

Case study on economic, social and institutional resilience: justice reforms

Introduction

Health, and economic, social and institutional resilience constitutes one of the six pillars of the Recovery and Resilience Facility. This case study analyses the contribution of the RRF to institutional resilience, derived from investments and reforms aimed at modernising public administrations and improving the effectiveness and integrity of public governance institutions.

Among the various measures aimed at improving public governance, the case study takes a deep dive into investments and reforms in the area of justice. Three reasons justify this choice. First, the Justice system figures prominently among the list of public governance reforms included in the RRPs, together with health care, public procurement and tax administration (Bankowski et al 2022). Second, reforms of the justice system are particularly difficult. Not only do they require a sustained effort but, when aimed at strengthening judicial independence, they also require genuine political will. Third, the EU's efforts to promote the rule of law have gained prominence over the last years and will be even more relevant in the future. Drawing lessons on the contribution of the RRF in support of justice reforms can be particularly useful in designing future EU instruments inspired by the RRF.

Conceptualising justice reforms

In the context of this case study, we use the term 'justice reforms' to refer to any measure aimed at improving the efficiency, quality and independence of national justice systems. Most justice reforms come in the form of legislative or regulatory actions but there are also investment measures aimed at supporting reforms (e.g. training courses for mediators to support a reform introducing mandatory judicial mediation) or improving the quality and efficiency of the system in general (e.g. investments in physical and technical infrastructure, training, acquisition or update of IT equipment and software).

Actions to strengthen judicial independence aim at guaranteeing both the external independence of the justice system (independence vis-à-vis the legislative and executive powers) and the internal independence of judges and prosecutors (independence against undue pressure from economic or other specific interests when conducting their activities). They typically include reforms of the composition and functioning of key judicial bodies (judiciary councils, supreme and constitutional courts), amendments to the rules governing the appointment and removal of high-level positions (supreme court presidents, general prosecutors or specialised high-level prosecutors), amendments to the rules governing the status, appointment, promotion and removal of ordinary judges and prosecutors (including disciplinary regimes) and other measures to safeguard the integrity of judges (such as principles or rules governing judges' professional conduct, rules on criminal and civil liability and rules on incompatibility of positions).

Actions to increase the efficiency of justice aim at reducing the length of judicial proceedings, reducing the number of pending cases in court and/or increasing the clearance ratio (the ratio of resolved cases over incoming cases in courts). This is mainly done through amendments in the procedural codes and changes in the judicial map to improve the organisational efficiency of the whole system.

Actions to improve the quality of the system may include actions to increase the accessibility of justice for citizens and businesses (e.g. extension of free legal aid assistance, promotion of alternative dispute resolution procedures); investments in physical and human capital (construction of new buildings, training of justice staff), the establishment

of tools to assess and evaluate the system and all types of reforms and investments to support the digitalisation of the justice system (e.g. amendment of procedural rules to generalise the use of digital technology, acquisition or upgrade of IT equipment and software).

EU instruments and procedures in support of justice reforms

There are various EU instruments and procedures providing guidance and support to national justice reforms. In the context of the **European Semester**, the Commission may propose to the Council to adopt country-specific recommendations (CSRs) on justice issues. As the European Semester is an economic policy coordination tool, CSRs on justice are mostly focused on improving the efficiency and quality of justice systems to guarantee an investment-friendly business environment. Since 2019 some Member States have received CSRs on strengthening judicial independence (see table below) in that context. As the RRF aims to support measures which address all or a significant subset of the challenges identified by CSRs, one can observe that 3 of the 4 countries that received 2019 or 2020 CSRs to improve the effectiveness of their justice system (all except Portugal) and 4 of the 5 countries that received CSR to guarantee judicial independence (all except Cyprus) have included measures in their RRPs to address these challenges. Conversely, some countries have not received CSRs in the field of justice but have nevertheless included measures in this field in their RRP. For Romania specifically, as explained in the dedicated recitals to the CSRs, issues related to the judiciary were subject to monitoring under the Cooperation and Verification Mechanism (CVM) and were therefore not covered by the CSRs, all while remaining relevant for developing a positive socio-economic environment in these countries (for details, see below).

Table 1 2019 and 2020 country-specific recommendations on justice (in bold those related to judicial independence)

Country	Related Measure Name
Cyprus	2019 CSR: Step up efforts to improve the efficiency of the judicial system (...) Accelerate anti-corruption reforms, safeguard the independence of the prosecution and strengthen the capacity of law enforcement. 2020 CSR: (...). Improve the efficiency and digitalisation of the judicial system and the public sector.
Croatia	2020 CSR (...). Improve the efficiency of the judicial system.
Hungary	2019 CSR: Reinforce the anti-corruption framework, including by improving prosecutorial efforts and access to public information, and strengthen judicial independence (...).
Italy	2020 CSR: Improve the efficiency of the judicial system and the effectiveness of public administration
Malta	2019 CSR: (...). Strengthen the independence of the judiciary , in particular the safeguards for judicial appointments and dismissals, and establish a separate prosecution service 2020 CSR: Complete reforms addressing current shortcomings in institutional capacity and governance to enhance judicial independence . (...)
Poland	2020 CSR: Enhance the investment climate, in particular by safeguarding judicial independence (...)
Portugal	2019 CSR: (...). Increase the efficiency of administrative and tax courts, in particular by decreasing the length of proceedings 2020 CSR: Increase the efficiency of administrative and tax courts, in particular by decreasing the length of proceedings

Slovakia	<p>2019 CSR: Continue to improve the effectiveness of the justice system, focusing on strengthening its independence, including on judicial appointments. Increase efforts to detect and prosecute corruption, in particular in large-scale corruption cases.</p> <p>2020 CSR: (...). Address concerns with regard to the integrity of the justice system.</p>
----------	--

Source: own elaboration

Since 2020 there is also the EU Rule of Law Cycle, an annual monitoring tool that serves as a basis for a dialogue between the EU, national governments and stakeholders on rule of law issues. The centrepiece of this cycle is the **annual Rule of Law Report**, which assesses the situation of the rule of law in all Member States in four key areas: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances. Since 2022, the annual Rule of Law Reports have included country-specific recommendations, including in the field of justice.

