

6 reasons why the EU should use the approval of National Recovery and Resilience Plans to enforce the rule of law in Hungary and Poland

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In parallel to the adoption of the pandemic-recovery fund – the Next Generation EU – the Union introduced, for the first time, a conditionality mechanism, making the disbursement of EU funds tied to respect for rule of law standards¹. This instrument, generally referred to as the **Rule of Law Conditionality Regulation**, has been in force since 1 January 2021 but is yet to be used. Under this Regulation, the Commission has the power to propose to the Council that the release of any EU funds (both the regular EU budget and EU COVID-funding) to a Member State is halted in a situation where rule of law problems “**affect or risk affecting**” the sound financial management of EU funds. It is therefore an instrument that can be both reactive (“affect”) as well as preventive (“risk affecting”)². The Commission has so far refused to use this instrument notwithstanding the European Parliament’s call to do so in light of the findings of a study demonstrating that the situation in Hungary warrants the immediate activation of the Regulation.³

However, Regulation 2020/2092 is **not the only** rule of law conditionality mechanism in force at EU level. The Commission and the Council have additional and more immediate options to give rule of law considerations a central place especially with regard to the situation in Hungary and Poland, the two countries currently subject to the Article 7(1) TEU procedure. They can do so by making proper use of Regulation 2021/241 (the **Recovery & Resilience Facility Regulation**),⁴ which governs the approval of EU COVID-funding specifically.⁵

This Regulation makes the approval of EU COVID-funding conditional upon Member States showing that their National Recovery and Resilience Plans comply with various economic and

¹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I, 22.12.2020, p. 1). This includes a detailed definition of the rule of law which includes willingness and capacity to deal with corruption and problems with judicial independence

² In the latter case, this means no release of cash unless and until rule of law problems are fully addressed by the authorities of the relevant Member State.

³ The EU Commission has to cut funding to Hungary: the legal case, July 2021, at: https://danielfreund.eu/wp-content/uploads/2021/07/220707_RoLCR_Report_digital.pdf

⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57/17, 18.2.2021.

⁵ Article 8 and corresponding recital 71 refers on multiple occasions to the Rule of Law Conditionality Regulation.

environmental benchmarks, including country-specific recommendations adopted in the context of the European Semester⁶. In particular, the national plan must demonstrate⁷ that:

- it contributes “to effectively addressing all **or a significant subset of** challenges identified in the relevant country-specific recommendations”;⁸
- “the arrangements proposed by the Member State” will help “prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Facility...”.⁹

In case (a) Member State(s) consider(s) that there are serious deviations from the satisfactory fulfilment of targets, they can refer the matter to the next European Council (recital 52, and annex 2 providing an overview of relevant Regulation 2021/141 wording).

The Commission has postponed the approval of the national plans submitted by Poland and Hungary, which are both currently subject to the Article 7(1) TEU procedure with Poland also subject to the full monitoring procedure of the Parliamentary assembly of the Council of Europe over the functioning of its democratic institutions and the rule of law. One must recall in this context that the Council adopted 2019 and 2020 country-specific recommendations for these two Member States which reflect both the Commission and the Council’s serious and persistent concerns regarding corruption and judicial independence (see annex 1).

Since the EU legislator has intended to connect COVID-funds release to compliance with the rule of law, it is important to understand whether and how this ‘other’ rule of law conditionality needs to be triggered. In other words, how much discretion does the Commission have under the Recovery & Resilience Facility Regulation, and does that extend both to the issue of addressing corruption and respecting judicial independence? Assuming the Commission has discretion in this respect, are there other legal, strategic, and political reasons to use approval of National Recovery and Resilience Plans as a means to enforce the rule of law?

