Who Pays the Piper calls the Tune? The implementation of the Union budget in the Institutional Framework of the European Union

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Abstract

The EU budget is an important tool for the attainment of the Union's political and constitutional priorities. Despite its political significance, EU primary law sets only high-level principles as to the responsibilities for executing and implementing the Union budget.

Against this background, this article provides a thorough analysis of the legal-constitutional principles guiding the budget implementation as set by the EU Treaties. Specifically, the article considers the European Commission's responsibility under the current legal framework for implementing the Union budget. It, furthermore, distinguishes this responsibility from the respective role of the European Parliament and the Council as budgetary and legislative authority, and it legally qualifies typical practical cases of budget implementation.

While the legislator enjoys certain leeway when defining what constitutes budget implementation in the context of a concrete legislative (basic) act, the article shows that there is a hard core of budget implementation which should remain reserved to the Commission. By combining the analysis of the legal framework with its prac-

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tical implementation, this article contributes to establishing a clearer understanding of the role of the respective institutions in the implementation of the Union budget as well as of the primary law requirements for budget implementation.

Keywords: EU budget, budget implementation, Financial Regulation, European Commission, budgetary authority, legislative acts, delegated acts, implementing acts, Multi-Annual Financial Framework (MFF)

A. Introduction

In the European Union, the Union budget has always been an important tool for the attainment of the Union's political priorities. From the common agricultural policy, through cohesion policy and structural funds to the multitude of spending programmes supporting other sectoral policies of the Union, the Union's budget contributes to and supports the attainment of the Union's objectives.

Arguably, the importance of the Union budget has grown in recent years. For most of the recent challenges facing the EU, the Union's budget has been an important part of the policy answer. This has been, for example, the case following the COVID-19 pandemic, which led to the adoption of Next Generation Europe (NGEU). For the first time in history, the EU was empowered through NGEU to issue bonds on a large scale to provide support to the recovery of Member States' economies following this pandemic. Furthermore, the Union budget in general, and also NGEU in particular, both contribute to the twin challenge of the digital and green transition within the EU. Moreover, the Union budget also played a key role following the 2022 invasion of Ukraine by Russia, which resulted in the adoption of several new budgetary instruments to support the Union's defence technological and industrial base.

These cumulative trends mean that the choices in the design and implementation of the Union budget are not merely technical, but may sometimes translate highly political and sensitive choices through the process of budget implementation into concrete actions. In addition, there are cross-cutting issues affecting the implementation of the Union budget, such as for example the respect for the rule of law,[1] which condition the implementation of the Union's budget and add to the sensitivity of the corresponding decisions.

Although still relatively small when compared to the overall public spending of Member States, the political importance of the Union's budget is not likely to decrease in future years. In its communication on the "Road to the next Multiannual Financial Framework", the European Commission underscored that the Union's budget stood at the "centre of Union policy action", while listing the significant

1 Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget, OJ L 433I of 22 December 2020, p. 1.

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policy changes ahead for the next multiannual financial framework (MFF).[2] At the same time, when presenting its proposals for the next MFF 2028-2034, the European Commission has stressed the need for a budget that is simpler, more flexible and more strategic. In particular, the Commission emphasised the need for a "more agile budget, better equipped for both the knowns – and the unknowns".[3]

Despite the political significance of the Union's budget in the toolbox of the Union, primary law only sets relatively high-level principles as to the responsibilities for executing the Union budget. Article 314 TFEU establishes the procedure for the establishment of the Union's budget, which is the task of the European Parliament and the Council acting as budgetary authority on the basis of proposals from the Commission. Article 310 (3) TFEU clarifies that the implementation of the Union budget in principle requires the prior adoption of a legally binding Union act, most often a legislative act. At the same time, the EU Treaties also clarify that it is the task of the Commission, where appropriate in cooperation with the Member States, to execute the budget and manage programmes (Article 17(1) TEU, Article 317 TFEU). However, the precise dividing line between the legislative and the budgetary authority, on the one hand, and budget implementation, on the other, is not further clarified in primary law. The Court of Justice, for its part, had only few occasions to clarify the responsibilities of the institutions in this area, and legal academic scholarship on the question remains equally sparse.[4]

Given the rather high-level primary law framework, the detailed rules governing the procedural steps to be taken and choices to be made in the implementation of the Union's budget therefore remain to be set out in secondary law. In light of the general sensitivity and policy-interest of the Union budget, it is thus not surprising that the responsibilities of the Commission and the other institutions for the implementation of the Union budget are often the subject of discussions in the legislative process. In these discussions, the various powers of the institutions – the budgetary authority, the legislative authority including the role of Parliament and Council in the adoption of delegated and implementing acts, and the budget implementation power of the Commission – need to be reconciled and brought into balance. Given the size of the budget, the delegation of budget implementation tasks to other actors such as agencies also comes into play. This often leads to complex and controversial discussions, and the practical solutions found are not always coherent. It is not unlikely that this will again be the case in the context of the negotiations for the next MFF.

2 *European Commission*, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions –The road to the next multiannual financial framework, COM(2025) 46 final.

3 *European Commission*, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – A dynamic EU Budget for the priorities of the future – The Multiannual Financial Framework 2028-2034, COM(2025) 570 final, pp. 1–2.

4 Cf. *Kilpatrick*, CMLR 2024/3, pp. 623–654.

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It is against this background that the present article aims to clarify, from a legal point of view, the guiding principles governing the implementation of the Union's budget[5] under the Treaties. For this purpose, the article first analyses the responsibility of the European Commission for the implementation of the Union budget as defined in the Treaties and describe how the Commission discharges this responsibility under the current legislative framework (B.). It then considers the role of the European Parliament and the Council as the budgetary and legislative authority, and the constraints resulting from that for the Commission (C.). On this basis, the article considers some typical cases of decisions to be taken in the implementation of the Union budget in the context of the current MFF and examines how they should be assessed and qualified from the legal point of view (D.). Finally, the article will take a first look at how these questions have been addressed in the proposals of the Commission for the next MFF (E.). By combining the analysis of the legal framework with its practical implementation in the context of the present (and future) MFF, this article contributes to establishing a clearer understanding of the role of the respective institutions in the implementation of the Union budget as well as of the primary law requirements for budget implementation.

B. The responsibility of the European Commission for the implementation of the Union budget

The EU Treaties establish the prerogatives of the Commission to implement the EU budget. Specifically, these prerogatives are enshrined in Article 17(1), fourth sentence, TEU as well as Article 317(1) TFEU. The primary law framework is complemented by secondary law, most prominently the rules laid down in the EU Financial Regulation, which were adopted by the Union legislator based on Article 322(1) TFEU and which must be respected when implementing the EU budget as explicitly highlighted in Article 317(1), first sentence, TFEU. This secondary law framework provides further details on how the Union budget is to be implemented without, however, altering the core parameters established by primary law, including the Commission's prerogatives.

The subsequent analysis provides an outline of the combined EU primary and secondary law framework applicable to the implementation of the Union budget. In a first step, the primary law provisions are considered (B.I. and B.II.) before

5 The Union budget is hereunder understood as the general budget of the European Union and of Euratom as referred to in Art. 1 of the Financial Regulation (Regulation (EU, Euratom) 2024/2509 on the financial rules applicable to the general budget of the Union (recast), OJ L 2024/2509 of 26 September 2024). It does not include off-budget funds such as the European Peace Facility (Council Decision (CFSP) 2021/509 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528, OJ L 102 of 24 March 2021, p. 14), which are implemented according to their own financial rules. It does by contrast cover the implementation of appropriations relating to the NGEU funds, which, although not voted by the budgetary authority, are implemented in accordance with the Financial Regulation.

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then examining the EU Financial Regulation, including specifically the different management modes employed for implementing the Union budget (B.III.).

I. Article 17(1), fourth sentence, TEU

Article 17(1), fourth sentence, TEU establishes that the Commission "shall execute the budget and manage programmes." The TEU determines thus, in a rather abstract and general manner, the Commission's prerogatives in relation to implementing the Union budget. An initial reading of Article 17(1), fourth sentence, TEU reveals that the provision only identifies the prerogatives as such – notably the *execution* of the Union budget as well as the *management* of Union programmes, which entails the management of financial resources that are made available for the achievement of specific Union objectives – without adding any details as to *how* the Commission is to carry out its budget implementation prerogatives.

Importantly, the *execution* of the budget must be distinguished from the "budgetary functions" conferred upon the European Parliament (Article 14(1) TEU) and the Council (Article 16(1) TEU).[6] Hence, the European Commission is tasked with executing the (annual) budget, as previously adopted by the budgetary authority or, exceptionally, following the system of provisional twelfths.[7] It should be already noted at this point that the execution of the budget does not only depend on the appropriations made available according to the budgetary procedure (cf. Article 314 TFEU), but it also depends on the substantive (legislative) framework adopted by the legislator, referred to as *basic acts*.[8] Simply put, the execution of the budget entails the committing of available appropriations according to the objectives and rules established by a specific legal act, such as a regulation.[9] The current MFF in this context is composed of more than 40 funding programmes established by separate basic acts.[10]

Considering the broader context of Article 17(1), fourth sentence, TEU, it should be emphasised that Article 17(1), first sentence, TEU establishes the Commission's responsibility to "promote the general interest of the Union". This commitment to the Union's general interest must, necessarily, cover the exercise of the subsequently listed institutional prerogatives, including the execution of the Union budget. Hence, the Commission must pursue the overall objectives and aims of the Union as a whole when deciding on the best way for implementing the budget. The obvious intention of the Treaty legislator for assigning the budget implementation

6 For the budgetary process, cf: https://european-union.europa.eu/institutions-law-budget/budget/how-eu-budget-adopted_en (5/2/2026).
7 Cf. Art. 315 TFEU.
8 Cf. Art. 2, point (4), of the Financial Regulation and in more detail Section CII below.
9 Cf. *Digital Europe Programme* set up by Regulation (EU) 2021/694 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240, OJ L 166 of 11 May 2021, p. 1. For further examples, cf. section D below.
10 For a list of the current funding programmes, cf: https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes_en (5/2/2026).

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prerogatives to the Commission was to prevent that specific institutional interests would impact the choice of what concrete projects receive Union funding. Instead, the determination of general objectives – at the level of the *basic act* as established by the Union legislator – is, in principle, separate from the concrete spending decisions – which are taken by the Commission when implementing the Union budget – to ensure sound financial management and the most efficient use of the available appropriations to achieve the general Union (policy) objectives defined by the EU Treaties.

II. Article 317(1) TFEU

Article 17(1), fourth sentence, TEU is complemented by Article 317(1) TFEU, which contains further detail on *how* the Commission is to implement the Union budget. Article 317(1) TFEU states:

> "The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management."

Article 317(1) TFEU underscores the importance of Member States' involvement in the implementation of the Union budget, notably through shared management; it further highlights the central importance of the Financial Regulation, as an instrument adopted on the basis of Article 322(1) TFEU, which contains specific rules on budget implementation; it establishes the Commission's independence in implementing the budget ("on its own responsibility") as well as the adherence to the spending margins set by the budget authority and the principles of sound financial management, which in turn are spelled out in greater detail in the Financial Regulation. Hence, it can be argued that Article 317 TFEU further defines the Commission's prerogatives concerning the implementation of the Union budget, as established by Article 17(1), fourth sentence, TEU.

Historically speaking, Article 205 TEC, as introduced by the Treaty of Rome, established: "The Commission shall, in accordance with the provisions of the regulations adopted pursuant to Article 209, implement the budget on its own responsibility and within the limits of the appropriations made." Subsequently, the Treaty of Maastricht added that budget implementation must occur according to the "principles of sound financial management".[11] The Treaty of Amsterdam then added a second sentence to Article 205(1) TEC:[12] "Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance

11 Cf. Art. G, point 73, of the EU-Treaty (Maastricht).
12 The Treaty of Amsterdam also re-numbered Art. 205 TEC to Art. 274 TEC.

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with the principles of sound financial management."[13] Finally, the Treaty of Lisbon introduced a reference to the Commission's responsibility *to cooperate with the Member States* when implementing the Union budget into the first sentence of Article 317(1) TFEU.