As a matter of background, it is to be noted that for Bulgaria and Romania, a **Cooperation and Verification Mechanism (CVM)** was established at the moment of their accession to the EU in 2007 to support them in their efforts to reform their justice system and to step up the fight against corruption and, in the case of Bulgaria, also organised crime. The CVM was set out by two Commission Decisions (Decisions 2006/928/EC and 2006/929/EC) and included 'benchmarks' the countries committed to fulfil. The benchmarks were further specified by recommendations in the Commission's CVM reports. The Commission published the last CVM reports in 2019 for Bulgaria and in 2022 for Romania, indicating in both cases that these countries had fulfilled all CVM benchmarks and recommendations satisfactorily, but that they would need to continue working to implement some specific commitments listed in the conclusions of the aforementioned reports. This work was concluded in June 2023 as highlighted in the 2023 rule of law report. On 5 July 2023, the Commission informed the Council and the Parliament about its intention to formally close the CVM. On 15 September 2023, the Commission repealed both CVM Decisions, officially putting an end to the mechanism, and noting that monitoring by the Commission would continue in the context of the annual Rule of Law Report, similarly to all Member States.

Next to monitoring and prevention tools, the EU has tools to react to violations of the rule of law. The Commission exercises its role as guardian of the EU treaties by proceeding with infringement procedures in response to specific failures to fulfil obligations under the EU Treaties, including breaches of the rule of law. This has resulted, over time, in the consolidation of a case law of the Court of Justice of the European Union (CJEU) on rule of law standards and particularly EU requirements on judicial independence. Moreover, Article 7 TEU allows the Council to determine the existence of a clear risk of a serious breach of the EU's common values. At present, there are two Article 7 procedures opened in relation to Poland and Hungary. The Council held hearings for Poland in May 2023, and for Hungary in November 2022 and May 2023.

Furthermore, the general regime of conditionality (founded upon the **Conditionality Regulation¹**) allows the EU to take measures – such as suspending EU funds or reducing financial support – to protect the EU budget in cases where breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. This mechanism complements **other procedures established in EU sectoral legislation which condition the use of EU funds on respecting certain rule of law principles²**.

Some other EU-level tools provide comparative data, technical guidance and budgetary support to justice reforms. The **EU Justice Scoreboard** provides annual comparative data on a number of indicators relevant to assessing the efficiency, quality and independence of justice systems. Technical support to EU countries on justice reforms can be

¹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I , 22.12.2020, p. 1–10.

² For a more detailed analysis of the scope and functioning of the conditionality regulation and these other various procedures linking the use of the EU funds to the respect of rule of law principles see Rubio et al (2023).

provided through the **Technical Support Instrument (TSI)**. Finally, during 2007-2013 and 2014-2020, 16 Member States used the European Structural and Investment Funds (**ESI Funds**) to improve the functioning of their justice systems. The amounts allocated to these projects were very small (roughly €1bn in total for the two programming periods) and were mostly used to finance digitalisation and the purchase of ICT systems³. For the majority of projects executed in 2007-13, Member States did not undertake any evaluation or other type of follow-up. For the 2014-2020 period, only 12% of all justice-related projects had planned an evaluation or any other form of follow-up⁴.

Case study objectives

As noted in the introduction, this case study aims to assess the current and potential contribution of the RRF in support of justice reforms. This is done by analysing the relevance, effectiveness, coherence and EU added value of a selected group of RRF actions in the field of justice. With respect to relevance, we analyse whether the justice measures included in the RRP contribute to addressing the relevant CSRs received as well as the main challenges of the respective national justice systems. With respect to effectiveness, in addition to assessing the state of progress of the various measures under study, we discuss the expected effects of the reforms beyond the fulfilment of the related milestones and targets. In the past, particularly in the process of EU accession, the EU has been very successful in catalysing judicial reforms. However, according to some studies, formal legal changes have not always led to the expected results (IMF 2017). Mendelski (2015), for instance, analyses the EU's efforts in support of judicial reforms in South Eastern Europe between 1999 and 2009. It concludes that EU actions had a positively reinforcing effect with regard to judicial capacity and substantive legality (i.e. the alignment of domestic legislation with international standards). However, EU requirements also overburdened domestic administrative and judicial structures resulting in more rapid, superficial, and incoherent changes in the legal framework. He also notes the lack of significant improvements in judicial impartiality. Looking at the cases of Serbia and Macedonia, Kmézic (2019) arrives at similar conclusions as regards the limitations of the EU pre-accession conditionality in the field of justice⁵.

With respect to coherence, we focus on the articulation of the measures supported by the RRF with other EU-level instruments in support of justice reforms. An article published in May 2021 (Fromont and Van Waeyenberge 2021) alerts about the risk that the European Semester and the RRF, neither specifically designed to protect the rule of law, approach these issues in a way not fully coherent with that promoted by other instruments compounding the EU rule of law toolbox. We investigate if this risk has materialised during the first months of implementation.