Below are six reasons why EU institutions should only approve the Hungarian and Polish National Recovery and Resilience Plans, and any future EU COVID funds instalments, after the authorities of these two countries stop actively breaching the rule of law in its different components as outlined in Regulation 2020/2092; meaningfully address the recommendations addressed to them under different EU instruments such as Article 7(1) TEU procedure and the European Semester; and comply, promptly and in good faith, with their EU legal obligations, in particular their obligation to comply with orders and judgments of the European Court of Justice:

- 1. The EU should only approve the Hungarian Recovery and Resilience Plan once Hungary, like all other Member States, has put in place a fully functioning system to fight corruption**

⁶ The same Regulation instructs the Commission to assess the “relevance, efficiency, effectiveness and coherence of plans submitted by Member States” (Article 19(3)-header).

⁷ See annex 2 for a comprehensive overview of all relevant wording of Regulation 2021/141.

⁸ Article 19(3)(b). This suggests a measure of discretion on the part of the Commission and the Council.

⁹ Article 19(3)(j).

The Recovery & Resilience Facility Regulation gives the Commission some discretion in assessing whether country-specific recommendations are fully met in National Recovery and Resilience Plans (“contribute to effectively address all *or a significant subset of* challenges).¹⁰ The Hungarian and Polish country-specific recommendations deal both with corruption and judicial independence. Under the assessment criteria provided by the Recovery & Resilience Facility Regulation regarding corruption, the Commission can only assess it to be either satisfactory or unsatisfactory.¹¹ This reasonably means that a Recovery and Resilience Plan should only be approved once it is established that any and all issues with regard to fighting corruption are solved. In other words, the Commission and Council should only be able to approve the Hungarian Recovery and Resilience Plan once Hungary, like all other Member States, has put in place a fully functioning system to fight corruption. There is no discretion here. Corruption needs to be durably solved before any EU COVID-funding is made available.

2. Failing to act to protect judicial independence when applying the Recovery & Resilience Facility Regulation would amount to a breach of EU law by the Commission and the Council

Serious and persistent problems with judicial independence are mentioned in the country-specific recommendations both for Hungary and Poland in addition inter alia to the two Article 7(1) TEU proposals originating respectively from the European Parliament and the European Commission. This raises one key question: Can the Commission, within the aforementioned apparent discretion in dealing with country-specific recommendations that the Recovery & Resilience Facility Regulation offers, propose the approval of a national recovery and resilience plan, and the Council greenlight it, before Hungarian and Polish authorities fully address these problems and effectively restore judicial independence?

One of the primary tasks of the Commission, as Guardian of the Treaties, is to ensure the application of the Treaties, which means inter alia a duty to ensure that Member States comply with judgments of the European Court of Justice in any area of Union policy. When it comes to the rule of law, the Court of Justice, in a string of recent cases¹², has repeatedly held that EU primary law (in particular, Article 2 TEU, Article 19 TEU, Article 47 Charter of Fundamental Rights) imposes inter alia on Member States a strict obligation to respect, ensure as well as maintain the independence of their courts which also necessarily implies another obligation for the EU, and especially the Commission, to *proactively* defend the independence of the national judiciaries and the rule of law via infringement actions and all available other means.

EU secondary law, such as the Recovery & Resilience Facility Regulation, must be understood, interpreted, and applied in the light of EU primary law, as interpreted by the Court of Justice. Failing to proactively acting to protect judicial independence when interpreting and applying the Recovery & Resilience Facility Regulation, which demands taking account of the country-specific recommendation which in the case of Hungary and Poland evidence the most serious

¹⁰ Articles 18(4)(b); 19(3)(b); Annex V, point 2.2 and corresponding recitals 32 and 42.

¹¹ Annex V, point 2.10 (“adequate” or “insufficient”).

¹² See L. Pech and D. Kochenov, *Respect for the Rule of Law in the Case Law of the European Court of Justice*, SIEPS, 2021 (forthcoming): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850308

and durable problems with respect to judicial independence, could therefore amount to a violation of EU law by the Commission and the Council.