Systematically speaking, Article 317 TFEU is under Chapter 4 concerning the implementation of the budget and discharge, which is integrated into Title II titled *Financial Provisions*. It should be noted that Title II is structured in an almost *chronological order* concerning the overall lifecycle of the Union budget. Chapter 1 contains provisions on own resources, Chapter 2 then contains detailed rules on the MFF, Chapter 3 concerns the annual budget, Chapter 4 the implementation of the budget (and the discharge), Chapter 5 provides common rules, and Chapter 6 contains specific rules on combating fraud. From a structural, systematic perspective, it becomes apparent that the implementation of the Union budget by the Commission is dependent on the *establishment* of the budget in the first place, which includes the creation of revenue (= own resources), an overarching multi-annual budgetary planning (MFF) and the adoption of the annual budget. Based on this framework, the Commission can then implement the budget for which it bears accountability to the European Parliament (and the Council). Notably, and following Article 319(1), first sentence, TFEU, the European Parliament, acting on a recommendation from the Council, must grant (annual) discharge concerning the implementation of the budget. At the same time, it should be recalled that both the MFF and the annual budget are based on Commission proposals, which illustrates that the Commission is not merely executing what has been decided by the European Parliament and the Council, but it is actively involved in the different stages of the budget lifecycle.

Importantly, it is the Commission that must be granted discharge by the European Parliament pursuant to Article 319(1), first sentence, TFEU in respect of the implementation of the entire budget – and not, for example, the Member States that implement most of the Union budget through shared management. This underscores the single overall responsibility of the Commission for the implementation of the budget, as expressed in Article 317(1) TFEU. While different management modes can be used for the implementation of the budget, and thus the concrete *actor* and *level* implementing the budget can differ, it is generally the Commission's task to initiate the process of budget implementation by adopting *financing decisions* (cf. for example Article 110 Financial Regulation). Through these *financing decisions* the specific framework for and details on the implementation of the budget will be set-out – in line with legislative requirements and the available appropriations, as determined by the annual budget. These financing decisions also serve as basis for reserving corresponding appropriations in the budget, based on which concrete legal commitments can then be made.

13 Cf. Art. 2, point 50, Treaty of Amsterdam.

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III. The Implementation of the Union budget in the Financial Regulation

The Financial Regulation provides detailed rules on the implementation of the Union budget. It is based on Article 322(1) TFEU and binds the Commission in the exercise of its prerogatives as explicitly underscored by Article 317(1) TFEU.

Article 2(7) of the Financial Regulation defines, at legislative level, budget implementation as "the carrying out of activities relating to the management, monitoring, control and auditing of budget appropriations". Article 2(7) Financial Regulation further specifies that these activities must be carried out in accordance with the methods of budget implementation provided for in Article 62 Financial Regulation, which are considered in the following sub-sections.[14]

1. Management modes for budget implementation (Article 62 Financial Regulation)

Article 62 Financial Regulation lists three different management modes applicable to budget implementation: *direct, shared* and *indirect* management. At the outset it should be highlighted that Article 62(1) Financial Regulation specifies that the *Commission* must implement the budget following one of the three management modes. Therefore, the specific management mode chosen does not affect the Commission prerogatives under Articles 17 TEU and 317 TFEU.

The Commission can implement the budget *directly* itself (Article 62(1), first subparagraph point (a), Financial Regulation), notably through its own departments, including Union delegations, and EU executive agencies, which are specifically set up for this task. Under direct management, it is thus the Commission itself that performs the necessary operations for implementing the budget.

Furthermore, the Commission can also implement the budget through *shared management* with the Member States (Article 62(1), first subparagraph point (b), Financial Regulation). Following this management mode, the Commission relies on the Member States to implement the Union budget. This is the management mode for example in the context of certain parts of cohesion policy or the common

14 Pursuant to Art. 59(1) Financial Regulation, the Commission is to confer to the Union institutions the required powers for implementing their respective parts of the Union budget, cf. *Inghelram*, in: Kuijper/Amtenbrink/Curtin/De Witte/McDonnell/Van den Bogaert (eds.), p. 335. This only concerns appropriations in relation to their administrative autonomy (Art. 58(2), point (e), Financial Regulation) and does not cover operative (programme) appropriations, which fall under the Commission's responsibility. The following considerations relate specifically to the latter category of expenditure.

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agricultural policy (CAP).[15] The Commission retains the final responsibility and must thus ensure that efficient EU controls are in place that guarantee Member States' compliance with the applicable EU rules, including the principles of sound financial management.

A peculiar and somewhat hybrid case is that of the Recovery and Resilience Facility (RRF). This facility, although serving also cohesion objectives, is implemented in direct management, but with Member States acting as the beneficiaries, and carrying much of the responsibility in the context of a performance-based implementation model.[16] Essentially the same model was also chosen for the implementation of the Social Climate Fund.[17]

Finally, and if provided for by the basic act, the Commission can also implement the budget *indirectly* (Article 62(1), first subparagraph point (c), Financial Regulation) and thereby entrust specific budget implementation tasks to, for example, EU decentralized agencies, third countries or an international organisation. As certain budget implementation tasks are delegated, the actors implementing on behalf of the Commission must comply with specific rules such as the avoidance of conflicts of interests, as well as compliance with transparency standards and requirements for effective internal controls. To that end, the Commission may require an (ex-ante) *pillar assessment*, which certifies that the actor complies with the requirements under the Financial Regulation (cf. Article 157 thereof).

Within the limits provided for by the basic act, the choice *for* a specific management mode is set out in the *financing decision*, as required by Article 110(2), second subparagraph point (c), Financial Regulation. Considering operational expenditure not implemented through *shared management*, the Commission will adopt such financing decision and determine whether the budget will be implemented directly or indirectly.

In relation to shared management, the Commission relies on the Member States to implement certain policies according to specific budget-allocation rules laid down by the legislator. For example, agricultural expenditure in the Member States is the task of the respective national bodies, working in accordance with rules established at EU level. For the Structural Funds[18] the European Parliament and

15 For cohesion, cf. Art. 7(1) Regulation (EU) 2021/1060 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (Common Provisions Regulation), OJ L 231 of 30 June 2021, p. 159; for agriculture (namely the European Agricultural Fund for Rural Development (EAFRD) and the European Agricultural Guarantee Fund (EAGF)), cf. Arts. 5(1) and (2), as well as Art. 6 Regulation (EU) 2021/2116 on the financing, management and monitoring of the common agricultural policy, OJ L 435 of 6 December 2021, p. 187.

16 Arts. 8 and 22(1) Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility, OJ L 57 of 18 February 2021, p. 17. Cf. *Mantl/Tritz*, EuZW 2021/23, pp. 1022 f.

17 Arts. 11 and 21(1) Regulation (EU) 2023/955 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, OJ L 130 of 16 May 2023, p. 1.

18 Cf. Art. 175(1) TFEU.

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the Council decide on the total amounts to be paid and the conditions of implementation. Member State administrations then choose which projects to finance and take responsibility for day-to-day management. Working together with the Member States, the Commission ensures that EU funds are correctly spent. Importantly, as the Commission bears the ultimate responsibility (cf. Article 317(1) TFEU), it is essential that the Commission ensures that the Member States put in place strong and efficient controls.[19]

As apparent from the different *management modes* available, the Commission is involved to a varying degree in the day-to-day management of EU funding and it may, in fact, rely on national, EU or international actors to implement (parts) of the EU budget. Nevertheless, and independent of the management mode applicable, it is the Commission that carries the ultimate responsibility for the implementation of the Union budget vis-à-vis the European Parliament (cf. Article 319(1), first sentence, TFEU). To that end, the Commission carries out targeted controls and retains the power to suspend or refuse payments (cf. for example Article 63(8) Financial Regulation). At the same time, implementing partners at the national, EU or international level (both in shared and indirect management) commit to ensuring effective budgetary safeguards.

2. Direct Management through Executive Agencies

In the context of direct management, the Commission has the possibility to rely on executive agencies to implement specific budget implementation tasks in the context of Union programmes. The framework for the establishment of such executive agencies can be found in Council Regulation (EC) No 58/2003.[20] As defined in Article 2, point (a), of that regulation, an executive agency is "a legal entity established in accordance with [Council Regulation (EC) No 58/2003]" that is entrusted with powers to implement all or parts of an EU programme on behalf and under the responsibility of the Commission.

The creation of an executive agency is contingent on a positive "cost-benefit analysis" regarding the possibility to outsource certain budget-related management tasks,[21] and its establishment is subject to the Comitology examination procedure.[22] Council Regulation (EC) No 58/2003 specifies that only non-discretionary powers that do not translate into political choices can be entrusted to executive agencies

19 See in more detail *Mantl/Tritz*, EuZW 2021/23, p. 1025.

20 Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, OJ L 11 of 16 January 2003, p. 1.

21 Cf. Recital 6 Council Regulation (EC) No 58/2003.

22 Art. 3(3) in conjunction with Art. 24(2) Council Regulation (EC) No 58/2003 as well as Art. 5 Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184 of 17 July 1999, p. 23, and now Art. 5 and Recital 21 Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55 of 28 February 2011, p. 13.

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and it further determines that such entrustment can only occur for a limited period of time.[23] Finally, executive agencies implement the entrusted tasks for the Commission under direct management – and the Commission decides, consequently, on the composition of the steering committee, it appoints the executive director and it has clear supervisory obligations.[24] For the current MFF, six executive agencies were created.[25]

Consequently, budget implementation through an executive agency must be strictly distinguished from budget implementation by other Union bodies, for example decentralized agencies. The latter are responsible for executing the tasks assigned to them through their mandate laid down in secondary law, and the Commission can decide to entrust additional budget implementation tasks to them through indirect management as far as the entrustment is *compatible* with the mandate of the decentralized agency. However, when entrusting certain budget implementation tasks through indirect management to a decentralized agency, it is the latter that has the primary responsibility for the tasks of implementation while the Commission ensures that adequate controls and verifications are in place.

An interesting example is also the European External Action Service (EEAS) established on the basis of Article 27(3) TEU. Since this Service is not part of the Commission, it cannot directly implement the management of Union programmes in the field of external relations, which remains a responsibility of the Commission.[26] For this purpose, the Commission established a specific service, the Foreign Policy Instruments Service (FPI), which works closely and is collocated with the EEAS, but remains under the responsibility of the Commission.

IV. Conclusions on the EU legal framework for EU budget implementation

The analysis of the EU primary and secondary law framework of EU budget implementation reveals the central position of the Commission, which bears the ultimate responsibility for budget implementation at EU level. As explained, the way in which this responsibility is carried out differs based on the *management mode* that is applied for specific operational expenditure. While under direct management it is the Commission that executes the budget itself through its departments or through specifically established executive agencies, the Commission must ensure adequate and effective controls and verifications in relation to operational expenditure that is implemented through shared or indirect management.

23 Cf. Art. 6(1) Council Regulation (EC) No 58/2003.
24 Art. 20 Council Regulation (EC) No 58/2003.
25 Commission Implementing Decision (EU) 2021/173 establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency, OJ L 50 of 15 February 2021, p. 9.
26 Art. 9 Council Decision 2010/427/EU establishing the organisation and functioning of the European External Action Service, OJ L 201 of 3 August 2010, p. 30.

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C. The implementation of the Union budget and the powers of the European Parliament and the Council

As highlighted, the implementation of the Union budget by the Commission does not take place in an institutional vacuum but must respect the prerogatives of the European Parliament and the Council as the Union's main political institutions.[27] Acting together, they are both the budgetary authority and the co-legislators of the Union. Moreover, they have certain powers as regards the adoption of delegated and implementing acts in accordance with Articles 290 and 291 TFEU. This section examines the principles that govern the articulation of these powers with the power to implement the budget vested in the Commission.

I. Budget implementation and the powers of the budgetary authority

The implementation of the Union budget presupposes that there is a budget which has been adopted and which can then be implemented by the Commission. Article 317(1) TFEU accordingly provides that the Commission implements the budget within the limits of the appropriations set out therein. The procedure for adopting the Union's annual budget is set out in Article 314 TFEU which provides that the Parliament and Council, acting jointly as budgetary authority, adopt the budget in accordance with a special legislative procedure.[28] The annual budget must comply with the multiannual financial framework adopted in accordance with Article 312(2) TFEU.

Pursuant to Article 310(2) TFEU, the Union's budget shall authorise the expenditure for the annual budgetary period in accordance with the Financial Regulation, which contains further details as regards the structure and presentation of the budget. Notably, the budget is to include separate sections for each institution detailing its revenue and expenditure.[29] However, while for the other institutions the expenditure concerns in essence their administrative expenditure, the section for the Commission contains the operational budget of the Union, divided into titles by policy area and chapters corresponding to specific programmes and activities.[30] It is within the limits of the appropriations contained in the annual budget that the Commission thus implements the budget.

27 This article does not focus on the powers of other institutions which may also be of relevance for budget implementation, notably those of the Court of Justice, which in accordance with Art. 19(1) TEU ensures that the law is observed in the application of the Treaties, including in the area of budget implementation, or those of the Court of Auditors (Arts. 285 et seq. TFEU).