With respect to the EU added value, we discuss the RRF's capacity to make a difference, inducing the implementation of judicial reforms that would not have otherwise been adopted. We also discuss the potential effectiveness of the RRF vis-à-vis that of other EU instruments used in the past to support justice reforms, particularly the Cooperation and Verification Mechanism (CVM). In this respect, it should be noted that there are discrepancies among experts about the effectiveness of the CVM. While some authors consider that the CVM has been rather ineffective due to the lack of robust enforcement procedures (see e.g. Dimitrov 2019, Vassileva 2020, Dimitrovs and Kochenov 2021) others contend that the CVM has had positive effects on certain fields. In particular, Lacatus and Sedelmeier (2020) argue that the CVM had a significant positive impact in Romania – but not in Bulgaria – in the area of anti-corruption, despite

³ European Commission (2018)

⁴ European Commission (2018), p. 140.

⁵ It concludes that EU-level efforts on rule of law have triggered rather surface-thin reforms across the Western Balkan aspiring Member States. They have prompted constitutional changes and the adoption of relevant legislation but rule of law in the region still remains deficient owing to shortfalls in norm implementation, the obstructing role of 'gate-keeping' elites, the absence of internal agents of change and lack of EU standards in the field of rule of law

the absence of robust enforcement mechanisms. The authors consider that the CVM mainly operated as an instrument of social pressure due to the strong legitimacy enjoyed by the EU among elites and the public.

Scope

Thematic coverage

15 RRPs include 74 measures aimed at improving the effectiveness of justice systems⁶. This corresponds to RRF measures tagged as “effectiveness of justice systems” either as primary or secondary policy area (source: RRF Scoreboard). Roughly half of these 74 measures consist of reforms (35) and the other half are investments (39). Among these 35 reforms, we can find different types of measures such as legislative changes to shorten the judicial procedures, reforms to safeguard the independence of judiciary bodies, measures to increase access to justice (e.g. by regulating court fees or extending the right to free legal aid), reorganise the judicial map or render procedural rules digital-ready. 17 out of the 35 reforms in the field of justice have been specifically tagged as “rule of law reforms” either as primary or secondary policy areas. These reforms concern 7 Member States. They consist of different types of measures such as changes in the composition or functioning of key judiciary bodies (e.g. HU), changes in the rules governing the appointment and dismissal of judges or the disciplinary regimes applied to judges (e.g. MT and PL) or measures to improve the effectiveness of the justice system in the fight against corruption (e.g. CZ, HR, HU, MT). It should be noted that some measures tagged as “rule of law reforms” are not primarily aimed at strengthening the independence of the justice system. This is the case of reform C11.R2 in the Spanish RRP, which consists of the adoption of a law to improve the efficiency of judicial procedures. Conversely, some measures are not tagged as ‘rule of law reforms’, even if they are also aimed at addressing concerns of integrity or independence of key judiciary bodies.

Turning now to the 39 RRF investments in the field of justice, these include interventions in 13 Member States roughly amounting to EUR 3.4bn⁷. 24 out of these 39 investments are investments to create or upgrade digital services and infrastructures, six consist of projects of building renovation or construction, four are energy efficiency investments and five are human capital investments (hiring new staff or training measures).

This case study focuses on one sub-set of RRF measures in the field of justice, those addressing problems of judicial independence.

Country coverage

Three Member States have been selected to conduct the case study: Hungary, Romania and Poland. The three countries have included various reforms aimed at strengthening the independence of their judicial systems in their RRPs. These are three countries which have had long-standing discussions with the European Commission on judicial independence and have received repeated recommendations from the European Commission and the Council of Europe to adopt rule of law reforms. As explained above, Romania has been, until recently, subject to a specific post-accession conditionality procedure, the Cooperation and Verification Mechanism (the CVM). Hungary and Poland are subject to various infringements procedures and to the Article 7 procedure for violations of rule of law principles. In the case of Hungary, the breach of rule of law principles affecting or seriously risking to affect the sound financial

⁶This corresponds to RRF measures tagged as “effectiveness of justice systems” either as primary or secondary policy area (source: RRF Scoreboard)

⁷ A thematic analysis from June 2022 published by the Commission ([rule of law: judicial systems](#)) cites 3.3bn in investments to strengthen the efficiency, quality and independence of the judicial system. To this amount, we have added 0.1bn which corresponds to the sum of investments in justice included in those national recovery plans which were not adopted by June 2022, at the moment of publishing this thematic analysis (source: RRF Scoreboard).

management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way has also resulted in the suspension of EU funds. It is thus interesting to assess how the RRF articulates with these other various mechanisms which are part of the EU Rule of Law toolbox.

Table 2 lists those milestones and targets included in the three RRPs which are linked to measures aimed to safeguard judicial independence and which, according to the indicative calendar, had to be fulfilled before June 2023.

Table 2 Selected milestones and targets per country

Romania
<ul style="list-style-type: none">• C14.R5 Entry into force of a strategy for the development of the judiciary 2022-2025 – Q1 2022• C14.R5 (II) Entry into force of the 'Justice Laws' (laws on the status of magistrates, judicial organisation, Superior Council of Magistracy) - Q2 2023• C14.R5 (III). Amendment of the Criminal Code and Criminal Procedure Code – Q4 2022
Poland
<ul style="list-style-type: none">• F1.1. Entry into force of a reform of the disciplinary regime applied to judges in order to strengthen the independence and impartiality of courts - Q2 2022• F1.2. Entry into force of a reform to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases - Q2 2022• F1.3 All review cases launched in accordance with Milestone F2G shall be adjudicated, unless in duly justified exceptional circumstances- Q4 2022.
Hungary
<ul style="list-style-type: none">• C9.R15 Strengthening the role and powers of the National Judicial Council to counterbalance the powers of the President of the National Office for the Judiciary" – Q1 2023• C9.R16 Strengthening judicial independence of the Supreme Court (Kúria) – Q1 2023• C9.R17 Removing obstacles to references for preliminary rulings to the Court of Justice of the European Union – Q1 2023• C9.R18: Reform regarding the review of final judgments by the Constitutional Court – Q1 2023

