 December 2024 the persisting challenges in evidence-gathering, particularly with regard to obtaining relevant financial data from the currently numerous separate state registries. Moreover, a new case management system is planned to take up operations in support of prosecutorial investigations by 1 July 2026. <u>The number of registered criminal procedures initiated for corruption crimes increased in 2021. The overall increase is reportedly due to the increase in the number of criminal proceedings opened for private sector corruption cases, including primarily petty corruption. Furthermore, the increase in the number of proceedings for public sector corruption significantly fluctuated over the years. The indictment rates for corruption are reported to be overall high. Some new high-level cases involving politicians were investigated in 2021. However, serious concerns remain regarding the absence of a robust track record of investigations of corruption allegations concerning high-level officials and their immediate circle. This poses a risk of low accountability, in view of the lack of judicial review for prosecutorial decisions not to investigate and prosecute corruption allegations. Risks of clientelism, favouritism and nepotism in high-level public administration remain unaddressed. The full implementation of the GRECO recommendations as regards the effective functioning of the prosecution would further strengthen the anti-corruption framework.”</u></i></p> <p>Could the Commission elaborate on how the proposed remedial measure regarding the procedure establishing judicial review of the decision of the prosecution service or the investigating authority to dismiss a crime report or terminate the criminal proceedings will work in practice ? Based on the review, an investigating judge will have the authority to order the commencement or the continuation of criminal proceedings. Ultimately, the procedure opens the right to file an indictment to a court of justice.</p> <p>Answer: See text of remedial measure.</p>
LV	<p>84. According to Conditionality Regulation (Recital 23 and Art. 6(10)) the Commission should make the most appropriate use of its rights under Article 237 TFEU and the Council’s Rules of Procedure with a view to ensuring that the Council takes the decision within stated time limits. How this provision correlates with envisaged very tight schedule and the risk that Council could not decide within one month? Could it be that signals on the lack of timely Council’s decision due to problems of interpretation should be considered as an exceptional circumstance? Could Presidency and the Commission elaborate more on envisaged timetable for dealing with this proposal in a transparent way?</p> <p>Answer: See answer to question 1.</p>

<p>NL</p>	<p>85. How does the Commission define ‘exceptional circumstances’ that would warrant the extension of another two months, thereby prolonging the established risk to the EU budget?</p> <p>Answer: See answer to question 1.</p> <p>86. How does the Commission’s suggestion that Hungary should be given more time to address the concerns relate, according to the Commission, to the systematics and regular timeframes of the decision-making procedure of article 6 of the Regulation? It could be argued that it was not foreseen by the Union legislator that intended corrective measures of a Member State - not yet adequate at the time of the consideration of the Commission that the conditions of article 4 are fulfilled - be taken into account in the decision-making process of the Council. The regulation allows for a process to lift the measures at any time, when the member state in question has taken appropriate measures to remedy the situation. Would it not be more in line with the procedure and systematics of the regulation to opt for the lifting of measures if Hungary is assessed to have made sufficient progress by November 19th?</p> <p>Answer: See answer to question 1. Moreover, also for reasons of procedural economy, it might be advisable to avoid adopting measures on 18 October and then to have to start a procedure for lifting of measures a month later if the key steps identified by the Commission to consider the remedial measures fully adequate are all taken within the timelines indicated in the Annex to the explanatory memorandum.</p> <p>87. If Hungary delivers on the implementation plan outlined in the annex, how does the CION than assess the remaining risk to the budget, in the period in which the measures that require a longer implementation period have not yet taken effect, for example the Integrity Authority which will start its activity’s on November 19.</p> <p>Answer: As explained in the explanatory memorandum, the proposed remedial measures, taken together, could in principle be capable of addressing the issues regarding systemic irregularities, deficiencies and weaknesses in public procurement, risks of conflicts of interest, and concerns regarding ‘public interest trusts’, as well as the additional grounds regarding investigation, prosecution and the anti-corruption framework, provided that all the measures are correctly and effectively implemented. However, the detailed implementing rules for the proposed remedial measures are still to be determined, notably how the key elements of the measures will be transposed in the actual legal texts to be adopted for the implementation of the remedial measures. Pending these elements, a risk for the budget remains. The Commission will closely monitor the fulfilment of all commitments and the implementation of the budget in Hungary, including the key implementation steps as well as those commitments with a later deadline.</p> <p>88. What methodology will the Commission apply in order to assess whether the remedial measures have been implemented properly and achieve genuine and actual reforms (not merely cosmetic) and can you elaborate on the timeframe, process and form?</p> <p>Answer: See answer to question 20.</p> <p>89. What criteria did the Commission use when it decided to propose cuts in certain EU funds? Why have agricultural funds not been touched? Are they not at risk?</p> <p>Answer: This is explained in section 8 of the explanatory memorandum.</p> <p>In this specific case, in light of all the information available in this procedure, the Commission considers that the Union actions that are most likely to be affected again in the future by the breaches of the principles of the rule of law are those of the cohesion policy programmes that are mainly implemented through public procurement. Therefore, measures should concern in priority the cohesion policy programmes 2021-2027 that are mainly implemented through public</p>
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procurement.