28 While the role of the Parliament in the budgetary procedure used to be controversial, this debate has quieted down since the Treaty of Lisbon, which simplified the budgetary procedure inter alia by abolishing the distinction between obligatory and non-obligatory expenditure (cf. *Magiera*, in: Grabitz/Hilf/Nettesheim, Art. 314 AEUV, para. 11).

29 Art. 46 Financial Regulation, with the exception in relation to the European Council and the Council which share one section.

30 Cf. Art. 47(2) Financial Regulation.

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There is only a limited number of exceptions that allow the Commission to act without or outside the limits set by the annual budget. One case provided for in the Treaties is the case that at the beginning of the financial year, the budget has not been definitively adopted.[31] In this case, Article 315 TFEU provides a system of "provisional twelfths", according to which a sum equivalent to not more than one twelfth of the budget appropriations of the preceding financial year may be spent each month.

Moreover, there can always be emergencies and unforeseen events which may require changes in priorities and unforeseen expenditure. Therefore, there is a need to provide for a certain degree of flexibility in the implementation of the budget, and this has become even more important in recent times. In this regard, Article 317(3) TFEU indicates that the Commission may, within the limits and conditions of the Financial Regulation, transfer appropriations from one budget chapter or subdivision to another. The further details are set out in the Financial Regulation, which gives the Commission within certain narrow limits the possibility to carry out transfers itself, whereas in other cases, the proposal may need to be submitted to the Parliament and Council.[32] Where a transfer of appropriations within those narrow limits is not sufficient, a proposal for an amending budget will ultimately be required.

Finally, there are also specific instruments which address financial needs which are not fully foreseeable. Examples for this are for instance the European Globalisation Adjustment Fund for Displaced Workers,[33] which offers support to displaced workers and self-employed persons whose activity has ceased in the course of major restructuring events, as well as the European Union Solidarity Fund,[34] which allows to provide support in reaction to emergency situations such as natural disasters and public health emergencies. Because of the unforeseeable nature of the expenditure concerned, both are financed over and above the MFF ceilings from a special reserve contained in the budget.[35] Before the Commission can thus approve the requested funding, it must make a proposal to the Parliament and the Council to mobilise the required funds.[36] It is noteworthy, however, that the requirement of prior mo-

31 This possibility has been used several times over the years, but last in 2013 (cf. *Bieber*, in: von der Groeben/Schwarze/Hatje (Hrsg.), Art. 315 AEUV, para. 4).

32 Cf. Arts. 30 and 31 Financial Regulation for the substantive and procedural conditions.

33 Regulation (EU) 2021/691 on the European Globalisation Adjustment Fund for Displaced Workers (EGF), OJ L 153 of 3 May 2021, p. 48.

34 Council Regulation (EC) No 2012/2002 establishing the European Union Solidarity Fund, OJ L 311 of 14 November 2002, p. 3, as amended.

35 These modalities are set out in points 9 and 10 Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ L 433I of 22 December 2020, p. 28. The same modality is also foreseen in point 11 for the Brexit Adjustment Reserve set up by Regulation (EU) 2021/1755 establishing the Brexit Adjustment Reserve, OJ L 357 of 8 October 2021, p. 1.

36 Art. 15 Regulation (EU) 2021/691; Art. 4(3) Regulation (EC) No 2012/2002.

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bilisation of the funds by the Parliament and Council does not strictly speaking constitute an involvement in budget implementation; rather it can be seen as a further concretisation of the Union's budget and the flexibilities contained therein, which the legislator has chosen to reserve to itself.

II. Budget implementation and the powers of the legislator

The existence of appropriations in the budget is however not in principle sufficient for the Commission to implement the budget. Article 310(3) TFEU provides that the implementation of the expenditure provided for in the budget shall require the prior adoption of a legally binding Union act providing for a legal basis for Union action, except in cases provided for in the Financial Regulation.

The principle that a basic act is required for the implementation of the budget was only formally enshrined in the Treaties through the Lisbon Treaty. However, the principle as such has been previously established. Notably, after initial controversy, it was recognised first in a joint declaration of the European Parliament, the Council and the Commission of 30 June 1982, which provided that "the implementation of appropriations entered for significant new Community action shall require a basic regulation".[37] This principle was subsequently included in the Financial Regulation.[38] However, what was to be considered "significant new Community action" continued to give rise to disputes, which resulted eventually in the judgment of the Court of Justice in Case C-106/96.[39] In this case, the United Kingdom had challenged a decision of the Commission to fund European projects seeking to overcome social exclusion, despite the fact that the Council had not prolonged the previously existing legal basis for funding such projects. In its judgment, the Court stressed that "the requirement that a basic act must be adopted before an appropriation is implemented derives directly from the scheme of the Treaty, in accordance with which the conditions governing the exercise of legislative powers and budgetary powers are not the same".[40] It further stressed that "because implementation of expenditure on the basis of the mere entry of the relevant appropriations in the budget is an exception to the fundamental rule that a basic act must first be adopted, it cannot be assumed that Community action is non-significant and the Commission must therefore clearly demonstrate that the planned measure is not

37 Point IV.3 c) Joint Declaration by the European Parliament, the Council and the Commission on various measures to improve the budgetary procedure, OJ C 194 of 28 July 1982, p. 1. Cf. on this also *Ehlermann/Minch*, EuR 1981/1, pp. 25ff.; *Forman*, Revue d'intégration européenne 1985/2-3, pp. 139ff.

38 Council Regulation (Euratom, ECSC, EEC) No 610/90 applicable to the general budget of the European Communities, OJ L 70 of 16 March 1990, p. 1 (inserting the principle in Art. 22(1) of the Financial Regulation).

39 ECJ, Case C-106/96, *United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities*, judgment of 12 May 1998, ECLI:EU:C:1998:218. On this case, cf. *Hervey*, CMLR 1999/5, pp. 1079–1090.

40 ECJ, Case C-106/96, para. 28.

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significant Community action".[41] Since the projects in question were covered by previously existing Council decisions, the Court considered that they could neither be considered preparatory actions, nor pilot projects, but rather had to be regarded as significant new Community action, and the Court thus annulled the Commission decision.[42]

Today, the requirement of the adoption of a basic act and the exceptions thereto are codified in Article 58 of the Financial Regulation. According to this provision, a basic act is not required inter alia for appropriations for pilot projects of an experimental nature designed to test the feasibility of an action and its usefulness, appropriations for preparatory actions designed to prepare proposals with a view to the adoption of future actions, appropriations for one-off actions, or for actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the TFEU and to the Euratom Treaty, and appropriations for the operation of each Union institution under its administrative autonomy.

The Financial Regulation also clarifies the meaning of the "basic act". According to Article 2(4) of the Financial Regulation, "'basic act' means a legal act, other than a recommendation or an opinion, which provides a legal basis for an action and for the implementation of the corresponding expenditure entered in the budget or of the budgetary guarantee or financial assistance backed by the budget," and which may take the form of a regulation, a directive or a decision within the meaning of Article 288 TFEU, or one of the acts in the field of Common Foreign and Security Policy (CFSP). Most frequently, the relevant basic act will be a legislative act adopted by Parliament and Council following the ordinary legislative procedure. However, acts adopted according to a special legislative procedure, or non-legislative acts, may equally be basic acts.[43]

The degree of detail prescribed in the legislative or other act will by definition be higher than the short indications that can be provided in the general budget. According to the Interinstitutional Agreement on budgetary discipline, the legislative act will set out a financial envelope for the programme from which the Parliament, the Council and the Commission commit to not depart in the budget procedure beyond certain limits, save exceptional cases.[44] It will also define the basic purposes and types of actions to be funded. It may also define, in accordance with the

41 Ibid., para. 30.
42 Ibid., paras. 34, 37.
43 E.g. acts adopted under Art. 122 TFEU: Council Regulation (EU) 2016/369 on the provision of emergency support within the Union, OJ L 70 of 16 March 2016, p. 1; Council Regulation (EU) 2020/672 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, OJ L 159 of 20 May 2020, p. 1; or Council Regulation (EU) 2025/1106 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, OJ L 2025/1106 of 28 May 2025.
44 Cf. point 18 Interinstitutional Agreement of 16 December 2020, which sets the limit at 15% for the entire duration of the programme concerned.

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Financial Regulation,[45] in further detail eligibility conditions, selection procedures, management modes and implementation modalities. However, the degree of detail may vary and depend to a certain extent on the discretion of the author of the act, i.e. most frequently the legislator. At the same time, the legislator can typically not prejudge the detailed decisions on projects and beneficiaries to be selected, which remain in the realm of budget implementation. The scope for implementation will typically be wider, the wider the scope and/or the longer the duration of the programme is. Thus, despite the requirement of a prior legal basis, given that most basic acts envisage a programme of actions to be implemented over a certain period of time, such legal bases will normally leave a significant room for decisions to be taken in the implementation of the act.

III. Budget implementation vs. delegated and implementing powers

However, even where the legislative act leaves room for subsequent concretisation, this does not yet mean that this has to be necessarily considered as budget implementation in the sense of Article 317(1) TFEU and thus a prerogative of the Commission. Indeed, since the Lisbon Treaty, Articles 290 and 291 TFEU provide, on the one hand, for delegated acts to amend or supplement legislative acts, and, on the other hand, for implementing acts to ensure, whenever required, uniform conditions for implementing legally binding Union acts. This article now examines how delegated and implementing powers relate to the Commission's prerogative to implement the budget.

1. Delegated acts

According to Article 290(1) TFEU, a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. According to Article 290(2) TFEU, legislative acts shall explicitly lay down the conditions to which the delegation is subject, which may – and typically do – include that the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act. Accordingly, whereas the Parliament (and Council) are not involved in the adoption of implementing acts pursuant to Article 291 TFEU as explained below, they enjoy an important role under Article 290 TFEU.

The distinction between delegated and implementing acts, and notably the notion of "supplementing" and "implementing" within the meaning of Articles 290 and 291 TFEU, has given rise to considerable controversy in practice and academic

45 Exceptionally, a basic act may derogate from the Financial Regulation, but shall do so explicitly with due justification (cf. Art. 3(2) Financial Regulation).

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writing.[46] However, in its case-law, the Court of Justice has clarified that "the EU legislature has discretion when it decides to confer a delegated power on the Commission pursuant to Article 290(1) TFEU or an implementing power pursuant to Article 291(2) TFEU", and, "consequently, judicial review is limited to manifest errors of assessment as to whether the EU legislature could reasonably have taken the view" that a matter to be regulated constitutes supplementing or implementing the legislative act.[47]

By contrast, it appears that there remains a conceptual distinction to be drawn between supplementing (let alone amending) a legislative act which constitutes the basis for budget implementation, and the act of budget implementation itself. By definition, supplementing a legislative act does not entail powers of budgetary execution, but rather entails a quasi-legislative action of providing further details, which however remain within the domain of what the legislator could have provided for itself, but chose to delegate to the Commission. Provisions concerning the specific management of appropriations, including the selection of specific actions and beneficiaries should thus never be the subject of delegated acts. This is all the more so since delegated acts are adopted under the concrete control of the legislators, including the European Parliament. However, it is at the same time the European Parliament that, together with the Council on whose recommendation it acts, monitors the execution of the budget by granting discharge to the Commission in accordance with Article 319 TFEU. It is thus important that the powers of the legislator and the Commission in the implementation of the budget remain separate and distinct.

However, despite this conceptual distinction, a certain grey zone may still appear to exist here. For instance, the Court of Justice has accepted that the Commission may be authorized to adopt delegated acts to detail certain funding priorities.[48] While these funding priorities were relevant as the basis for budget implementation, they were subsequently to be implemented through work programmes.[49] Accordingly, the delegated act merely fleshed out the content of the legislative act, but did not enter the domain of budget implementation.

2. Implementing powers

It is with regard to the implementing powers covered by Article 291 TFEU that the distinction with budget implementation becomes particularly difficult and gives rise to frequent discussion between the institutions.

46 Cf. *Buchet*, Cahiers de droit européen 2018/3, pp. 205–250; *Stelkens*, EuR 2012/5, pp. 511–545.

47 ECJ, Case C-427/12, *European Commission v European Parliament and Council of the European Union*, judgment of 18 March 2014, ECLI:EU:C:2014:170, para. 40. On this judgment, cf. *Ritleng*, CMLR 2015/1, pp. 243–258.

48 ECJ, Case C-286/14, *European Parliament v European Commission*, judgment of 17 March 2016, ECLI:EU:C:2016:183, para. 47.