Methodology and data collection

To conduct this analysis, we have combined desk research with semi-structured interviews with key national stakeholders (academics, representatives of the judiciary and representatives of the national governments). The country chapters of the EU annual Rule of Law Reports, the EU Justice Scoreboard, the Council of Europe's resolutions and opinions⁸ and – in the case of Romania – the CVM reports have proven a valuable source of information. These EU-level sources of information have been complemented with national data, particularly official documents (annual reports of the Ministry of Justice and the Council of the Judiciary, minutes of parliamentary debates, official press releases), reports from independent experts and civil society, press articles as well as (wherever possible) national data/statistics on e-justice.

Desk research has been complemented with information from semi-structured interviews. We have conducted interviews with 8 national experts, stakeholders and representatives of the national governments as well as one interview with various officials from DG JUST. Table 2 below shows how the research questions guiding this case study are linked to the overarching evaluation questions and the data we have used to answer each question.

⁸ In particular resolutions adopted by the Council of Europe in the context of the supervision of execution of judgments of the European Court of Human Rights as well as opinions on draft reforms from the Council of Europe's Venice Commission.

Table 3 Research questions of the case study and methodology used

Criterion	Question	Relevant EQ	Data collection
Relevance	To what extent have the justice measures included in the RRP remained relevant and feasible to implement until 2026?	EQ 23.2	Country Specific Recommendations, Country chapters of the 2021 rule of law reports and semi-structured interviews
Effectiveness	What is the current state of play as regards the implementation of justice measures included in the RRP?	EQ 2.1	Country chapters of the 2022 and 2023 rule of law report, Council of Europe's resolutions and opinions, semi-structured interviews and national official data
	Which results have been obtained so far? If it is too early to assess the results, will they achieve the expected results according to experts?	EQ 2.2	Country chapters of the 2022 and 2023 rule of law report, semi-structured interviews, Council of Europe's resolutions and opinions and reports or papers from national experts and civil society
Coherence	To what extent is the RRF coherent with other Union policies and instruments in support of justice reforms?	EQ 14	Country chapters of the 2021 and 2022 annual Rule of Law Reports, CVM reports, ECJ case law, EU documents adopted in application of article 7 TEU procedure or the Conditionality Regulation, semi-structured interviews
EU Added Value	To what extent, could similar results/impact be achieved with a different instrument at Union level or by Member States?	EQ 22	Semi-structured interviews, reports or papers from national experts

Source: own elaboration

Results

The results of the case study are presented by specific evaluation questions under each of the standard criteria as prescribed by the Better Regulation Guidelines.

Relevance

To what extent have the justice measures included in the RRP remained relevant and feasible to implement until 2026?

Summary

Justice measures included in the three RRPs tackle major challenges of the respective national justice systems identified in the 2021 edition of the Rule of Law report. They mostly consist of legislative amendments which are feasible to be adopted until 2026 and are expected to remain relevant over time. While they all address key aspects affecting the independence of the justice systems, they do not address some other structural problems, particularly the politicisation of key judiciary bodies (Supreme Councils of Magistracy, Constitutional Court). At the same time, the legal basis, nature and design of the RRF (a short-term and temporary instrument, with a focus on the CSRs) do not make it an appropriate instrument to address all these structural concerns in an all-encompassing manner.

The RRF regulation notes that the assessment of the relevance of the Facility should take into account 'whether the recovery and resilience plan is expected to contribute to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations'⁹. Therefore, the analysis for this question takes this as a starting point. Country-specific recommendations linked to justice reform for Hungary and Poland were very generic. In the case of Hungary, the 2019 CSRs contain a recommendation to 'strengthen judicial independence'¹⁰, while for Poland it relates to 'safeguarding judicial independence'¹¹. Romania did not receive CSRs on justice in 2019 and 2020 because, as mentioned above, this area was subject to specific monitoring under the CVM. This is explicitly mentioned in a dedicated recital in the Council Decisions adopting the CSRs for Romania¹². The same recital notes that justice and anti-corruption issues, even if not covered in a dedicated CSR, are "relevant for the development of a positive business environment for the country". In consequence, the Romanian RRP includes measures to deal with concerns in these areas.

Given that CSRs in these fields are generic (in the case of HU and PL) or non-existent (for RO) the Member States had wide discretion as to which specific measures to incorporate into RRPs. To assess the relevance of the measures chosen, we look at the country chapters of the 2021 edition of the Rule of Law report. These reports offer a comprehensive overview of the state of judicial systems across the European Union. They are therefore a detailed source of information to identify the main concerns in the field of justice in each country while also making it comparable across the countries within scope. The case study looks specifically at the 2021 country chapters. These were published on 20 July 2021 and reflect the situation of the national justice systems at the moment in which countries were drafting their first versions of the RRPs. All RRPs under analysis except the Hungarian one were approved by the Council before the publication of the 2022 Rule of Law Report¹³

Before presenting the results of the analysis per country it is worth clarifying that, due to its very design, the RRF is not expected to address all problems of the national justice systems. It is a temporary instrument with a relatively short-term horizon for implementation and therefore limited scope for a long-run follow-up¹⁴. It is hence not the best-positioned instrument to support a long and comprehensive justice reform adequately addressing all challenges concerning the judiciary, requiring full involvement of all key stakeholders throughout the design, implementation and monitoring stages. This aspect of the RRF's design is all the more important because the reforms cannot be understood in a 'vacuum': as the introductory section on 'EU instruments and procedures in support of justice reforms'

⁹ Regulation (EU) 2021/241, Article 19 (3)b

¹⁰ 2019/C 301/17

¹¹ 2020/C 282/21

¹² Recital 28 of the Council Decision adopting the CSRs for Romania (2020)

¹³ The Romanian and Polish RRPs were approved by the Council in October 2021 and June 2022 respectively, before the publication of the 2022 rule of law report on 13 July 2022. The Hungarian RRP was approved in December 2022.