[REDACTED]

The Commission's findings in this case mainly relate to the Cohesion policy programmes and not the agricultural funds. In line with the principle of proportionality that has to be respected when the Commission proposes measures under the Regulation, the measures proposed should address the identified risk for the Union budget and in this case, the Commission did not have enough data to identify the risk in relation to agricultural funds.

90.

[REDACTED]

[REDACTED]

91. The explanatory memorandum 3.1 para 34 states that the notification pointed out a "serious risk of weakening the effective pursuit of investigations and prosecutions in cases involving EU funds" due to several issues related to the independence of the judiciary as also reflected in the Hungarian country chapter of the Commission's rule of law report. Only the remedial measure 'Judicial Review of prosecutors' decisions' seems to correspond directly to these particular issues. Does the Commission believe this measure to sufficiently address the concerns raised regarding the investigation and prosecution in cases? If yes, could the Commission motivate why this is the case? If no, which additional actions will be taken to address these issues in order to protect the budget?

Answer: If correctly specified in detailed rules and implemented accordingly, the remedial measure on the judicial review of prosecutors' decisions could address in principle the issues raised as regards ineffective investigation and prosecution or sanctioning of breaches of law linked to the protection of the financial interests of the Union, as well as those related to systemic weaknesses of the public procurement system. Together with other remedial measures linked to the anticorruption framework (including on asset declaration) and enhanced transparency, this measure is expected to improve the situation also on the front of the effective investigation and prosecution.

92. On the integrity authority: It is stated that the Authority will need to issue annual reports on its activities that need to be published. How can the CION ensure that the annual reports created are sufficiently in-depth? Are any third parties involved in this process (e.g. certification process)? Any control system requires regular outside assessment in order to remain effective.

Answer: The remedial measure text specifies the content of the report – please refer to the relevant text in the remedial measure.

SE

93. The conditionality regulation allows for an extension of the time period for a council decision if exceptional circumstances arise. We would like an elaboration on whether a decision to

extend the period in this case would be in line with the regulation. As this is the first time the regulation is implemented in this regard, it is important to do an even more thorough analysis. Would the remedial actions take effect immediately after a council decision?

Answer: Please see answers to questions 1 and 15.

94. If the council decide to extend the time period for the council decision on the adoption of the implementing decision, the potential threats against the budget would be existing for a longer period of time. How could this affect the EU budget?

Answer: As regards the operational programmes under shared management, these have not been adopted yet. Moreover, Hungary committed to implement key elements of the remedial measures by 19 November 2022 and the Commission will closely follow this development. See also Answer to Question 77.

95. How is the commission planning to make sure that the remedial measures are properly implemented, and at a later stage, make sure that they are sufficient and effective?

Answer: Please see answer to question 20.

96. What would be the consequences if the measures are not implemented properly?

Answer: Please see answer to question 6.

97. At first glance, withholding 65% sounds like a rather low figure. Why, more specifically is it the Commission's assessment that 65% is proportional? Are the rest of the funds not affected by the issues raised by the commission?

Answer: Please see answer to question 4.

98. The proposed measures only affect the cohesion policy, could there be other parts of the budget that are threatened by the deficiencies found in Hungary?

Answer: Please see answer to question 89.

[REDACTED]

100. Why did not the commission include previous commitments or payments made in the current MFF? The conditionality regime is to be applied from 1 January 2021 and allows that also identified deficiencies and not only risks of deficiencies can be used as grounds for action.

Answer: Please see answer to question 81.