49 Ibid., para. 51.

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According to Article 291(2) TFEU, where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases, on the Council. Where considered appropriate, the exercise of implementing powers by the Commission can be made subject to the mechanisms of control laid down on the basis of Article 291(3) TFEU in Regulation 182/2011 (the "Comitology Regulation").[50] This regulation provides in essence that the exercise of the implementing power is subject to the prior opinion of a committee composed of representatives of the Member States in the context of an advisory or examination procedure. In the context of the examination procedure, a negative opinion of the committee shall in principle prevent the Commission from adopting the act.[51]

Under the comitology procedure, it is thus the Commission which adopts the implementing act. Moreover, the Council and Parliament are not directly involved in the procedure,[52] which rather involves control by a committee composed of representatives of the Member States. However, the differences between an implementing power under Article 291 TFEU, and the power to implement the budget, are highly significant. First of all, the control mechanisms of the comitology regulation cannot be applied to measures of budget implementation within the meaning of Article 317(1) TFEU. Secondly, and equally importantly, if a measure is qualified as an implementing act within the meaning of Article 291(2) TFEU, this has the important consequence that the Council may reserve itself the power to exercise the implementing power under certain conditions. Of course, according to Article 291(2) TFEU this must be done only "in duly justified specific cases", and the Court of Justice has stated that this "requires a detailed statement of the reasons why that institution is entrusted with the adoption of measures implementing a legally binding act of the Union".[53] In practice, the Court accepted such a justification in a matter concerning value-added tax "on account of the impact, sometimes significant, that such measures could have on the budgets of Member States".[54] It is not evident that such a justification could always be transposed to matters concerning the implementation of Union funding programmes, as the impact on nationals budgets may be less direct or more limited. However, other considerations may be invoked in support of an attribution of powers to the Council. In any

50 It should be noted that implementing acts within the meaning of Article 291 TFEU do not need to be made subject to comitology procedures; it remains a discretionary choice of the legislator whether to apply the control mechanism, but it cannot apply any others.

51 For the details, cf. Arts. 5 and 6 Regulation (EU) No 182/2011.

52 According to Art. 11 Regulation (EU) No 182/2011, Parliament and Council have a right of scrutiny which however relates only to the question whether a draft implementing act exceeds the implementing powers conferred on the Commission.

53 ECJ, Case C-695/20, *Fenix International*, judgment of 28 February 2023, ECLI:EU:C:2023:127, para. 37; ECJ, Case C-440/14 P, *National Iranian Oil Company v Council*, judgment of 1 March 2016, ECLI:EU:C:2016:128, paras. 49 and 50; first established in ECJ, Case 16/88, *Commission v Council*, judgment of 24 October 1989, ECLI:EU:C:1989:397, para. 10.

54 ECJ, Case C-695/20, para. 39. On this judgment, cf. also *Chamon*, CMLR 2023/6, pp. 1683–1704.

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event, the mere possibility of a reservation of powers to the benefit of the Council illustrates the legal significance of the distinction between budget implementation in the sense of Article 317(1) TFEU and implementation within the meaning of Article 291(1) TFEU.

Therefore, the question arises of how to define, and distinguish, the two types of *implementation*. This is a question which has frequently led to disagreements in the practice of the institutions, and occupied the Court of Justice already several times, without the borderline yet becoming fully clear.

The first such case to reach the Court, Case 16/88, concerned a dispute between the Commission and the Council in the fisheries sector.[55] In a Council Regulation on the coordination and promotion of research in the fisheries sector, the Council had reserved to itself the power to adopt the research programmes, acting on the basis of a Commission proposal. The Council also granted the Commission the power of concluding research contracts and supervising the results. The Commission's decisions concerning the execution of the programmes were subject to a comitology procedure, which under the rules applicable at the time meant the Council could take the decision itself in case of unfavourable decision from the management committee. The Commission challenged the Council Regulation arguing that it encroached upon the Commission's powers of budgetary implementation granted by the Treaty.

Advocate-General Darmon in his conclusions sided with the Commission, based on a reasoning that focused on the notion of budgetary commitments as part of the Commissions power to implement the budget, and thus proposed to annul the Council act.[56] By contrast, in its judgment, the Court of Justice held that the notion of implementing powers may concern the adoption of general implementing rules but also the application of rules to individual cases.[57] Such implementing powers could be subject to comitology procedures.[58] The Court then considered the plea raised by the Commission's argument that the Council encroached upon the Commission's prerogatives and assessed it against two main arguments. Firstly, it held that "the Commission's power to implement the budget is not such as to modify the division of powers resulting from the various provisions of the Treaty which authorize the Council and the Commission to adopt generally applicable or individual measures within specific areas […], and from the institutional provisions […]".[59] Secondly, the Court added that, "even though an individual measure may almost inevitably entail the commitment of expenditure, the two must be distinguished – particularly since the power to adopt the administrative decision and the power to commit the expenditure may be entrusted, within the internal organization of each

55 On this case, cf. *Forman*, CMLR 1990/4, pp. 872–882.
56 Opinion AG *Darmon*, Case 16/88, *Commission of the European Communities v Council of the European Communities*, ECLI:EU:C:1989:280, paras. 25 ff.
57 ECJ, Case 16/88, para. 11.
58 Ibid., paras. 12–13.
59 Ibid., para. 16.

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institution, to different officials".[60] For these reasons, the Court concluded that "the Commission [was] wrong to maintain that the Council cannot confer upon it under the third indent of Article 145 the power to adopt individual measures when such measures have financial implications".[61] For the Court, that interpretation "rules out the possibility that commitments of expenditure might in themselves and irrespective of any substantive decision impose legally binding obligations on the Community vis-à-vis third parties".[62]

While this judgment influenced the subsequent practice, it has not definitively settled the question. For once, the judgment, while accepting the possibility of the Council to take decisions even in cases concerning individual contracts, did not attempt to provide a positive definition of the content of the Commission's power to implement the budget under Article 317(1) TFEU. In that respect, a certain nuance was added already in the above-mentioned Case C-106/96, *United Kingdom v Commission*, where the Court further clarified that "in the system of the Treaty, any implementation of expenditure by the Commission in principle presupposes, in addition to the entry of the relevant appropriation in the budget, an act of secondary legislation (commonly called the 'basic act') from which the expenditure derives".[63] In this judgment, the Court thus clearly distinguishes between (i) the prerogatives of the Commission to implement the budget, (ii) the prerogatives of the legislature to adopt a basic act that contains the substantive decision, and (iii) the prerogatives of the budgetary authority to adopt the Union budget.

Moreover, the legal framework of the Union Treaties has significantly evolved since 1989. On the one hand, the Commission's role to execute the budget and manage the programmes was explicitly recognised in Article 17(1) TEU, as introduced by the Treaty of Lisbon. At the same time, account needs to be taken also of the introduction of Articles 290 and 291 TFEU and the evolving case-law on these provisions.

In Case C-521/15, *Spain* v *Council*, the Court held that Article 291(2) TFEU "relates solely to legally binding acts of the European Union which lend themselves in principle to implementation by the Member State" and which "must, for a particular reason, be implemented by means of measures adopted […] by the Commission or the Council, for the purpose of ensuring that they are applied uniformly".[64] In this judgment, the Court considered that the power to impose a fine on a Member State could not be considered as a power in the sense of Article 291(2) TFEU, as that power did not "lend itself in the slightest to implementation by the Member States themselves".[65] While this judgment was rendered in a different legal context, and did not directly concern implementing powers in the budgetary sphere, it

60 Ibid., para. 17.
61 Ibid., para. 18.
62 Ibid., para. 19.
63 ECJ, Case C-106/96, para. 22.
64 ECJ, Case C-521/15, *Spain v Council*, judgment of 20 December 2017, ECLI:EU:C:2017:982, para. 48.
65 Ibid., para. 49. On this judgment, cf. *Chamon*, CMLR 2018/5, pp. 1495–1520.

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nonetheless shows that the scope of Article 291(2) TFEU should be targeted to cases in which implementation by the Member States could be considered, and is not primarily intended to cover matters of budget implementation.

The issue of implementing powers in the budgetary field returned to the Court in more direct form in the recent judgment concerning the validity of the General Conditionality Regulation.[66] In this case, Hungary had challenged the General Conditionality Regulation[67] by arguing *inter alia* that the institutional balance was affected by the fact that the Council was to adopt, on a proposal from the Commission, an implementing decision adopting appropriate measures to protect the Union budget in the event of rule of law deficiencies affecting the implementation of the budget. In response, following in this regard the conclusions of the Advocate-General,[68] the Court distinguished the concept of "budget implementation" in a broader sense, which includes "the financial rules which determine 'in particular the procedure to be adopted for implementing the budget', within the meaning of Article 322(1)(a) TFEU", from the notion of 'budget implementation' within the meaning of Article 317 TFEU. The latter would be a narrower notion including the "activities relating to the management, monitoring, control and audit of budget appropriations",[69] as defined in Article 2(7) of the Financial Regulation. Thus, the Court found that "the horizontal conditionality mechanism established by the contested regulation forms part of a conception of budget implementation that goes beyond that which […] falls within the Commission's powers in cooperation with the Member States, in accordance with the first paragraph of Article 317 TFEU".[70] The Court concluded that in this specific case the legislature was granting an implementing power in order to ensure uniform conditions for the implementation of those financial rules, and that granting it to the Council was duly justified.[71]

It thus becomes clear from this judgment that the notion of budget implementation within the meaning of Article 317 TFEU covers at the very least the definition provided by the Union legislature in Article 2(7) of the Financial Regulation which entails: "the carrying out of activities relating to the management, monitoring, control and auditing of budget appropriations in accordance with the methods provided for in Article 62 [of that Regulation]".

The Court thus clarified that implementing powers for the adoption of acts with implications for the implementation of the budget may lawfully be conferred pursuant to Article 291(2) TFEU, provided that they do not undermine the institutional prerogatives of the Commission to execute the budget as provided for by

66 ECJ, Case C-156/21, *Hungary v European Parliament and Council*, judgment of 16 February 2022, ECLI:EU:C:2022:97. Poland challenged the regulation in a parallel case (ECJ, Case C-157/21, *Poland v European Parliament and Council*, judgment of 16 February 2022, ECLI:EU:C:2022:98), but it did not make the same plea.

67 Regulation (EU, Euratom) 2020/2092.

68 Opinion AG *Campos Sánchez-Bordona*, Case C-156/21, *Hungary v European Parliament and Council*, ECLI:EU:C:2021:974, paras. 252 ff.

69 ECJ, Case C-156/21, paras. 186–187.

70 Ibid., para. 187.

71 Ibid., paras. 188–189.

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Union primary law. The aforementioned case-law clarifies that the Commission's budget implementation prerogatives are framed by the Union budget, the relevant basic act, including, where appropriate, the relevant delegated and implementing acts, as well as wider budget implementation rules adopted on the basis of Article 322 TFEU.

Nevertheless, it should be observed that Article 62(3) of the Financial Regulation, which is included in the definition of budgetary implementation contained in Article 2(7) of the Financial Regulation referred to by the Court in the judgment on the General Conditionality Regulation, provides as follows: "The Commission is responsible for budget implementation in accordance with Article 317 TFEU and shall not delegate those tasks to third parties, where such tasks involve a large measure of discretion implying political choices." This implies that the implementation of the budget by the Commission is not an activity of a purely accounting or mechanical nature. On the contrary, it is clear that this activity includes a large measure of discretion and political choices. This is also in line with the fact that the Commission is a political institution which, according to Article 17(1) TEU, promotes the general interest of the Union and has the autonomous task of executing the budget and managing programmes. These tasks can therefore not be limited to tasks of a merely technical or accounting nature.

This is also confirmed by the fact that only the Commission, unlike the Council, is acting under the political control of the European Parliament. In accordance with Article 319 TFEU, the discharge for the implementation of the operation budget is granted to the Commission. This is further confirmation that budget implementation tasks should be reserved to the Commission.[72]

IV. Interim conclusion on the legal framework underpinning budget implementation

The assessment has established that, under the current EU Treaties, a distinction must be made between the *budget implementation prerogatives* of the Commission, enshrined in Article 17(1), fourth sentence, TEU and Article 317(1) TFEU, and the European Parliament and the Council's prerogatives to adopt the EU budget and EU legislation. Further to that, it has been established that the legislator can provide detail on wider *budget implementation* modalities, including the question whether implementing acts might be required for the adoption of work programmes. At the same time, should a legislative act not further provide detail on what requirements are to apply for budget implementation steps (in relation to operational, programme expenditure), it would be for the Commission to set out the necessary elements in an own Commission decision pursuant to Article 110 of the Financial Regulation.