¹⁴ i.e. after the non-reversibility clause runs out in 2027

explained, the list of EU instruments that can be used to support justice reforms and rule of law encompasses several complementary tools of which the RRF is but one.

The reforms in the Hungarian RRP address all the major concerns of the 2021¹⁵ Rule of Law report related to the justice system. These reflect the concerns expressed already in the framework of the Article 7(1) procedure¹⁶, successive country-specific recommendations and the 2020 edition of the Rule of Law report related to the independence of the justice system and shortcomings of the prosecution service.

The reforms linked to the independence of the Kúria and the National Judicial Council (NCJ) form the centrepiece of the measures targeting judicial independence included in the Hungarian RRP. The NJC is an independent body tasked with supervising the functioning of the National Office for the Judiciary (NOJ), which is responsible for the central administration of the courts. The law¹⁷ containing these reforms also removes obstacles to references for preliminary rulings to the Court of Justice of the EU and removes the option for state authorities to submit constitutional complaints.

The Polish NRRP includes one major reform, raised by the 2021 Rule of Law report, related to the disciplinary regime for judges, which raises serious concerns related to judicial independence and effective judicial protection. The Plan does not address other concerns over the independence of three key judicial institutions – the Constitutional Court, the National Council for the Judiciary and the Supreme Court- as well as the lack of separation between the Justice Minister and the Prosecutor General, which negatively impact the independence of the justice system. These have been recurrently denounced in the Commission's rule of law reports. They have also been addressed under other tools in the rule of law toolbox, such as the Article 7TEU procedure and infringement procedures, some of which have led to rulings from the CJEU.

The Romanian RRP addresses all the main challenges of the justice system identified in the 2021 Rule of Law report. An important commitment was to amend the justice laws to ensure the independence, quality and efficiency of the justice system following a backtracking in 2017-2019. The Romanian Plan also includes a commitment to amend the Code of Criminal Law and Code of Criminal Procedure to align them with relevant decisions adopted by the Constitutional Court. This reform is essential to guarantee the effective investigation, prosecution and sanctioning of high-level corruption cases.

¹⁵ As well as the 2022 report, which has relevance in view of the timeline for the negotiations of the Hungarian RRP.

¹⁷ Act X of 2023 amending, with regard to the Hungarian Recovery and Resilience Plan, certain Acts governing justice

Effectiveness

What is the current state of play as regards the implementation of justice measures included in the NRRPs?

Summary

Among the 10 measures under study and due until Q2 2023, by September 2023 only one non-legislative reform has been formally notified to the Commission and positively assessed as part of a payment request: the adoption of a strategy for the judiciary in Romania.

Hungary and Romania have adopted key legislative reforms in response to milestones planned up to Q2 2023 even if not always in line with the indicative calendar. Poland has adopted legislation to reform the disciplinary regime of judges but the most recent reform has not yet entered into force as it is pending at the Constitutional Court. None of these legislative acts have been formally notified to the Commission as part of a payment request.

In some cases, it is uncertain if the adopted legislative amendments will be notified in their current form to the Commission or will be further revised before notification. It is also unclear if the Commission will consider these amendments sufficient to fulfil the milestones. This is particularly true for milestones that include multiple legislative and non-legislative requirements or elements subject to interpretation (e.g. introduction of an amendment to strengthen the independence of judges)

Among the 10 measures under study and planned up to Q2 2023, by September 2023 only one non-legislative reform has been formally notified to the Commission and positively assessed as part of a payment request: the adoption of a strategy for the judiciary in Romania.

Hungary and Romania have adopted key legislative reforms in response to milestones planned up to Q2 2023 even if not always in line with the indicative calendar. Poland has adopted legislation to reform the disciplinary regime of judges but the most recent reform has not yet entered into force as it is pending at the Constitutional Court. None of these legislative acts have been formally notified to the Commission as part of a payment request.

In some cases, it is uncertain if the adopted legislative amendments will be notified in their current form to the Commission or will be further revised before notification. It is also unclear if the Commission will consider these amendments sufficient to fulfil the milestones. This is particularly true for milestones that include multiple legislative and non-legislative requirements or elements subject to interpretation (e.g. introduction of an amendment to strengthen the independence of judges)

Hungary has adopted a “judicial package reform” designed to meet the four justice RRP milestones. This bill (Act X of 2023 on the Amendment of Certain Laws on Justice) was adopted by the Hungarian Parliament on 3 May 2023. The Act entered into force on 1 June, thus with a bit of delay as regards the indicative calendar (as noted in the introduction, the reforms were marked for entry into force in Q1 2023). The practical steps and implementing acts for these reforms were adopted in July 2023. The Hungarian government considers that the judicial legislative package is sufficient to comply with the requisites imposed by the four justice milestones. In addition, there are a few cases where it believes that the reforms go beyond what is strictly necessary as per the requirements indicated in the RRP.¹⁸ However, it should be noted that the four milestones include multiple requirements, and some of these requirements are subject to interpretation (such as the requirement under milestone 213, point c, to “ensure that the National

¹⁸ This is notably the case for the number of judges in the uniformity complaint panel of the Supreme Court and transitional rules for the National Judicial Council until the new rules enter into force.

