

Non-paper on behalf of Austria, Estonia, Finland, Germany, The Netherlands, and Sweden on the Rule of Law and the Charter of Fundamental Rights in the MFF proposal

We welcome the Commission's proposal on protection for the Rule of Law and the Charter in the MFF, as well as the strong message that respect for the Rule of Law and the Charter is a must for EU funds. EU taxpayers' money should not be available to those who breach these fundamental values. In order to further strengthen the preconditionality, which is an important part of the new NRP structure, several key elements are required in the NRP Regulation to ensure that the Union's budget, as well as its' values are effectively protected.

Consistent application of general and specific objectives

We support the general and specific objectives laid down in Article 2(1e) and Article 3(1e) NRP Regulation, but it's crucial that fundamental rights and the Rule of Law are consistently applied in tandem with democracy and Union values throughout the Regulation, both in the legal text and in its practical application. It must be ensured across the whole Regulation that the new framework provides for stronger protection compared to the previous one. Relevant control mechanisms and safeguards in the current CPR should be carried over to the new framework, such as reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the horizontal conditions.

Effective application of the Rule of Law and Charter horizontal conditions

It is crucial that the horizontal conditions set out in Articles 8 and 9 of the NRP Regulation can be applied swiftly, effectively and in a transparent manner, by for example the publication of decisions. In the current framework for the horizontal enabling conditions on the Charter, it is the Commission that holds the decision-making role. This should remain the case also for the Charter horizontal condition in Article 8 of the NRP Regulation. While the Rule of Law horizontal condition in Article 9 would also benefit from a swift decision-making process by the Commission, a Council implementing decision could also be envisaged, albeit only if a reverse QMV is the voting rule. Furthermore, the proposed priority rule in Article 8(8) of the NRP Regulation carries a risk of undermining the effectiveness of Article 8, particularly where a breach concerns both the Charter and Rule of Law. Consequently, Article 8(8) should only be applicable in cases that *predominantly* concern breaches of Rule of Law to ensure efficiency and accountability.

Restrict reallocation of funds which have been blocked for breach of the Charter

Reallocation of funds withheld due to breaches of the Rule of Law or of the Charter must be limited and stringently defined. The current proposal in Article 24(9b) of the NRP Regulation which allows for reallocation of 30% of funds that have previously been blocked under Article 8, should be removed to ensure that the application of the Charter horizontal condition is not watered down and can be effective in practice.

Sources for the assessment

The annual Rule of Law Report and other relevant reports from the Commission should feed into the overall assessment of Member States' compliance with the Charter and the Rule of Law under Articles 8 and 9 of the NRP Regulation. Judgments of the court of Justice of the EU and relevant reports from the Fundamental Rights Agency should also form part of the Commission's assessment. Only by building a sound basis for the decision-making process, and by making use of all available sources, can the assessment be made efficient, transparent and qualitative.

The proportionality assessment in Articles 8(4a) and 9(4a) of the NRP Regulation

The weighing of the "actual or potential impact on the sound financial management of the Union budget or the financial interests of the Union" logically forms part of the proportionality assessment and is not relevant for establishing whether the horizontal condition has been fulfilled. Considering the impact on the EU budget/financial interests as a requirement for establishing a breach would lower the level of protection as compared to the current horizontal enabling condition on the Charter.

Effective protection of the whole budget

While the NRPP-proposal includes strengthened horizontal conditions for the Rule of Law and the Charter, the remaining part of the proposal for the budget lacks such explicit safeguards. In that context we underline the importance of an effective and consistent application of the Conditionality Regulation throughout all existing and future EU funding and recall Article 6(3) of the Budget Regulation. In line with the advice from the European Court of Auditors, we call for further clarification of the scope of the conditionality mechanisms in other parts of the budget, such as the ECF.