72 In the same sense, cf. already Opinion GA *Darmon*, Case 16/88, *Commission of the European Communities v Council of the European Communities,* ECLI:EU:C:1989:280, para. 46.

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As will be further elaborated in the following section, the concept of *budget implementation* in itself is vague and can, in fact, be understood in a broad and in a narrow sense. Obviously, the conception of *budget implementation* has implications for the understanding of the primary law prerogatives of the Commission in that regard. Based on the case-law of the CJEU, it appears that only *budget implementation in the narrow sense* falls within the prerogatives of the Commission pursuant to Article 17(1), fourth sentence, TEU and Article 317(1) TFEU.[73] Regarding broader budget implementation questions the legislator retains discretion, for example by foreseeing the adoption of an implementing act, insofar as the prerogatives of the Commission under the Treaties are fully respected.

D. Specific cases of budget implementation: the practice under the current MFF (2021-2027)

Based on the general principles and the institutional framework set out, the practical implementation of these *primary law* requirements under the current MFF through the various EU programmes and instruments are now considered. Specifically, the focus rests on analysing the legal requirements and the institutional responsibilities of the Commission – as well as partly the Council – in relation to *budget implementation* tasks (understood in a broad sense) foreseen by a selection of current EU secondary law instruments.

To that end, the following section examines the *design* of different stages of budget implementation in relation to a range of legislative instruments. First, the adoption of work programmes (and financing decisions) will be considered (D.I.), before then considering the subsequent, downstream budget implementation steps, with a particular focus on disbursement (D.II.), and, finally, the general and programme-specific conditionalities as means to (temporarily) suspend the release of EU funds (D.III.).

I. Budget implementation in the broad sense: Work Programmes

Article 110(1) of the Financial Regulation determines that budgetary commitments generally require the adoption of a financing decision, which constitutes at the same time the corresponding work programme. As previously established, the legislator enjoys discretion when determining the procedural rules applicable to the adoption of work programmes.[74] The arrangement is thus programme-specific and depends on the details provided by the *basic act*. Under the current MFF, most programmes foresee the adoption of work programmes through a Commission implementing act in the sense of Article 291 TFEU subject to comitology.

73 Cf. ECJ, Case 16/88, *Commission v Council,* judgment of 24 October 1989, ECLI:EU:C:1989:397, paras. 11–13.

74 As previously highlighted and accepted by the Court, cf. ECJ, Case C-156/21, paras. 188–189.

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While Article 110(2) of the Financial Regulation provides that the financing decision shall at the same time constitute the work programme, it should also be noted that it is only the work programme as such which constitutes budget implementation in the broad sense, whereas the financing decision, which constitutes the authorisation to enter into budgetary and legal commitments, should be regarded as budget implementation in the narrow sense. This subtle difference is taken into account in Article 110(2) Financial Regulation through the indication that, where the relevant basic act provides for specific modalities for the adoption of a financing decision or a work programme or both – such as a comitology procedure – those modalities shall be applied to the part of the financing decision constituting the work programme.

1. Commission Implementing Decision with comitology: Horizon Europe

One illustrative example of a basic act that foresees the adoption of work programmes by Commission implementing act subject to comitology is Council Decision (EU) 2021/764, which establishes the Specific Programme implementing Horizon Europe (hereinafter: "Horizon Europe").[75] Article 13(1) Horizon Europe clarifies that the programme is to be implemented through work programmes, adopted pursuant to Article 13(2) of that decision. This provision, in turn, specifies that the Commission is to adopt separate work programmes by means of implementing acts in relation to explicitly named Horizon Europe actions and following the legislative conditions specified by the legislator.[76] It should further be noted that the adoption of work programmes via implementing acts has been made subject to comitology (notably the examination procedure provided for in Article 14(4) Horizon Europe, which refers to the Comitology Regulation and to Article 5 Regulation (EU) No 182/2011), except for the JRC multi-annual work programme (cf. Article 13(2), point (d), Horizon Europe).

Furthermore, Article 13(3) Horizon Europe provides for additional requirements to those generally foreseen in Article 110 Financial Regulation, which must be respected by the Commission when drafting the respective work programme and corresponding financing decision. The Commission must, for example, set indicative amounts per action and mission (Article 13(3), point (a), Horizon Europe) or considerable detail on the selection procedure, including the weighing of award criteria (Article 13(3), point (b), Horizon Europe). It is hence apparent that the legislator imposes on the Commission specific obligations regarding the required detail contained in the Commission implementing decision – and thus the financing

75 Council Decision (EU) 2021/764 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU, OJ L 167I of 12 May 2021, p. 1.

76 In particular, Art. 13(2) Horizon Europe includes requirements to take into account the opinion of certain specific bodies in the field of research in the preparation of certain of the work programmes.

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decision – going beyond the otherwise applicable minimum requirements set out in Article 110(2) Financial Regulation.

Based on the concrete example of the Horizon Europe programme, several more general observations in relation to *budget implementation* can be made. First, the Horizon Europe programme was established by the legislator, here the Council following a special legislative procedure based on Article 182(4) of the TFEU. The resulting Council Decision (EU) 2021/764 constitutes a basic act in the sense of Article 58 of the Financial Regulation, which provides the overarching legislative framework. Second, the MFF provides the maximum annual amounts of EU spending for the various headings of the budget, including heading 1 concerning "Single Market, Innovation and Digital", which covers the Horizon Europe programme.[77] Third, within the legislative framework (i.e. Council Decision (EU) 2021/764 as basic act) and the budgetary framework (MFF and annual budget), the Commission can then proceed and draw up the specific work programmes through Commission implementing decisions pursuant to Article 13 of Council Decision (EU) 2021/764, in principle, subject to comitology. These implementing decisions constitute work programmes (and financing decisions) in the sense of Article 110 of the Financial Regulation based on which concrete budgetary and, subsequently, legal commitments can be made.

A range of other EU programmes follow a similar approach concerning budget implementation as Horizon Europe, notably to subject wider budget implementation questions such as the adoption of work programmes to the adoption of Commission implementing acts under comitology. Some examples include:

- Regulation (EU) 2021/694 concerning the Digital Europe Programme (DEP), which aims at supporting and accelerating the digital transformation of the European society and economy. In relation to the *Specific Objectives* to be implemented through direct management, the Commission is to adopt work programmes in the sense of Article 110 of the Financial Regulation by means of implementing acts subject to the examination procedure, as specified in Article 24(6) Regulation (EU) 2021/694. It should also be noted that certain Specific Objectives are to be implemented through indirect management, with details provided as to what actor should be entrusted with these budget implementation tasks (cf. Article 4(2) Regulation (EU) 2021/694 in relation to Specific Objective 1 as well as Article 6(2) Regulation (EU) 2021/694 in relation to Specific Objective 3).
- Regulation (EU) 2021/1153[78] regarding the Connecting Europe Facility (CEF) aims at building, modernising and completing trans-European networks in the transport, energy and digital sector. The CEF-Regulation establishes that CEF "shall be implemented by work programmes referred to in Article 110 of the

77 Council Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433I of 22 December 2020, p. 11, as apparent from Annex II.

78 Regulation (EU) 2021/1153 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, OJ L 249 of 14 July 2021, p. 38.

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Financial Regulation" (Article 20 Regulation (EU) 2021/1153). It further specifies that the Commission is to adopt these work programmes by means of implementing acts subject to the examination procedure, as detailed in Article 20(3) Regulation (EU) 2021/1153.

- Regulation (EU) 2021/947 concerning the Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI),[79] is based on a two-stepped budget implementation process. This comparably more complex implementation process can be explained due to the specific thematic context of NDICI, as it relates to neighbourhood policy, as well as the relatively large financial envelope. In a first step the *multiannual indicative programmes* are adopted by the Commission through implementing acts, subject to the examination procedure pursuant to Article 16(1) of Regulation (EU) 2021/947.[80] Subsequently, in a second budget implementation step, and based on the established broad geographic and thematic programming documents,[81] the Commission then establishes concrete (multi-)annual action plans and measures by means of implementing act pursuant to Article 25(1) of Regulation (EU) 2021/947 again subject to the examination procedure in the sense of Article 5 of Regulation (EU) No 182/2011.[82] Recital 78 of Regulation (EU) 2021/947 clarifies that these action plans and measures constitute work programmes and thus financing decisions under the Financial Regulation.[83]

These four examples – notably Horizon Europe, CEF, DEP and NDICI – display the most common features of budget implementation under the current MFF in relation to programmes that are (mainly) managed directly by the Commission. First, all four programmes are established by, and their core features are laid down in a legislative act in a detailed manner. This legislative act constitutes the *basic act* in the sense of Article 58 of the Financial Regulation. Second, the respective programme's financial envelope is guaranteed by the MFF, the annual budget as well as the tentative envelope mentioned directly in the programme-specific legislative act. And third, it is the Commission that devises via implementing acts the concrete plan on how the available budget is to be spent in light of the legislative priorities.

This last aspect constitutes budget implementation in a broad sense, as the Commission adopts work programmes in the sense of Article 110 of the Financial Regu-

79 Regulation (EU) 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009, OJ L 209 of 14 June 2021, p. 1.

80 These multiannual indicative programmes are divided into two separate sets of plannings based on the financial envelop set out in Art. 6(2) Regulation (EU) 2021/947, notably, *geographic* programming in the sense of Art. 14 and *thematic* programmes in the sense of Art. 15 Regulation (EU) 2021/947.

81 Cf. Art. 23(2) Regulation (EU) 2021/947.

82 Cf. Art. 25(1), second sentence, Regulation (EU) 2021/947.

83 NDICI bears similarities with Regulation (EU) 2021/1529 establishing the Instrument for Pre-Accession assistance (IPA III), OJ L 330 of 20 September 2021, p. 1.

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lation. These provide the overall overview of what specific activities are envisaged to be implemented in a given year, and they instruct the Commission's Directorate Generals – or other implementing actors – on how operational expenditure is to be implemented. Together with the work programmes, the Commission also adopts financing decisions, which qualify as budget implementation in the narrow sense, and which provide the basis to the various authorising officers to make concrete budgetary (and subsequently legal) commitments.

2. Commission Implementing Decision without comitology: the example of cohesion policy and agriculture

Further to the previous examples, certain Union acts foresee the adoption of Commission implementing decisions without, however, prescribing comitology. This is for example the case in relation to the adoption of cohesion programmes pursuant to Article 23(4) Regulation (EU) 2021/1060. The *national* cohesion programmes are prepared by the Member States pursuant to Article 21 of Regulation (EU) 2021/1060, they are subsequently reviewed by the Commission and, finally, approved by an implementing decision, as indicated. Similarly, Article 118(6) Regulation (EU) 2021/2115[84] establishes that the Common Agricultural Policy (CAP) Strategic Plan, as proposed by the Member States and following a dedicated review by the Commission, is approved by Commission implementing decision without comitology.

Arguably, given that Member States are drawing up the respective programmes and given the high number and specific nature and focus of such programmes, the involvement of a committee involving all Member States might be perceived as less relevant. As stated, Member States are closely involved in the drawing up of the respective acts, and responsible for their subsequent implementation through shared management, and thus no additional oversight at the stage of adoption of the Commission implementing decision seems warranted in these specific cases.

3. Examples of Council Implementing Acts for budget implementation in the broad sense

While generally the Commission is tasked with adopting work programmes and financing decisions for Union programmes (operational expenditure), some deviations from this approach emerged specifically in relation to recent EU instruments. These include, for example, SURE, the RRF, the Ukraine Facility, and most recently

84 Regulation (EU) 2021/2115 on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435 of 6 December 2021, p. 1.

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SAFE. Furthermore, the Western Balkans Facility will be considered for comparative purposes in relation to the Ukraine Facility.

a) SURE Regulation

Council Regulation (EU) 2020/672 was one of the first emergency measures following the COVID-19 outbreak, and it established the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE). In relation to the implementation of SURE, Article 6(1) Council Regulation (EU) 2020/672 determines, regarding the handling of Member States' requests for financial assistance through loans, that this assistance would be made available pursuant to a Council implementing decision based on a Commission proposal. Article 6(2) Council Regulation (EU) 2020/672 details the Commission's obligation in relation to preparing the corresponding proposal for such Council implementing decision.

Hence, different to the examples mentioned in the previous subsections, under SURE it is the Council that takes the decision subsequent to which "financial assistance shall be made available".

b) RRF Regulation

Regulation (EU) 2021/241 was also adopted during the COVID-19 pandemic to boost the EU recovery process with the aim to create a stronger and more resilient EU. In essence, the facility empowers the Commission to raise funds for EU investments through borrowing on the capital markets. In relation to the non-repayable grant component, which is implemented through direct management by the Commission pursuant to Article 8 Regulation (EU) 2021/241, the facility requires that national recovery and resilience plans are adopted by Council implementing decision following a Commission proposal, as established by Article 20 Regulation (EU) 2021/241. It is important to underscore that the national recovery and resilience plans set out the specific reforms and investment projects for the respective Member State including "the milestones and targets, and the financial contributions" (cf. Article 20(2) Regulation (EU) 2021/241).