Judicial Council has adequate resources, including staff and offices, to carry out its tasks in an effective manner"). Besides, the four milestones require that the legislative amendments "shall enter into force and start being applied".

Another relevant point refers to the process of adopting these reforms. The fact that all of the reforms constituted super milestones and that they were linked to access to other EU funds¹⁹ put a high level of pressure on the government to deliver on them as fast as possible. In consequence, the bill was adopted through a process that was perceived as rushed by virtually all stakeholders involved²⁰. It is worth noting in this respect that all four of the milestones in the Hungarian RRP had an explicit requirement to conduct a consultation indicating some key stakeholders explicitly²¹. Based on input from expert interviews and of those involved, the consultation process appears to have complied with requirements, but some stakeholders have raised concerns about its overall transparency²². For instance, the final bill was adopted within three working days of the Parliament and is considerably different from the draft version that formed the basis of the consultation. As argued by the government, the common practice regarding consultations in Hungary is that after the first round has taken place, there is no requirement to repeat the process for modifications occurring at a later stage.

Table 45 Overview of the state of play - Hungary

Milestone or target	Indicative calendar	Current state of play
C9.R15 (milestone 213) Strengthening the role and powers of the National Judicial Council to counterbalance the powers of the President of the National Office for the Judiciary"	Q1 2023	Legislative amendments adopted in May 2023 as part of the 'justice package', entered into force in June. Some implementing steps only entered into force in July.
C9.R16(milestone 214) Strengthening judicial independence of the Supreme Court (Kúria)	Q1 2023	Legislative amendments adopted in May 2023 as part of the 'justice package', entered into force in June. Some implementing steps only entered into force in July.
C9.R17 (milestone 215) Removing obstacles to references for preliminary rulings to the Court of Justice of the European Union	Q1 2023	Adopted in May 2023 as part of the 'justice package', entered into force in June.
C9.R18: (milestone 216) Reform regarding the review of final judgments by the Constitutional Court	Q1 2023	Adopted in May 2023 as part of the 'justice package', entered into force in June.

Source: own elaboration

¹⁹ The four super milestones in the judicial package are not only a precondition for submitting RRF payment requests but are also tied to the fulfillment of a horizontal enabling condition that would allow to unblock a large part of cohesion funds in the country.

²⁰ As confirmed by our interviewees, as well as relevant statements and reports referenced in this case study, notably the ones referenced at the end of this paragraph.

²¹ More specifically: ' Before tabling the draft laws required for the implementation of this reform, a stakeholder consultation shall be organised, allowing at least the NJC, judicial associations, the Hungarian Bar Association, civil society organisations, the Kúria, the NOJ, the Constitutional Court, and the Prosecutor General to give comments within no less than 15 days.'

²² For details, please refer to Amnesty International Hungary, Eötvös Károly Policy Institute and Hungarian Helsinki Committee, see their joint publication referenced as Amnesty International et al. (2023); 2023 Rule of Law Report Country Chapter on Hungary as well as the few publicly available responses to this consultation: 'Az Országos Bírói Tanács jogalkotási észrevételei és javaslatai', available [here](#), 'A MABIE élemezte a parlament elé kerülő igazságügyi törvénycsomag tervezetét', available [here](#);

Poland has adopted legislation to reform the disciplinary regime of judges but the most recent reform has not yet entered into force as it is pending at the Constitutional Court. The first reform of the disciplinary regime was adopted in June 2022 and entered into force on 15 July 2022. This law dismantled the Disciplinary Chamber of the Supreme Court and replaced it with a new Chamber of Professional Liability. The new Chamber issued a number of rulings, reviewing measures imposed on judges in the context of disciplinary and judicial immunity cases, and annulled all suspensions from office decided by the Disciplinary Chamber. On 13 January 2023, a new law was adopted by the Polish parliament to, among others, reinforce the provisions protecting judges against disciplinary liability based on the content of their judicial decisions. This law has not yet entered into force as it was referred to the Constitutional Tribunal, which has not yet rendered any ruling.

The Law of June 2022 replacing the Disciplinary Chamber with the Chamber of Professional Liability has been considered a positive but not sufficient step to guarantee that the disciplinary regime applied to judges meets all the EU requisites of judicial independence. In coherence with this vision, at the request of the Polish government, on 21 April 2021 the ECJ reduced by half (from EUR 1 million to EUR 500 000) the daily penalty imposed on the Polish government by the Order of 14 July 2021²³. A similar assessment comes from experts interviewed as well as key national stakeholders (see e.g. the common letter by the partners of the Justice Defence Committee "KOS" of 12th January 2023²⁴). While acknowledging some positive results from the reform (see following section) they consider that, even if adopted, this legislative reform will not be sufficient to comply with the requisites imposed by the RRP, particularly with the requisite of having an "independent and impartial court established by the law" in charge of applying the disciplinary regime to judges.

Table 56 Overview of the state of play - Poland

Milestone or target	Indicative calendar	Current state of play
F1G Entry into force of a reform strengthening the independence and impartiality of courts (particularly by reforming the disciplinary regime applied to judges)	Q2 2022	A law adopted in June 2022 dismantled the former Disciplinary Chamber of the Supreme Court and replaced it with a new Chamber of Professional Liability. A second law adopted in January 2023 has not yet entered into force as it is pending before the Constitutional Tribunal.
F2G Entry into force of a reform to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases	Q2 2022	The Chamber of Professional Liability created in July 2022 introduced a mechanism for reviewing case decisions adopted by the former Disciplinary Chamber of the Supreme Court.
F3G. All review cases launched in accordance with Milestone F2G shall be adjudicated, unless in duly justified exceptional circumstances	Q4	The new Chamber of Professional Liability has reviewed various measures imposed on judges in the context of disciplinary and judicial immunity cases. It annulled all suspensions from office decided by the Disciplinary Chamber.