3. For the Commission to simultaneously raise concerns regarding the repeated violations of the EU requirements relating to judicial independence and ECJ orders and judgments while clearing the way for releasing EU COVID-funding would be contradictory

Specifically with regard to violations of the rule of law in Poland since the end of 2015, more than 80 legal actions have been lodged with the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR) with every single infringement action decided to date by the ECJ establishing the most serious violations of EU judicial independence requirements and every single complaint decided by the ECtHR to date similarly establishing the most serious violations of ECHR right to an independent tribunal established by law. The situation has continuously worsened since 2015 culminating recently in the formal nullification of past and future ECJ orders regarding judicial independence matters on account of their alleged “unconstitutionality” as well the formal nullification of one ECtHR judgment regarding the unlawful composition of Poland’s “Constitutional Tribunal” by the unlawfully composed “Constitutional Tribunal”.

The Commission has rightly and regularly expressed its most serious concerns, most recently in relation to the ongoing process of legal Polexit from EU judicial independence rule of law requirements.¹³ In the face of manifest and repeated violations of the most recent order and judgment of the ECJ regarding the new disciplinary regime for judges and “muzzle law” adopted by current Polish authorities, the Commission is now assessing whether or not to apply to the ECJ to request the imposition of a daily penalty payment regarding the ECJ order in Case C-204/21 R.¹⁴ In the press release about its reply to the Commission, the Polish government has continued to refuse to recognise the authority of the ECJ and has not given any evidence of its intent to comply with either the ECJ order of 14 July 2021 in Case C-204/21 R or the ECJ judgment of 15 July 2021 in Case C-791/19 .¹⁵ In that regard it is important to point out that, next to the Court of Justice, the European Court of Human Rights has also recently established the flagrant and deliberate violations of ECHR basic rule of law requirements by the Polish authorities by holding that the current “Constitutional Tribunal” of Poland is unlawfully composed; that the 2016-17 mass dismissal of the senior leadership of ordinary courts was completely arbitrary and that the so-called “Disciplinary Chamber” never was a tribunal established by law.¹⁶ The ECtHR’s reasoning regarding the “Disciplinary Chamber” also indicates that all of the judicial appointments made by the new National Council of the Judiciary since 2018 are inherently deficient due to manifest fundamental procedural irregularities which have marred and continue to mar these appointments.

¹³ European Commission, Statement on the decision of the Polish Constitutional Tribunal of 14 July, 15 July 2021, at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_3726

¹⁴ https://twitter.com/EU_Commission/status/1417487022479003661?s=20

¹⁵ Polish government, Communiqué on the government’s response to the European Commission, 17 August 2021, at: <https://www.gov.pl/web/premier/komunikat-cir-ws-odpowiedzi-rzadu-do-komisji-europejskiej>

¹⁶ European Court of Human Rights, Xero Flor v. Poland, Application nr. 4907/18, 7 May 2021; European Court of Human Rights, Broda and Bojara v. Poland, Application nr. 26691/18 & 27367/18, 29 June 2021; European Court of Human Rights, Reczkowicz v. Poland, Application nr. 43447/19, 22 July 2021.

Agreeing to release EU COVID-funding in these conditions would raise the most serious issues about the current Commission's judgment and understanding of its EU primary law duty to ensure the application of the Treaties and oversee the application of EU law under the control of the ECJ. And even if the Commission were to ignore its own repeated diagnosis regarding the systemic violations of judicial independence requirements in Poland and all of the evidence of the structural and worsening breakdown in the rule of law in Poland, it is submitted that the Council should not approve the Commission's eventual proposal. Member States should also consider using their option to refer the matter to the European Council in a situation where the Commission would fall for empty promises of future compliance with ECJ orders and judgments rather than confronting the reality of continuing and worsening deterioration of the rule of law situation in Poland. Any such action by the current Commission would be tantamount to undermining the position and authority of the ECJ and being complicit in the systemic violation of EU judicial independence requirements as established by the ECJ in violation of the Commission's duties under the Treaties.

4. Should the Commission propose to approve EU COVID-funding, it would undermine its capacity and credibility to act swiftly to address corruption with all (other) EU funds as well as to counter violations of judicial independence requirements

There are additional legal grounds requiring the Commission to take a firm line on both the rule of law issue of corruption and judicial independence when deciding on the release of EU COVID-funds. Regulation 2021/141 repeatedly explicitly mentions Regulation 2020/2042, the Rule of Law Conditionality Regulation.¹⁷ This is evidence of the EU legislator's intent to make sure that that rule of law considerations, both of a preventive and reactive nature, are fully taken into account when the release of COVID funding is to be decided.