Following the adoption of these national recovery and resilience plans, the Commission then signs an agreement with the Member State concerned, which is to constitute the "individual legal commitment within the meaning of the Financial Regulation".

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c) Ukraine Facility Regulation

Regulation (EU) 2024/792[85] establishes the Ukraine Facility, which aims at supporting Ukraine's recovery, reconstruction, restoration and modernisation due to the on-going war, with a view of also supporting the required reforms for the envisaged EU accession. Under the facility, it is again the Council, upon a proposal from the Commission, that adopts in accordance with Article 19 of Regulation (EU) 2024/792 an implementing decision approving the "Ukraine Plan", which contains all the detail on *inter alia* the financial support granted, the reforms and investments agreed as well as the applicable timetable. Subsequently and pursuant to Article 38 of Regulation (EU) 2024/792, the Commission is then tasked with adopting work programmes in the sense of Article 110 of the Financial Regulation by means of implementing acts subject to the examination procedure in order to lay down the details for implementing the support under the facility and thus specifically the Ukraine Plan.

Hence, while the Commission retains the responsibility to adopt the *formal* work programmes and financing decisions, the Council considerably limits the Commission's discretion, as the *Ukraine Plan* sets out in considerable detail what projects will be supported and what disbursement modalities are to be respected.

Interestingly, the European Parliament, the Council and the Commission have adopted a joint declaration that underscored the exceptional nature of the Ukraine Facility.[86] That declaration specifies that the facility constitutes "an exceptional medium-term instrument of high geopolitical importance adapted to the uncertainty and unprecedented challenges of supporting a country at war with direct implications for the security of the Union." Given this specific context, the "objectives, financing and governance arrangements agreed for the Ukraine Facility respond to the exceptional and specific context and challenges in relation to which this particular Facility has been adopted," and the Facility "should not therefore be considered as a precedent for future instruments of economic assistance to third countries." Arguably, the institutions themselves acknowledge the particularities of the found solution, also in relation to budget implementation.

d) Western Balkans Facility Regulation

Regulation (EU) 2024/1449[87] establishes the Reform and Growth Facility for the Western Balkans, which supports and incentivises the Western Balkans enlargement partners' preparation for EU membership with a particular focus on economic con-

85 Regulation (EU) 2024/792 establishing the Ukraine Facility, OJ L 2024/792 of 29 February 2024.

86 OJ C C/2024/1969 of 29 February 2024, Joint declaration of the European Parliament, the Council and the Commission relating to the exceptional nature of the Ukraine Facility.

87 Regulation (EU) 2024/1449 on establishing the Reform and Growth Facility for the Western Balkans, OJ L 2024/1449 of 24 May 2024.

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vergence. Different to the Ukraine Facility, the "Reform Agenda" per beneficiary (comparable to the *Ukraine Plan*) is to be adopted by a Commission implementing decision subject to the examination procedure, as specified in Article 15 Regulation (EU) 2024/1449. Recital 43 Regulation (EU) 2024/1449 also specifies that these Commission implementing decisions constitute work programmes in the sense of the Financial Regulation.

e) SAFE Regulation

Council Regulation (EU) 2025/1106 establishes the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, which provides financial assistance to Member States in order to enable them to implement urgent, major public investments in support of the European defence industry in light of the current "crisis situation". Under the instrument, Member States may submit duly substantiated requests for financial assistance (together with a *European defence industry investment plan*), as foreseen by Article 7 of Council Regulation (EU) 2025/1106. This request is then assessed by the Commission (Article 8(1) of Council Regulation (EU) 2025/1106), and, in case the Commission concludes that all conditions are fulfilled, it will submit a proposal for a Council implementing decision (Article 8(2) of Council Regulation (EU) 2025/1106). The Council can then approve the request for financial assistance by adopting an implementing decision, which specifies *inter alia* the loan support to be paid, and the form of pre-financing awarded. Subsequently, it is again for the Commission to conclude the loan agreement and operational arrangements with the requesting Member State based on the Council implementing decision.[88]

f) Conclusion on SURE, the RRF, Ukraine Facility, Western Balkans Facility and SAFE Regulation

Considering the five mentioned examples, it was outlined that under SURE, the RRF, the Ukraine Facility and the SAFE Regulation the legislator foresaw the adoption of Council implementing acts for fleshing out considerable detail on how to implement the available budget under the respective instrument – including for example specific projects, milestones or deadlines. Only under the Western Balkans Facility, the adoption of the "Reform Agendas" – which is largely comparable to the national recovery and resilience plans under the RRF, the Ukraine Plan under the Ukraine Facility and the requests under the SAFE instrument – is left to the Commission. Two possible reasons for this distinction might be, first, the political sensitivity in relation to the specific instrument (cf. COVID-19 recovery, Ukraine support, and defence) and, second, the amounts at stake. However, it can also be

88 Article 10 Council Regulation (EU) 2025/1106. Of note, Art. 9(1) of Council Regulation (EU) 2025/1106 empowers the Commission to "*borrow the necessary funds on the capital market or from financial institutions*" in order to finance SAFE loan support.

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noted that despite the requirement to duly motivate the attribution of implementing powers to the Council,[89] the legislative acts remain largely silent on the point.

II. Budget implementation in the narrow sense, notably disbursement decisions

As already indicated, the concept of wider budget implementation tasks, considered in the previous subsection, must be distinguished from the budget implementation prerogatives of the Commission according to the EU Treaties. The Financial Regulation provides a definition of the term *budget implementation*. According to Article 2, point (7), of that regulation, budget implementation "means the carrying out of activities relating to the management, monitoring, control and auditing of budget appropriations in accordance with the methods provided for in Article 62". Article 62 then lists the three management modes available for budget implementation, notably direct, indirect and shared management. As clarified by the CJEU, this *budget implementation* falls squarely within the prerogatives of the Commission enshrined in Article 317 TFEU.[90] To distinguish the different layers of budget implementation, the present contribution refers to budget implementation as defined in Article 2, point (7), of the Financial Regulation as *budget implementation in the narrow sense*.

Depending on the management mode, the downstream budget implementation may include a variety of tasks. These include the organisation of award procedures and the selection of projects and beneficiaries to be funded – if not already identified in the work programme – the selection of implementing partners in indirect management, the conclusion of the appropriate legal commitments, the disbursement of funds, and the control of their correct spending, including possible recovery actions. All these actions are the prerogative of the Commission, which it carries out on the basis of the provisions of the Financial Regulation and the relevant basic acts.[91]

Certain variations have occurred, however, in recent times as regards disbursement decisions, particularly in the context of the facilities considered in section IV.1.c) above, where sometimes large amounts are at stake. In principle, disbursement decisions concern the institutional act required to release the committed budget appropriations once the payments conditions are fulfilled, following the assessment by the Commission – or rather the relevant authorising officer. For a payment to be made, a prior budgetary commitment is required (which is made following the adoption of a financing decision) as well as the conclusion of a legal commitment (for example, by signing a grant agreement or a procurement contract). The authorising officer will then consider whether the agreed payment conditions

89 Cf. ECJ, Case 16/88, para. 10.
90 ECJ, Case C-156/21, para. 187.
91 A rare and isolated exception to this rule can be found in Art. 11(2) Regulation (EU) 2021/697 establishing the European Defence Fund, OJ L 170 of 12 May 2021, p. 149, according to which award decisions are taken by the Commission by implementing act with comitology.

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(i.e. completing of agreed conditions or delivery of agreed output) are met, which justify the disbursement of the corresponding funds as set out in Article 111(3) Financial Regulation. If all conditions are met and the expenditure can be validated, the authorising officer issues a "validation decision". Subsequently, a payment order is issued (cf. Article 111(5) Financial Regulation) which will then be implemented by the accounting officer pursuant to Article 115 Financial Regulation.

Disbursement decisions are, thus in principle, reserved to the Commission, as they enable the Commission to monitor and verify compliance with the agreed conditions, thereby complying with the sound financial management obligations applicable to the Commission. It should be noted that depending on the management mode, the payment recipient and the verification exercise differs. In the context of direct management, the Commission will directly release the funds to the beneficiary or the contractor. In the context of indirect management or shared management, it is the entity entrusted with budget implementation tasks or the Member State that will receive the payment.

Given the Commission's constitutional responsibility for the sound implementation of the Union budget, it seems that these disbursement decisions in relation to operational (programme) expenditure can in principle not be delegated to or executed by a different (institutional) actor. As emphasised, the decision on whether funds should be released following verification that the contract or the agreement is properly executed gives the Commission overall oversight and control – which can justify the parliamentary scrutiny of the Commission's budget implementation actions in the context of the discharge procedure. However, among recent funding instruments both the Ukraine Facility as well as the RRF do not follow this traditional approach. Regarding the Ukraine Facility, it should be noted that Regulation (EU) 2024/792 contains specific rules on the disbursement of (non-repayable) support. Pursuant to Article 26 of Regulation (EU) 2024/792 the Commission is to assess whether the various payment conditions are fulfilled, but it is the Council that adopts the subsequent payment decision via implementing act.[92]

Considering now the RRF, it is the Commission that is tasked with assessing duly justified payment requests submitted by the Member States as detailed in Article 24 Regulation (EU) 2021/241. It should be, however, noted that the Commission must submit its preliminary positive assessment to the Economic and Financial Committee pursuant to Article 24(4) Regulation (EU) 2021/241 for an opinion. This opinion must be taken into account by the Commission when making its final disbursement decision. Furthermore, Article 24(5) Regulation (EU) 2021/241 requires the adoption of a Commission implementing decision subject to comitology for the disbursement decision.

Overall, it can thus be argued that disbursement decisions concerning operational (programme) expenditure fall within the Commission's institutional prerogatives under Article 317(1) TFEU. This enables the Commission to exercise overall control over budget implementation (as it can refuse payment in case agreed require-

92 Art. 26(4) Regulation (EU) 2024/792.

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ments are not fulfilled), thereby justifying the budget scrutiny in the context of the annual discharge procedure. The assessment has revealed, however, that both the Ukraine Facility – despite the explicit acknowledgment that no precedent would be set by this facility – as well as the RRF deviate from this standard practice, as enshrined in Articles 111-116 Financial Regulation. Notably, under the Ukraine Facility, disbursement is made by the Council and under the RRF disbursement requires the adoption of an implementing act (and thus reliance on Article 291 TFEU instead of Article 317 TFEU). While both examples appear to deviate from the established legal framework as confirmed by the case-law of the CJEU, it is noteworthy that in the more recent case of the Western Balkans Facility, the power to decide on disbursement remained with the Commission, which may be explained in light of the different political sensitivity as well as the significantly different amounts at stake.[93]

III. General and programme-specific conditionalities

A separate topical issue that also relates to the implementation of the budget concerns the general and programme-specific conditionalities that are applied to uphold EU values, including in particular the rule of law. In short, EU funding is tied to the *ex ante* fulfilment of certain EU values, including specifically the rule of law.

Regarding the general conditionality regime, established by Regulation (EU, Euratom) 2020/2092, a mechanism is introduced to take dedicated measures against a Member State – such as suspension of payments or financial corrections – in order to protect the EU financial interests in light of rule of law violations (cf. Article 3 Regulation (EU, Euratom) 2020/2092). Pursuant to Article 6 Regulation (EU, Euratom) 2020/2092, the Commission assesses whether the conditions for adopting dedicated measures are fulfilled and engages in a dialogue with the respective Member State. If the Commission considers that the conditions continue to be met and that no adequate remedial measures were proposed by the Member State (cf. Article 6(9) Regulation (EU, Euratom) 2020/2092), the Commission submits a proposal for an implementing act to the Council. The Council then adopts the corresponding implementing decision (cf. Article 6(1) Regulation (EU, Euratom) 2020/2092) as well as ultimately lifts such implementing measure once the concerns are remedied (cf. Article 7 Regulation (EU, Euratom) 2020/2092). As previously explained, the CJEU clarified that such horizontal conditionality regime is not undermining the institutional balance established by the EU Treaties.[94]

Stemming from the cited jurisprudence, it can be established that the possibility to suspend payments and to implement financial corrections across programmes may in certain cases be reserved to the Council and thus does in principle not

93 Cf. Art. 21(3) Regulation (EU) 2024/1449. The same model was followed most recently in Regulation (EU) 2025/535 establishing the Reform and Growth Facility for the Republic of Moldova, OJ L of 21 March 2025.