Source: own elaboration

²³By an Order of 14 July 2021, the ECJ imposed interim measures to Poland, particularly to immediately suspend the application of provisions relating to the powers of the Disciplinary Chamber of the Supreme Court. The Order also imposed to the Polish government the payment of a daily financial penalty of EUR 1 million for as long as the interim measures were not fully complied with.

²⁴ KOS (Komitetu Obrony Sprawiedliwości), Position of the Justice Defence Committee on the bill amending the Act on the Supreme Court and certain other Acts (form num 2870), 12 January 2023 (<http://themis-sedziowie.eu/materials-in-english/position-of-the-justice-defence-committee-kos-on-the-members-bill-amending-the-act-on-the-supreme-court-and-certain-other-acts-form-no-2870/>)

Romania has adopted the two legislative reforms which were due for Q2 2023. The most important reform has been the amendment of the three 'Justice Laws' (on the Status of Magistrates, on the Organisation of the Judiciary and on the Superior Council of Magistracy), which was a major and longstanding request from the Council of Europe and was also requested under the CVM. The amendments were adopted on 17 October 2022 and entered into force in November 2022. It should be noted that the milestone corresponding to this reform is written in very generic terms. It stipulates the intended results of the reform rather than its precise content (strengthening the independence of judges, admission to the profession of judges and career advancement on meritocratic grounds, efficient functioning of courts, effective accountability of magistrates, making judicial inspection more effective etc.). Besides, the amendments of the three 'Justice laws' - three voluminous pieces of legislation - were adopted in the parliament through an emergency procedure. The Venice Commission deplored "the haste of the adoption procedure", noting that "the parliamentary debate was conducted in a rushed manner". For all these reasons, according to experts, it is difficult and subject to debate to assess if these reforms will be deemed sufficient by the Commission to fulfil the milestone. In its Opinion of December 2022 on the Justice Laws, the Venice Commission however concluded that on the whole, the laws are heading in the right direction and made some recommendations for further consideration. In January 2023, the Government set up a panel of high-level national experts to present a report on adequate legislative solutions to follow up on the Venice Commission's opinion. This panel was expected to submit its assessment by 1 September 2023. At the end of September, no publicly available data on this report was found.

The Romanian RRP also included a reform of Romania's Codes of Criminal Law and Criminal Procedure to align several provisions of these Codes with relevant decisions of the Constitutional Court of Romania. The government adopted draft amendments to the two Codes on 28 December 2022 but the High Court of Cassation and Justice referred the proposal to the Constitutional Court which required the modification of some amendments. The revised Codes were adopted in June 2023.

Table 67 Overview of the state of play - Romania

Milestone or target	Indicative calendar	Current state of play
C14.R5 (milestone 421) Entry into force of a Q1 2022 strategy for the development of the judiciary 2022-2025		Strategy adopted in March, 30 2022.
C14.R5. (milestone 424) Amendment of the Criminal Code and Criminal Procedure Code	Q4 2022	Amendments to the two Codes were adopted on December 28 2022 but some of them were the object of a constitutionality review and had to be modified following a decision of the Constitutional Court. The new additional amendments were adopted in June 2023.
C14.R5 (milestone 423) Entry into force of 'Justice Laws' (laws on the status of magistrates, judicial organisation, Superior Council of Magistracy)	Q2 2023	Amended 'Justice Laws' adopted in October 2022 and entered into force in November 2022.

Source: own elaboration

Which results have been obtained so far? If it is too early to assess the results, will they achieve the expected results according to experts?

Summary

It is too early to assess the results of the recent reforms adopted. However, an overview can rely on the opinions of national experts regarding the potential and expected results of these reforms. These opinions should be interpreted with caution, as some of the reforms may be subject to further amendments before being formally notified to the Commission, or complemented with additional regulations.

In Hungary, national experts acknowledge that the justice package includes provisions to strengthen the powers and role of the National Judicial Council, reinforce the independence of Hungary's Supreme Court (Kúria), abolish

the power of public authorities to lodge constitutional complaints and remove obstacles to references for preliminary rulings to the ECJ but point at weaknesses in the reform which may hamper the effective application of the laws.

In **Poland**, experts acknowledge that the new Chamber of Professional Liability has allowed to review various decisions taken by the former Disciplinary Chamber and has cancelled all the suspensions adopted by the former Chamber. However, they note that a number of judges continue to be subject to disciplinary investigations and proceedings related to the content of their judicial decisions and forced transfers. Besides, there is wide consensus that the new Chamber does not comply with the requirement stemming from Article 19(1) TEU of being an "independent and impartial court established by the law".

In **Romania**, the general consensus is that the Justice Laws have brought positive effects, such as more safeguards regarding the civil and disciplinary liability of magistrates and new provisions to make the Supreme Council of the Magistracy (SCM) more transparent and accountable. However, some experts as well as the Venice Commission, consider that some provisions are problematic and require further improvement (e.g. on the rules governing the appointment of deputy managers in courts and prosecutors' offices, or on the duration of the mandate of high-ranking prosecutors).

As explained above, the overwhelming majority of reforms under study have been recently implemented or are not yet implemented. In many cases, they consist of important legislative reforms establishing new procedures or introducing changes, the effective implementation of which may take some time to materialise. It is thus too early to assess the results of RRF justice measures in these four countries. As stated before, most of the discussed reforms have also not been formally notified to nor assessed by the Commission, as this is only done in the context of a relevant payment request. Despite these limitations, we can report the opinions of national experts regarding the potential and expected results of these reforms. These opinions should be interpreted with caution, as some of these reforms may be subject to further amendments before being formally notified to the Commission, or complemented with additional regulations, and expert opinions may go beyond the formal milestone requirements..