Were the Commission to approve the release of EU COVID-funding in a situation where evidence of state sponsored corruption and violation of judicial independence is overwhelming, the Commission's own capacity and credibility would be seriously undermined, in particular when it comes to addressing corruption with all (other) EU funds as well as with problems with judicial independence in Hungary and Poland that ultimately risk affecting the sound financial management of the EU budget. This is all the more so since the European Parliament has already given the Commission all the evidence it needs to intervene in Hungary,¹⁸ while the Commission's own diagnosis regarding the rule of law situation in Poland (i.e. the executive and legislative powers can now interfere at will throughout the entire structure and output of the justice system) also manifestly warrants the immediate activation of the Rule of Law Conditionality Regulation at a time where furthermore both ECJ but also ECtHR rule of law related orders and judgments are openly ignored and in some cases, have been formally nullified in obvious breach of both EU and ECHR legal obligations of Poland.

5. Should the EU approve EU COVID Funding for Hungary and/or Poland, the relevant Council decision and Commission implementing decisions could be challenged before the Court of Justice of the European Union

¹⁷ Article 8 and corresponding recital 71.

¹⁸ See supra n. 2.

An additional scenario that EU decision-makers must take into account is the likelihood that the approval of EU-COVID funding for Hungary and/or Poland could be challenged in European courts. The Council decision approving the programmes, and subsequent implementation actions by the European Commission based on that, could become the object of an annulment action before the General Court of the European Union pursuant to Article 263 TFEU. This might in turn lead to the adoption of interim measures suspending the enforcement of the Commission and Council acts, with the inherent legal and financial uncertainty associated with this scenario.

6. Locking EU funds via the Recovery & Resilience Facility Regulation is the most effective way to uphold and defend the rule of law in the short term

Lastly, apart from there being a variety of legal obligations to halt EU COVID-funding to Hungary and Poland until they durably address corruption and judicial independence issues, it would also be bad economic and environmental policy and bad politics to release EU COVID-funds to any Member State with an extensive track record of systematically undermining all national checks and balances and/or extensive track record of corruption and misuse of EU funds. Any EU-financed investment would be insecure until the preconditions for a system complying with minimum rule of law requirements are fully in place. Acting on this in the context of Regulation 2021/141 which offers clear and immediate financial leverage over these Member States would also be more effective than in the context of Article 7(1) TEU discussions, slow infringement procedures and labour-intensive procedures under Regulation 2020/2092.

Conclusions

Considering the above, the Commission and Council must only unlock EU COVID-funding to Hungary and Poland once the rule of law problems identified inter alia in the European Semester country-specific recommendations are addressed meaningfully and in good faith. In addition, the Commission ought to make immediate use of its powers under the **Rule of Law Conditionality Regulation** against Poland and Hungary, including to use its potential with regard to the non-COVID related, regular EU funds, such as Structural Funds. Sound financial management and economic governance can only occur when rule of law standards are fully met across the board and ECJ orders and judgments promptly complied with. The economic and environmental goals of the Recovery and Resilience Facility will not be met without a forceful defence of the rule of law in all the Member States.

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Annex 1: Rule of law language in country-specific recommendations for Hungary and Poland

For Hungary (2019)¹⁹:

Recital 16: Concerns remain over the **prevention and prosecution of corruption. Several indicators suggest that Hungary's exposure to corruption has increased in recent years.** Corruption risks and favouritism distort the allocation of resources as these are not channelled to the most productive firms. The functioning of the prosecution service is of crucial importance to fighting corruption... **[T]here are still no signs of determined action to prosecute corruption involving high-level officials or their immediate circle when serious allegations arise. Accountability for decisions to close investigations is a matter of concern, as there are no effective remedies to contest such decisions.** The prevention of corruption is further hindered by public institutions applying restrictions, including dissuasive fees for access to information.