94 ECJ, Case C-156/21, paras. 183–187.

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conflict with the Commission's prerogatives under Article 317(1) TFEU. Rather, the (budget) legislator is empowered to establish such framework pursuant to Article 322(1) TFEU and it may confer implementing powers on the Commission – or if duly justified also on the Council – in this regard. Such horizontal framework corresponds to the *implementation of the budget* in the broad sense within the realm of the legislator's responsibilities.

In addition to this *general* framework, programme-specific conditionalities were introduced, for example, in relation to the RRF, the Ukraine Facility, the Western Balkans Facility, but also the horizontal as well as thematic enabling conditions in relation to shared management spending.

The RRF contains programme-specific economic conditionality as established in Article 10 Regulation (EU) 2021/241, which in fact links the RRF Facility with the applicable EU rules concerning sound economic governance. Pursuant to Article 10(1) Regulation (EU) 2021/241 the Commission must propose the (partial) suspension of commitments and payments to the Council in case the Council adopted a decision establishing that a Member State has not effectively corrected an excessive deficit pursuant to Article 126(8) and 126(11) TFEU. Further to that, the Commission *may* also propose the (partial) suspension under Article 10(2) Regulation (EU) 2021/241 where the Council acted in relation to excessive imbalance procedures or the macroeconomic adjustment programme concerning a Member State as well as in the context of Regulation (EC) No 332/2002.[95] Once the Commission decides to propose the suspension of commitments and/or payments, it is then the Council that has to act by adopting an implementing act.[96] Hence, in the context of the RRF the horizontal EU rules concerning the general conditionality mechanism and the economic governance are applicable.[97] Procedurally, for both conditionalities it is the Commission that conducts the required (preparatory) assessments and subsequently the Council has to adopt the corresponding implementing act (if deemed appropriate).

A different, more instrument-specific conditionality was introduced in the context of the Ukraine as well as the Western Balkans Facility. Considering first the Ukraine Facility, Article 5(1) Regulation (EU) 2024/792 establishes a list of preconditional principles which includes "that Ukraine continues to uphold and respect effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and to guarantee respect for human rights, including the rights of persons belonging to minorities." Fulfilment of these principles is a "precondition" for any financing under the Facility, as established by Article 16(2) Regulation (EU) 2024/792. To that end, the Commission is tasked with continuously monitoring fulfilment of the precondition (Article 5(2) Regulation (EU) 2024/792) and it must

95 Council Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments, OJ L 53 of 23 February 2002, p. 1.

96 Pursuant to Art. 10(3) Regulation (EU) 2021/241 the "reversed majority" applies.

97 Similarly, and for completeness, Art. 19 Regulation (EU) 2021/1060 also foresees the application of macroeconomic conditionality in the context of cohesion funding.

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inform the Council about the compliance status prior to the adoption of a Council disbursement decision.[98]

The Western Balkans Facility replicates this precondition with slightly more elaborate wording in Article 5(1), point (a), Regulation (EU) 2024/1449. Further to that, Article 5(1), point (b), Regulation (EU) 2024/1449 contains a specific precondition for Serbia and Kosovo regarding the process of normalising their relations. It is again the Commission that monitors the fulfilment of these preconditions (cf. 5(2) Regulation (EU) 2024/1449). Furthermore, the Commission must reflect in its evaluation of the *Reform Agendas* whether these "appropriately [address] potential risks in compliance with the preconditions and payment conditions."[99] Finally, prior to the release of funds, which under the Western Balkans Facility is authorised through a Commission decision, the Commission must verify that the preconditions are still fulfilled (cf. Article 21(2) Regulation (EU) 2024/1449).

Hence, under both facilities, the release of funds is subject to compliance with core EU values, that correspond to the foundational values enshrined in Article 2 TEU. The monitoring of and the compliance assessment with these preconditional requirements is done by the Commission. As pointed out, given the different institutional design, it is either the Council (Ukraine Facility) or the Commission (Western Balkans Facility) that must then confirm fulfilment of these preconditional requirements prior to the release of any funds. Obviously, both facilities fall within the accession-context, and the EU funds are thus used to foster alignment with core EU values, such as democracy, the rule of law and protection of minorities.

Finally, in the context of cohesion funding, Regulation (EU) 2021/1060 ("Common Provisions Regulation") contains *enabling conditions* that must be fulfilled before the Commission can reimburse a corresponding payment request submitted by a Member State (cf. Article 15(4) Regulation (EU) 2021/1060). Article 15(6) Regulation (EU) 2021/1060 clarifies that the enabling conditions must remain fulfilled and that Member States must inform the Commission in case of possible changes, based on which the Commission may then consider suspending the reimbursement of payment requests. There are four horizontal enabling conditions for which Annex III to Regulation (EU) 2021/1060 lists specific fulfilment criteria that are self-assessed by the Member States subject to Commission review. In addition to these *horizontal conditions*, which apply across the different Member States' programmes and to all specific objectives, there are also sixteen *thematic enabling conditions* which apply to the European Regional Development Fund (ERDF), European Social Fund Plus (ESF+) as well as the Cohesion Fund as set out in Annex IV to Regulation (EU) 2021/1060. These thematic conditions are sector-specific and thus tailored to a specific objective, such as for example "ERFD: Enhancing digital connectivity" and the enabling condition being "national or regional broadband plan" with then specific fulfilment criteria. As apparent from the enabling conditions framework, Article 15 Regulation (EU) 2021/1060 provides the

98 Cf. Art. 5(2) in conjunction with Art. 26(3) and (4) Regulation (EU) 2024/792.
99 Cf. Art. 15(4), point (g), Regulation (EU) 2024/1449.

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Commission with a strong tool to halt disbursement of EU funds in case related concerns are observed and established.[100]

Taken together, the analysis shows that both the general as well as the programme-specific conditionalities may entail, but do not necessarily require, the adoption of implementing acts. The recourse to Article 291 TFEU seems justified where the aim of these conditionality mechanisms is to create *uniform conditions* for the implementation of EU law or – put differently – where the effectiveness of conditionality mechanisms depends on establishing a binding and uniform decision that prevents the release of Union funding until the corresponding concerns are adequately addressed.

Moreover, as apparent from the analysis, in three instances the Council is empowered to adopt these implementing decisions (cf. the general conditionality regime, the RRF, and the Ukraine Facility) and in two instances the Commission adopts these implementing acts (Common Provisions Regulation and the Western Balkans Facility). In relation to the general conditionality mechanism as established by Regulation (EU, Euratom) 2020/2092, the CJEU has confirmed the legislator's reasoning notably that Council implementing acts are justified given the "importance of the financial effects of those measures"[101] specifically given their cross-cutting nature across various programmes. Similarly, it can be argued that in light of the uncertainties and the required flexibility in relation to Ukraine, which entail ad hoc political decision-making, the Council must be exceptionally empowered to take the decision on fulfilment of the preconditions. One may apply a similar reasoning in relation to the RRF, which concerns considerable financial investments in relation to a crisis-situation which might require additional political steer. By contrast, the Western Balkans Facility does not involve the same level of uncertainties – compared to Ukraine in light of the on-going war. Considering the horizontal enabling conditions, one could argue that empowering the Commission to decide on their fulfilment via implementing act instead of the Council renders the mechanism less political. Moreover, their approval by the Commission is also coherent with the fact that they are closely linked to the approval and implementation of the programmes, which are approved by the Commission by implementing act without comitology.

IV. Conclusions on the practical examples

The analysis of various spending programmes under the current MFF has revealed that the legislator enjoys considerable discretion when devising budget implementation processes in the broad sense. As highlighted, both the general programming required based on pre-defined priorities as well as the subsequent adoption of the work programme can require the adoption of an implementing act subject to comi-

100 Whereas programme approval decisions pursuant to Art. 24 Regulation (EU) 2021/1060 are taken by implementing act, this is not the case for decisions under Art. 15 Regulation (EU) 2021/1060.

101 ECJ, Case C-156/21, paras. 188–189; Cf. reasoning provided by the legislator in Recital 20 Regulation (EU, Euratom) 2020/2092.

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tology. As clarified by the CJEU, this does not conflict with the Commission's prerogatives under Article 317 TFEU.[102] It was highlighted that the RRF, the Ukraine Facility and SAFE reserve the adoption of implementing acts to the Council, which can be explained due to the sensitive context to which these legislative acts correspond as well as the financial volumes concerned.

Similarly, general conditionality mechanisms through which payments may be temporarily suspended form part of the budget implementation process in the broad sense. Consequently, the legislator enjoys discretion when devising the concrete implementing modalities in light of Article 322(1) TFEU. As highlighted, the various mechanisms entail the adoption of an implementing act in order to guarantee uniform application. Depending on the political sensitivity, either the Council might be exceptionally empowered to adopt these implementing acts, or the Commission is tasked with this.

These *wider* budget implementation tasks are to be distinguished from the Commission's prerogatives under Article 317(1) TFEU, which include specifically "activities relating to the management, monitoring, control and auditing of budget appropriations in accordance with the methods provided for in Article 62" as defined in Article 2, point (7), of the Financial Regulation.[103] It was outlined that *inter alia* disbursement decisions fall within this definition and these should be reserved to the Commission. In this regard, the RRF provides an exception as it foresees the adoption of disbursement decisions through Commission implementing acts. Although not intended as a precedent, the Ukraine Facility provides a further peculiar exception, as it foresees a Council implementing decision to approve the disbursement of funding. However, in more recent practice, notably the case of the Western Balkans Facility, a return to the more traditional approach according to which disbursement decision are the prerogative of the Commission can be noted.

E. Budget implementation in the future MFF (2028-34)

On 16 July and 3 September 2025, the European Commission presented its proposals for the next MFF, which will cover the period from 2028 to 2034.[104] As mentioned, given the significant policy challenges and budgetary constraints for the Union budget, a significant emphasis in the design of the proposals was placed on flexibility and efficiency in budget implementation.[105] It is therefore interesting to consider how the questions examined in this article have been addressed in the new proposals. Evidently, given the complexity and volume of the new package, the ambition is not to present an exhaustive or definite analysis, but rather to illustrate some salient features of interest for the current topic. In any event, the

102 ECJ, Case C-156/21, para. 187.
103 Ibid., paras. 186–187.
104 For a list of the proposals adopted on 16 July 2025: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034_en#factsheets (5/2/2026).
105 COM(2025) 570 final, p. 1–2.

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final outcome of the legislative processes, which will take some time, will have to be awaited for a more definitive appraisal.

I. The structure of the new basic acts: Consolidation and simplification

A major emphasis of the new MFF proposals is on the consolidation and simplification of the Union's spending programmes. While under the current MFF there are 40 funding programmes, each established by separate basic acts with own financial envelope and implementation mechanisms,[106] this number will be significantly reduced. This reduction is achieved by consolidating a number of current spending programmes into single basic acts.[107]

Probably the most salient consolidation is reflected in the proposal for a European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime prosperity and security (National and Regional Partnership Plans – NRPP Fund Regulation).[108] This fund, which regroups and consolidates in a single framework the current funds in the field of cohesion policy (notably the European Fund for Regional Development, the European Social Fund, and the Cohesion Fund), the funds in the field of agricultural policy and fisheries, and de facto also replaces the current RRF,[109] is a major innovation of the proposals for the next MFF. It will have a financial envelope of 865 billion Euro, which will be allocated across Members States.[110] It will then be implemented through national and regional partnership plans which will be prepared by Member States, and approved by Council, based on a proposal by the Commission.[111] Each plan will have to allocate adequate funding to all the relevant objectives, and contain milestones and targets for the measures to be supported,[112] thus following in essence the performance-based model of the current RRF. However, unlike the RRF, the new fund shall mainly be implemented according to the principles of shared management,[113]

106 For a list of the current funding programmes: https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes_en (5/2/2026).

107 In parallel, the number of MFF headings (apart from the heading dedicated to administration) is reduced from currently six to three, covering 1) Economic, Social, and Territorial Cohesion, agriculture and rural and maritime prosperity and security, 2) Competitiveness, Prosperity and Security, and 3) Global Europe, cf. proposal for a new MFF Regulation, *European Commission*, Proposal for a Council Regulation laying down the multiannual financial framework for the years 2028 to 2034, COM(2025) 571 final.

108 *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for the period 2028-2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509, COM(2025) 565 final.

