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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Budget Committee
Subject:	RoI/Budget conditionality: State of play on 09.11.2022: PPT presentation

As announced by the Commission during the meeting, delegations will find attached the updated version (with factual corrections) of the slides that have been used for presenting the state of play of the RoL case at the Budget Committee meeting on 9 November 2022.



Rule of law conditionality regulation

Hungary

9 November 2022

The remedial measures - assessment

- Full and effective implementation of all **key implementation steps is key to consider that the budget and the financial interests of the Union are no longer at risk.** → COM monitors closely and will inform Council of assessment **after 19 November 2022**
- **Taken together**, the 17 remedial measures could in principle be capable of **addressing the issues raised in the notification**, if correctly specified in laws and rules, and implemented accordingly
- 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
- **BUT** COM needs 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

Key implementation steps (1)

Remedial measure	Key implementation step	Implementation date	State of play
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	Adopted on 5/9
	Submission to the National Assembly of a Draft Act on the establishment of the Authority	by 30 September 2022	Adopted on 10/10 amendments needed
	Appointment of the board of the Authority	by 4 November 2022	Appointed (being checked)
	Beginning of the activities of the Authority	as of 19 November 2022	Pending
Anticorruption Task Force	Adoption of the repealing of the Government Decision	by 5 September 2022	Adopted on 5/9
	Submission to the National Assembly of a Draft Act on the establishment of the Authority	by 30 September 2022	Adopted on 10/10 amendments needed
Strengthening the Anticorruption framework	Adoption of anti-fraud and anti- corruption strategies	by 30 September 2022	Adopted on 30/09 amendments needed
	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	Adopted on 25/10 amendments needed

Key implementation steps (2)

Remedial measure	Key implementation step	Implementation date	State of play
Public Interest Management Foundations	Adoption of the amending acts (Act CXLIII of 2015 on public procurement and Act IX)	by 30 September 2022	Adopted on 4/10
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	Under discussion
	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	Pending
Strengthening audit and control mechanisms for the implementation of EU funds	Establishment of a Working Group	by 31 August 2022	Established
	Establishment of the DIAI (Directorate of Internal Audit and Integrity) in the Prime Minister's Office	by 30 September 2022	Adopted on 10/10 amendments needed
	Adoption of amendments of the relevant Government Decrees (413/2021 and 256/2021)	by 30 September 2022	Adopted on 30/09 amendments needed

Key implementation steps (3)

Remedial measure	Key implementation step	Implementation date	State of play
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	Received and confirmed
Single-bid reporting tool	Development of a new monitoring and reporting tool based on data sourced from the EPS	by 30 September 2022	Developed and fully operational
	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	Received and confirmed
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	Developed and fully operational
Performance measurement framework	Development of a performance measurement framework, including the adoption of a Government Decision	by 30 September 2022	Adopted on 05/09

Key implementation steps (4)

Remedial measure	Key implementation step	Implementation date	State of play
Extended use of Arachne	Application of the procedures for the systematic and effective use of ARACHNE	by 30 September 2022	Adopted on 30/09
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	Adopted on 04/10
	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		Adopted on 04/10
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	COM provided feedback
	Adoption of the above legislative act	by 31 October 2022	Pending

Questions on remedial measures

Integrity Authority:

- **Powers:** Extensive powers [not only soft powers] including instructing other authorities, initiating proceedings before the relevant national authorities/ bodies, and requesting judicial review of all decisions of authorities concerning public procurement procedures that involve any Union support and may be subject to judicial review (details in remedial measure).
- **Independence:**
 - constitution of an independent 'eligibility committee' (checking eligibility of candidates for the board, reviewing its operations two years after the appointment);
 - Board members must fulfil criteria of independence and expertise;
 - strict conflict of interest provisions;
 - autonomous state administration organ with separate chapter in the State budget, fully independent in the performance of its tasks, without any interference.

Questions on remedial measures

Anti-Corruption Framework:

- Scope of asset declarations to include, in addition to persons entrusted with senior political functions, also relatives living in the same household with the person concerned.
- Integrity Authority to verify certain asset declarations (i.e. of members of the government).
- Conflict of interest declarations by members of national authorities at any level, involved in EU budget implementation, including acts preparatory thereto, audit or control.

Public Interest Asset Management Foundations

- Law provides for conflict of interest rules to apply to the foundations and legal entities established or maintained by them, including chairs, (supervisory) board members, and staff when involved in the implementation of Union support. DIAI will be competent to check the declarations; Integrity Authority has access to declarations.
- Article 61 of the Financial Regulation requires that all conflict of interest, including perceived ones, are avoided and addressed. There is no prohibition in principle that members of the Government sit in organisations carrying out tasks of public interest.

Questions on remedial measures

Judicial review:

- Covers corruption-related criminal offences, all cases of bribery involving public officials as well as other cases of bribery with the exception of petty crimes, abuse of office with the exception of petty crimes, the aggravated cases of budget fraud, failure to comply with the supervisory or control obligation related to budget fraud, agreement restricting competition in a public procurement and concession procedure.
- Deadlines and legal costs are based on standard provisions applicable in Hungary to other procedures too; need to keep a balance between the right to access the procedure and the protection from abuses, to preserve efficiency, economy of justice, the presumption of innocence and the reputation of the persons concerned by the procedure.

Public Procurement measures: questions will be answered in writing.

Q&A

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