Recital 17: The independence, efficiency and quality of the justice system are crucial to attracting business and enabling economic growth. Checks and balances, which are crucial to ensuring judicial independence, are seen to be under further pressure within the ordinary courts system. **The National Judicial Council faces increasing challenges in counter-balancing the powers of the President of the National Office for the Judiciary. Questions have been raised regarding the consequences of this for judicial independence.** With regard to the Administrative Courts Law, it is noted that the government tabled a bill withdrawing the Act on the entry into force and transitional rules for the administrative courts on 30 May 2019.

Recommendation 4: **Reinforce the anti-corruption framework, including by improving prosecutorial efforts and access to public information, and strengthen judicial independence... (..).**

For Hungary (2020)²⁰:

Recital 31: ... The 2019 country-specific recommendations remain pertinent and will continue to be monitored throughout next year's European Semester... All of the 2019 country-specific recommendations should be taken into account for the strategic programming of post-2020 cohesion policy funding, including for mitigating measures and exit strategies with regard to the current crisis.

Recital 32: ...Corruption, access to public information and media freedom caused concerns even before the crisis ...**Investigation and prosecution appears less effective in Hungary than in other Member States. Determined systematic action to prosecute high-level corruption is lacking. Accountability for decisions to close investigations remains a matter of concern as there are no effective remedies against decisions of the prosecution service not to prosecute alleged criminal activity...** Dissuasive

¹⁹ Council recommendation of 9 July 2019 on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary, OJ C 301/101, 5.9.2019, at: https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2019:301:TOC&uri=uriserv:OJ.C_.2019.301.01.0101.01.ENG

²⁰ Council recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, OJ C 282/107 26.8.2020, at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2020.282.01.0107.01.ENG&toc=OJ%3AC%3A2020%3A282%3AFULL

practices for accessing public information can deter citizens and non-governmental organisations from exercising their constitutional rights.

For Poland (2019)²¹:

Recital 18: ... The unstable regulatory framework and other barriers to the expansion of firms are negatively affecting investment activity and productivity. Establishing an effective dialogue with all stakeholders would help improve the quality of legislation ... Guaranteeing the rule of law and the independence of the judiciary are also essential in this context. It is recalled that **in December 2017, the Commission presented to the Council a reasoned proposal to determine that there is a clear risk of a serious breach by Poland of the rule of law.** These concerns are the subject of a judgement and on-going procedures which are pending before the Court of Justice ... **Legal certainty and trust in the quality and predictability of ... institutions are important factors for the investment environment.**

For Poland (2020)²²:

Recommendation 4: Enhance the investment climate, **in particular by safeguarding judicial independence.**

²¹ Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Poland and delivering a Council opinion on the 2019 Convergence Programme of Poland, OJ C301/123, 5.9.2019, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019H0905%2821%29>

²² Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Poland and delivering a Council opinion on the 2020 Convergence Programme of Poland, OJ C 282/135, 26.8.2020, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H0826%2821%29>

Annex 2: Relevant language in Regulation 2021/141

- Recital 17: Currently, no instrument foresees direct financial support linked to the achievement of results and to the implementation of reforms and public investments of the Member States in response to challenges identified in the context of the European Semester...
- Recital 29: A mechanism to ensure the link between the Facility and sound economic governance should be established, allowing the Commission to make a proposal to the Council to suspend all or part of the commitments or payments under the Facility...
- Recital 32: ... Recovery and resilience plans **should be consistent with the relevant country-specific challenges and priorities** identified in the context of the European Semester...
- Recital 40: **The implementation of the Facility should be carried out in line with the principle of sound financial management, including the effective prevention and prosecution of fraud, including tax fraud, tax evasion, corruption and conflicts of interest.**
- Recital 42: Appropriate guidelines should be set out in an annex to this Regulation [i.e. Annex V] to serve as a basis for the Commission to assess in a transparent and equitable manner the recovery and resilience plans ... In the interest of transparency and efficiency, a rating system for the assessment of the proposals for recovery and resilience plans should be established to that effect. **The criteria related to the country-specific recommendations ... should require the highest score of the assessment...**
- Recital 45: The Council should approve the assessment of the recovery and resilience plans by means of an implementing decision, based on a proposal by the Commission, which it should endeavour to adopt within four weeks of the adoption of that proposal. **Provided that the recovery and resilience plan satisfactorily addresses the assessment criteria**, the Member State concerned should be allocated the maximum financial contribution ... **No financial contribution should be awarded to the Member State if the recovery and resilience plan does not satisfactorily address the assessment criteria...**
- Recital 52: The release of funds under the Facility is contingent on the satisfactory fulfilment of the relevant milestones and targets by the Member States set out in the recovery and resilience plans, the assessment of such plans having been approved by the Council. ... **If, exceptionally, one or more Member States consider that there are serious deviations from the satisfactory fulfilment of the relevant milestones and targets, they may request the President of the European Council to refer the matter to the next European Council. The respective Member States should also inform the Council without undue delay, and the Council should, in turn, without delay inform the European**