109 Although the financing model of the RRF through NGEU will not be continued.

110 For the details, cf. Art. 10 COM(2025) 565 final in conjunction with Annex I (allocation key).

111 Further on that see the next subsection.

112 For the requirements on the plan, cf. Art. 22 COM(2025) 565 final.

113 Art. 5 COM(2025) 565 final.

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thus to this extent remaining in line with the current implementing mode in the fields of cohesion, agriculture, and fisheries.[114] The NRPP Fund will also contain a new facility, to be implemented in shared, direct or indirect management,[115] which will replace inter alia the current EU Solidarity Fund with its specific mobilisation mechanisms.[116]

This consolidation of funds and their integration into a common implementation framework was possible to the extent that all the legal bases involved are procedurally compatible. Moreover, Article 177(1) TFEU also allows the legislator to proceed to a grouping of the structural funds. At the same time, the structural funds foreseen by the Treaties continue to exist, albeit within the context of a single implementation framework. This is illustrated by the fact that there are accompanying regulations setting out further rules for certain of the funds.[117] Moreover, for certain funding programmes in the field of asylum, migration and home affairs, where the legal bases are not compatible due to the variable geometry decision-making in Council applying in the field of Justice and Home Affairs, basic acts with own financial envelopes are foreseen.[118]

114 In addition, the NRPP Fund also comprises a Facility, with an envelope of almost 72 billion euro, which finance a range a support measures, including crisis support measures. These measures can be implemented through direct, indirect or shared management, and provide a further element of flexibility in response to crisis and emergency situations in the field of cohesion policy. For further details, cf. Art. 26 and Annex XV COM(2025) 565 final.

115 Art. 26 ff. and Annex XV COM(2025) 565 final.

116 Cf. Council Regulation (EC) No 2012/2002.

117 Cf. *inter alia European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the European Social Fund as part of the National and Regional Partnership Plan set out in Regulation (EU) […] [NRPPlan] establishing conditions for the implementation of the Union support to quality employment, skills and social inclusion for the period from 2028 to 2034, COM(2025) 558 final containing a proposal for a Regulation establishing the European Social Fund as part of the National and Regional Partnership Plan, *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the European Fund for Regional Development including for European Territorial Cooperation (Interreg) and the Cohesion Fund as part of the Fund set out in Regulation (EU) […] [NRP] and establishing conditions for the implementation of the Union support to regional development from 2028 to 2034, COM(2025) 552 final with a proposal establishing the European Fund for Regional Development including for European Territorial Cooperation (Interreg) and the Cohesion Fund as part of the National and Regional Partnership Plan, or *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for the implementation of the Union support to the Common Agriculture Policy for the period from 2028 to 2034, COM(2025) 560 containing a Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for the implementation of the Union support to the Common Agricultural Policy.

118 Cf. e.g. *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the Union support for asylum, migration and integration for the period from 2028 to 2034 COM(2025) 540 final.

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Another significant element of consolidation is represented by a proposal for a regulation establishing a European Competitiveness Fund (ECF).[119] This new fund will have an indicative financial envelope of 234 billion Euro, and will provide support to the Union's competitiveness in the areas of clean and industrial decarbonisation, health, biotech, agriculture and bioeconomy, digital leadership, resilience, security, defence and space.[120] The new fund replaces or repeals about 10 funding programmes under the current MFF. The ECF shall be implemented through work programmes in direct or indirect management.[121] Next to the ECF, Horizon Europe shall be maintained as a separate basic act with its own financial envelope, but shall be closely coordinated with the prior.[122] An additional new basic act implying a significant consolidation of basic acts is the new Single Market and Customs Program, which will replace several currently existing basic acts in the field of the internal market, customs, tax, and anti-fraud.[123] In the field of external relations, a Global Europe Regulation[124] will replace the current NDICI basic act. In line with the overall objective of simplification, the proposed Global Europe Regulation will also incorporate and replace the current Instrument for Preaccession[125] as well as the Ukraine, Western Balkans and Moldova Facilities.

The overall effect of this consolidation of basic acts is to achieve more efficiency and flexibility in the implementation of the Union's funding programmes, by allowing flexibility in the allocation to specific priorities within the envelope of a larger programme, or by avoiding the need to proceed budgetary transfers in order to respond to new or changing policy priorities.[126] It can be noted that in several

119 *European Commission*, Proposal for a Regulation of the European Parliament and of the Council on establishing the European Competitiveness Fund ('ECF'), including the specific programme for defence research and innovation activities, repealing Regulations (EU) 2021/522, (EU) 2021/694, (EU) 2021/697, (EU) 2021/783, repealing provisions of Regulations (EU) 2021/696, (EU) 2023/588, and amending Regulation (EU) [EDIP], COM(2025) 555 final.

120 Cf. Arts. 3 and 4 COM(2025) 555 final.

121 Art. 12(1) and (2) COM(2025) 555 final.

122 *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing Horizon Europe, the Framework Programme for Research and Innovation, for the period 2028-2034 laying down its rules for participation and dissemination, and repealing Regulation (EU) 2021/695, COM(2025) 543 final.

123 *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the Single Market and Customs Programme for the period 2028-2034 and repealing Regulations (EU) 2021/444, (EU) 2021/690, (EU) 2021/785, (EU) 2021/847 and (EU) 2021/1077 COM(2025) 590 final.

124 *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing Global Europe, COM(2025) 551 final.

125 Regulation (EU) 2021/1529.

126 A further element of flexibility is introduced via the proposal for a new Interinstitutional Agreement (*European Commission*, Proposal for a Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, COM(2025) 572 final), which provides in Article 10 that the budgetary authority may depart by 20% from the amount to the indicated envelope for the duration of the programme concerned, compared to currently 15%.

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proposed basic acts, the objectives are defined at a relatively high level, which leaves flexibility for the programming level. However, provided essential elements are defined in the basic act, it is a policy choice of the legislator in how much detail to frame the spending programmes, and how much leeway to leave to programming and budget implementation in order to achieve more flexibility and agility in the subsequent implementation of Union funding programmes.

II. Budget implementation in the future MFF

This now allows to turn our attention to the modalities in terms of responsibility for programming and budget implementation in the proposals for the new MFF.

In that regard, of particular interest is the NRP Fund proposal. Given the very large financial volume, scope and political importance, it is evident that particular attention is paid to the governance arrangement for the implementation of this Fund. Moreover, as seen above, the Commission has, with this fund, combined instruments that are currently marked by starkly different models of implementation in terms of the roles of the Council and the Commission: whereas under the RRF model, it is the Council that approves the RRF plans, and even disbursements, in the field of cohesion policy and agriculture it is the Commission alone that is in charge of the approval of programmes or plans.

In its proposal for the new fund, it appears that the Commission has tried to steer a middle course between the existing models. As a consequence, as regards the approval of the plans, the Commission's proposal foresees that where a plan complies with the requirement of the regulation, the Commission shall propose an implementing decision to the Council laying down certain core elements of the plan, namely the total Union contribution, the amount of loan support, and the list of measures covered by the Union contribution and loans contained in the NRP plan.[127] Once the Council has adopted the implementing decision, the Commission shall then adopt a financing decision including *inter alia* the milestones and targets in relation to the implementation of the measures, the corresponding pay-out values, and the Union contribution per year.[128] Similarly, like under cohesion policy, the Commission shall also be subsequently responsible for the assessment of payment requests.

A similarly hybrid solution was also chosen for the horizontal conditions applicable under the Fund. According to the Commission's proposal, the new fund will, like the current cohesion funds, contain a horizontal condition concerning effective mechanisms to ensure compliance with the Charter of Fundamental Rights in the implementation of the Fund ("Charter Horizontal Condition"). As under the current Regulation (EU) 2021/1060, it is proposed that it shall be the Commission that is responsible for deciding on the non-fulfilment of this condition, and on

127 Art. 23(4) COM(2025) 565 final.
128 Art. 23(7) COM(2025) 565 final.

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possible consequences.[129] However, as a new element, the proposal also foresees a condition concerning the respect of the principles of the rule of law ("rule of law horizontal condition"). With regard to this condition, in line with the model currently applicable under the General Conditionality Regulation,[130] it shall be the Council, acting by implementing act upon a proposal from the Commission, that shall decide on the non-fulfilment of this condition.[131] However, given the potential overlap between the Charter and the Rule of Law Horizontal Conditions, it is also provided that where a breach may concern both conditions, the procedure concerning the Rule of Law Horizontal Condition shall be activated with priority, giving thus priority to the Council.[132]

While particular solutions were thus devised for the purposes of the NRP Fund, the implementing modalities for the remaining basic acts remain largely in line with current practice as regards the procedures for programming and responsibility for budget implementation. Notably, work programmes are generally adopted by the Commission, often by implementing act following an examination or advisory procedure. For instance, in the case of the ECF, the adoption of work programmes is usually foreseen following an advisory procedure, but in certain cases, notably relating to defence, also following an examination procedure.[133] In other cases only an examination procedure[134] or only advisory procedure,[135] and sometimes no comitology,[136] is foreseen. As regards the downstream budget implementation mechanism, the proposals follow largely establish practice as described. However, further issues may come to light in the course of the legislative process.

F. Conclusion

The interpretation and application of European Union law always has to take into account its political and policy context, and in no area is this truer than in the field of budgetary law. At the level of the Treaties, EU budget law is governed by

129 Art. 8 COM(2025) 565 final.
130 Regulation (EU, Euratom) 2020/2092.
131 Art. 9(4) COM(2025) 565 final.
132 Art. 8(8) COM(2025) 565 final.
133 Art. 15(3) and (4) COM(2025) 555 final. Art. 15(5) and (6) COM(2025) 555 final foresee to adopt immediately applicable implementing acts without prior comitology in certain cases of urgency.
134 Cf. Art. 4(2) (a) – (c) of the proposal for the Horizon Europe Specific Programme, COM(2025) 544 final.
135 Cf. Art. 12 of *European Commission*, Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility for the period 2028-2034, amending Regulation (EU) 2024/1679 and repealing Regulation (EU) 2021/1153, COM(2025) 547 final.
136 Cf. *Europäische Kommission*, Vorschlag für eine Verordnugn des Europäischen Parlaments und des Rates zur Einrichtung des Binnenmarkt- und Zollprogramms für den Zeitraum 2028-2034 und zur Aufhebung der Verordnungen (EU) 2021/444, (EU) 2021/690, (EU) 2021/785, (EU) 2021/847 und (EU) 2021/1077, Art. 11 COM(2025) 590 final.

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a limited number of provisions which set out relatively high-level principles and limitations. At the same time, the Union has developed a considerable acquis of secondary law and practice which has grown in density and complexity over time, reflecting the increasing challenges for the Union's budget. By contrast, the Court of Justice has had limited occasion to weigh in on questions of budgetary law, and case-law as well as academic writing has equally remained sparse. As a consequence, as illustrated in the present article, EU budget law is very much shaped by the practice of the institutions, to whom primary law leaves quite some flexibility in defining the modes and modalities of budget implementation.

However, while serving policy and sometimes political objectives, budget execution is at the same time a matter in which the principles of sound financial management must be scrupulously respected. It is therefore not coincidental that the Treaties have conferred the task of budget implementation to the European Commission as an institution which is independent, acts in the interest of the Union as a whole, and remains under the political scrutiny of the Parliament and the Council. Without prejudice to the responsibilities of the Parliament and Council as Union legislator and budgetary authority, it is therefore also in the very interest of the Union that the prerogative of the Commission to execute the budget is duly respected. The correct delineation and balancing of the powers of the Parliament, the Council and the Commission in the budgetary field is thus of considerable importance both for the institutional balance in the Union, and for the success of its policies.

A clear understanding of the guiding principles is therefore necessary to steer the practice of the institutions and achieve a framework for the attainment of the Union's objectives. While the present article has shown that there is a leeway of the legislator in defining what constitutes budget implementation in the context of a concrete basic act, it has also been shown that there is a hard core of budget implementation acts in the narrow sense which should remain reserved to the Commission, and that this room does not only concern purely technical matters. At the same time, while the legislator can go into considerable detail in framing budgetary implementation in the broader sense, it may also leave this room to the Commission when deciding on further priorities in work programmes, possibly with the assistance of comitology committees. In fact, in many cases this flexibility may also be in the interest of increased speed and agility in terms of the delivery of the objectives of the Union's budget, particularly when faced with crises or emergencies that are not foreseeable at the time of adoption of the basic act. It is here where a policy space exists for the legislator to balance the desired precision and control at the level of the basic act and the necessary flexibility at implementing level.

It is hoped that the present article can contribute to a better understanding of these questions, which are – given the political importance of the Union budget for the political priorities of the Union – likely to occupy the institutions in the coming years, including but not only in the upcoming legislative process on the new MFF.

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