

Two ECA Reports Assess Rule-of-Law Efforts to Protect the EU Budget

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News

In February 2024, the European Court of Auditors (ECA) published [two reports](#) that examine the Commission's steps designed to ensure that EU money is properly spent to Member States if they comply with the EU's rule of law values.

[ECA report on Conditionality Regulation](#)

[Special Report 03/2024](#) entitled "The rule of law in the EU - An improved framework to protect the EU's financial interests, but risks remain" assessed appropriateness and consistency of the protection of the EU's financial interests through the Conditionality Regulation, together with relevant provisions under the Recovery and Resilience Facility (RRF) Regulation and the 2021-2027 Common Provisions Regulation covering cohesion policy funds (→ articles by *Iwona Jaskolska* and *Lothar Kuhl* in [eucrim 4/2023](#), pp. 337-345). The audit sample included Bulgaria, Greece, Hungary, Italy, Poland and Romania.

The ECA welcomed the Conditionality Regulation as an improvement in the EU's rule-of-law framework and it acknowledged that the block of money to Hungary in 2022 was duly justified - to date the only concrete case in which the the Regulation was applied. However, several aspects make the Regulation difficult to apply, in particular, the requirement to establish a sufficiently direct link between breaches of principles of the rule of law and the EU's financial interest. The ECA also points out that not all major EU spending programmes (e.g., the Common Agricultural Policy) have protective tools equivalent to those set out under the RRF and the Common Provisions Regulation for cohesion policy. With regard to the Commission's steps taken under the new legal framework, the ECA identified several shortcomings, including the following:

- No yet fully developed administrative capacity on the part of the Commission to apply the Conditionality Regulation;
- No systematic assessment and documentation of the impact on the EU's financial interests for all Member States in which the Commission identified challenges to the rule of law;
- Discontinuation of the Coordination and Verification Mechanism (CVM) for Bulgaria and Romania in September 2023 despite unresolved reforms covered by the CVM and no resumption under the new rule-of-law instruments of these issues.

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The ECA also found a number of risks that undermine the effectiveness of the budgetary and remedial measures, such as:

- The application of the Conditionality Regulation may result in a mere box-ticking exercise with no real improvements on the ground;
- Risk of remedial action being reversed once budgetary measures are lifted.

These risks are exacerbated by the fact that political considerations may ultimately play a major role in decision-making. The auditors criticised that, in December 2023, rule-of-law decisions on Hungary had to be taken at the same time as voting on the Ukrainian accession talks to which Hungary initially objected. The auditors recommend that any proposal to lift budgetary measures must be based on solid evidence.

ECA report on the Commission's annual rule of law report

The second ECA report reviews the Commission's annual Rule of Law Report – a preventive tool that presents the Commission's assessment of significant rule of law developments in EU Member States, including recommendations on the issues identified. It is a relatively new tool in the EU's toolbox to protect rule-of-law issues; the first report was published in 2020 (→ [eucrim 3/2020, 158-159](#)). ECA's review provides a descriptive and informative analysis identifying potential challenges and opportunities as well as issues for further scrutiny, e.g. the Report's methodology or its relationship with other rule-of-law tools.

The auditors point to the very low implementation rate of the Report's recommendations for Member States (only a tenth of the recommendations were fully implemented and one third saw no progress). A "weakness" of the Report is that it relates to developments over a previous year even though some recommendations may require a concerted effort over several years to implement. In addition, the findings of the report are not legally enforceable and the Commission must rely on the sincere cooperation of the Member States.

The auditors identified opportunities to improve the evidence trail for the assessment process to document better how the European Commission decides which issues to look into and how it classifies their level of seriousness. They also found that the terminology used to classify rule-of-law issues in the Report differs from the terms used by other EU rule-of-law tools. For example, a "serious concern" in the Rule of Law Report is not equivalent to a "serious and persistent breach of values" under the Article 7 TEU procedure, or to a "breach of the principles of the rule of law" under the Conditionality Regulation. Lastly, the auditors recommend that the methodology of the Report could be made more transparent.

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