Parliament. In such exceptional circumstances, no decision authorising the disbursement of the financial contribution and, where applicable, of the loan should be taken until the next European Council has exhaustively discussed the matter...

Recital 53: For the purposes of sound financial management, while respecting the performance-based nature of the Facility, specific rules should be laid down for budget commitments, payments, suspension, and recovery of funds as well as the termination of agreements related to financial support. ... Payments should be made in instalments and be based on a positive assessment by the Commission of the implementation of the recovery and resilience plan by the Member State concerned. **The Member States should take appropriate measures to ensure that the use of funds in relation to measures supported by the Facility complies with applicable Union and national law. In particular, they should ensure that fraud, corruption and conflicts of interests are prevented, detected and corrected ...**

Recital 71: Horizontal financial rules adopted by the European Parliament and the Council pursuant to Article 322 TFEU apply to this Regulation. ... **Rules adopted pursuant to Article 322 TFEU also include a general regime of conditionality for the protection of the Union's budget.**

Article 8 (implementation):

The Facility shall be implemented by the Commission in direct management in accordance with the relevant rules adopted pursuant to Article 322 TFEU, in particular the Financial Regulation and [Regulation] (EU, Euratom) 2020/2092 [Rule of Law Conditionality Regulation].

Article 17 (Eligibility):

Article 17(1): ... Member States shall prepare national recovery and resilience plans. Those plans shall set out the reform and investment agenda of the Member State concerned. Recovery and resilience plans that are eligible for financing under the Facility shall comprise measures for the implementation of reforms and public investment through a comprehensive and coherent package...

Article 17(3): **The recovery and resilience plans shall be consistent with the relevant country-specific challenges and priorities identified in the context of the European Semester...**

Article 18 (Recovery and Resilience Plan):

Article 18(1): A Member State wishing to receive a financial contribution ... shall submit to the Commission a recovery and resilience plan as defined in Article 17(1).

Article 18(4): The recovery and resilience plan shall be duly reasoned and substantiated. It shall in particular set out the following elements:

.. (b): **an explanation of how the recovery and resilience plan contributes to effectively address all *or a significant subset of* challenges identified in the relevant country-specific recommendations...**

.. (r): **an explanation of the Member State's system to prevent, detect and correct corruption, fraud and conflicts of interests, when using the funds provided under the Facility...**

Article 19 (Commission assessment):

Article 19(1): The Commission shall assess the recovery and resilience plan or, where applicable, the update to that plan submitted by the Member State in accordance with Article 18(1) and 18(2) within two months of the official submission, and make a proposal for a Council implementing decision in accordance with Article 20(1). ... The Commission may make observations or seek additional information. The Member State concerned shall provide the requested additional information and may revise the recovery and resilience plan if needed...

Article 19(2): When assessing the recovery and resilience plan ..., the Commission **shall take into account the analytical information on the Member State concerned available in the context of the European Semester** as well as the justification and the elements provided by that Member State, as referred to in Article 18(4), **as well as any other relevant information ...**

Article 19(3): **The Commission shall assess the relevance, effectiveness, efficiency and coherence of the recovery and resilience plan and, for that purpose, shall take into account the following criteria which it shall apply in accordance with Annex V:**

Relevance:

.. (b): **whether the recovery and resilience plan is expected to contribute to effectively addressing all *or a significant subset of* challenges identified in the relevant country-specific recommendations...**

... Efficiency:

.. (j): **whether the arrangements proposed by the Member State concerned are expected to prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Facility...**

Article 20 (Commission proposal and Council implementing decision):

Article 20(1): On a proposal from the Commission, the Council shall approve by means of an implementing decision the assessment of the recovery and resilience plan submitted by the Member State in accordance with Article 18(1) or, where applicable, of its update submitted in accordance with Article 18(2).
..

Article 20(7): The Council shall adopt the implementing decisions referred to in paragraph 1, as a rule, within four weeks of the adoption of the Commission proposal.

Article 22 (Protection of the financial interests of the Union):

Article 22(1): In implementing the Facility, the Member States ... shall take all the appropriate measures to protect the financial interests of the Union and to ensure that the use of funds in relation to measures supported by the Facility complies with the applicable Union and national law, **in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests. To this effect, the Member States shall provide an effective and efficient internal control system and the recovery of amounts wrongly paid or incorrectly used.** Member States may rely on their regular national budget management systems.

Annex V: Assessment guidelines for the Facility

1. Scope

The purpose of these guidelines is to serve together with this Regulation as a basis for the Commission to assess - in a transparent and equitable manner - the recovery and resilience plans proposed by Member States and to determine the financial contribution in conformity with the objectives and any other relevant requirements laid down in this Regulation. These guidelines represent the basis for the application of the assessment criteria and the determination of the financial contribution as referred to, respectively, in Articles 19(3) and 20(4).

The assessment guidelines are designed to:

- (a) give further guidance on the assessment process of the proposals for recovery and resilience plans submitted by Member States;
- (b) provide further details on the assessment criteria and provide for a rating system to be established with a view to ensuring an equitable and transparent process

...

The guidelines are a tool to facilitate assessment by the Commission of the proposals for recovery and resilience plans as submitted by Member States and to ensure that the recovery and resilience plans support reforms and public investment that are relevant and display high added value with regard to the objectives of the Facility, while ensuring equal treatment among the Member States.

2. Assessment criteria

In accordance with Article 19(3), the Commission shall assess the recovery and resilience plans under the criteria of relevance, effectiveness, efficiency and coherence. As a result of the assessment process, the Commission shall give ratings to the recovery and resilience plans submitted by the Member States under each of the assessment criteria referred to in Article 19(3), with a view to establishing the financial allocation in accordance with Article 20(4).

For the sake of simplification and efficiency, the rating system shall range from A to C, as set out in the following:

Relevance

...

2.2 The recovery and resilience plan is expected to contribute to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations...

The Commission shall take into account the following elements for the assessment under this criterion:

Scope

— the recovery and resilience plan is expected to contribute to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations ...

And ..

Rating

A – the recovery and resilience plan contributes to effectively addressing all or a significant subset of challenges identified in the country-specific recommendations ...

B – the recovery and resilience plan contributes to partially addressing all or a significant subset of challenges identified in the country-specific recommendations ...

C – the recovery and resilience plan does not contribute to addressing any challenges identified in the country-specific recommendations ...

...

2.10 The arrangements proposed by the Member State concerned are expected to prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Facility, including the arrangements that aim to avoid double funding from the Facility and other Union programmes.

The Commission shall take into account the following elements for the assessment under this criterion:

Scope

— the internal control system described in the recovery and resilience plan is based on robust processes and structures, and identifies clear actors (bodies/entities) and their roles and responsibilities for the performance of the internal control tasks; it notably ensures appropriate segregation of relevant functions; and

— the control system and other relevant arrangements, including for the collection and making available of data on final recipients described in the recovery and resilience plan, in particular to prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Facility are adequate; and ..

— the actors (bodies/entities) responsible for controls have the legal empowerment and administrative capacity to exercise their foreseen roles and tasks.

Rating

A – adequate arrangements

C – insufficient arrangements