In **Hungary**, national experts acknowledge that the justice package includes provisions to strengthen the powers and role of the National Judicial Council, reinforce the independence of Hungary's Supreme Court (Kúria), abolish the power of public authorities to lodge constitutional complaints and remove obstacles to references for preliminary rulings to the ECJ. The 2023 rule of law report also acknowledges that Hungary has complied with and implemented the recommendation included in the 2022 rule of law report of adapting the rules related to the Kúria, strengthening the role of the National Judicial Council and removing obstacles to reference for preliminary rulings to the ECJ. However, some national stakeholders have expressed strong reservations regarding the impact of these reforms and in particular their application in practice. According to an in-depth report prepared by three civil society organisations (referenced as Amnesty International et al (2023) henceforth), while the reforms are mostly in line with formal requirements set out in the super milestones they do not guarantee effective compliance in practice, and these shortcomings cannot be considered minor²⁵. For instance, experts have noted that the new law strengthens the legal status and powers of the National Judicial Council (NJC) as required by the milestone with a proper transitional period, allows access to all relevant data and information by the NJC, and establishes a system of legal remedies available to the NJC to enforce its powers. However, Amnesty International et al. (2023) suggests the reform does not guarantee an effective exercise of the right of the NJC to consent to regulations through transitional rules. Regarding milestone 213 g), the paper argues that 'the Reform continues to allow the NOJ President to appoint the transferred judge after

²⁵ For a concise assessment of how each sub-component of the milestones is assessed by these stakeholders, see [here](#)

the termination of the transfer as presiding judge without an application proceeding.²⁶ It should be noted that these concerns were raised before the adoption of all elements of the reform. In addition, expert opinions do not only look at milestone requirements but go beyond them.

In **Poland**, experts acknowledge that the establishment of a new Chamber of Professional Liability has allowed to review various decisions taken by the former Disciplinary Chamber and has cancelled all the suspensions adopted by the former Chamber. However, they note that a number of judges continue to be subject to disciplinary investigations and proceedings related to the content of their judicial decisions and forced transfers. Besides, there is wide consensus that the new Chamber does not comply with the requirement stemming from Article 19(1) TEU of being an "independent and impartial court established by the law", with doubts also raised by the Polish chapter of the 2023 rule of law report. Apart from that, it is worth mentioning that the four main European judges' organisations filed a lawsuit against the Council's decision to adopt the Polish RRP. These judges' associations contend that the fulfilment of the justice milestones will be insufficient to guarantee Poland's compliance with the ECJ case law on the Disciplinary Chamber. In particular, Milestone F.3G stipulates 'All review cases launched in accordance with Milestone F2G shall be adjudicated, unless in duly justified exceptional circumstances' but does not include an obligation of result as regards these review procedures. This is to their mind insufficient to guarantee that Poland complies with the ECJ case law, which imposes the immediate reinstatement of those judges²⁷.

In **Romania**, the new Justice Laws have brought important changes regarding the career organisation and liability regimes for magistrates; the appointment, dismissal, and powers of high-ranking prosecutors; and the governance of the Judicial Inspectorate. The general consensus among experts is that the Laws have brought positive effects, such as more safeguards regarding the civil and disciplinary liability of magistrates and new provisions to make the Superior Council of Magistracy (SCM) more transparent and accountable. However, some experts²⁸ as well as an Opinion by the Venice Commission of December 2022 have pointed to some problematic provisions and the need for further improvements. In particular, there are concerns about the rules governing the appointment of deputy managers in courts and prosecutors' offices. The Venice Commission recommended introducing a competitive selection for deputy managers. With regard to the duration of the mandate of high-ranking prosecutors, the Venice Commission noted that a period of three years term of office, with a possibility of renewal, creates a potential risk and recommended introducing a longer appointment period, with no possibility of renewal. In addition to that, given the length and complexity of these laws, the Council of Europe's Venice Commission alerts of high risks of failed implementation, with provisions being "ignored in practice or interpreted in a way which diverges from their intended meaning"²⁹. The Commission however recalls that there will be monitoring of the implementation of the reform under the Rule of Law Report.

²⁶ It is to be noted that milestone 213 g) requires that 'The legislative amendments shall prohibit the reintegration, by the President of the NOJ, of judges, following their secondment, to a court instance higher than the court in which they adjudicated before their secondment.'

²⁷ [Lawsuit against the EU Council for its decision to unblock Recovery and Resilience funds for Poland](#), AEAJ, EAJ, Judges for judges, MEDEL, press release, August 28 2022

²⁸ See Expert Forum (2022), Chis (2023)

Coherence

To what extent is the RRF coherent with other Union policies and instruments in support to justice reforms?

Summary

The use of the RRF is well articulated with that of other EU-level instruments in support of justice reforms. In all three countries, RRP actions to strengthen the independence of justice are coherent with the analysis of priorities and concerns presented in the Commission's Rule of Law Reports and (in the case of Romania) CVM reports.

However, according to some experts as well as the four largest associations of judges in Europe, the actions required in the **Polish RRF** are not fully coherent with the implementation of the ECJ rulings which declare the nullity of the former Disciplinary Chamber as well as all the decisions taken by this institution.

As noted above, there are various EU instruments and procedures providing guidance and support to national justice reforms and ensuring respect for rule of law principles. As the RRF is not specifically designed to protect the rule of law, there is a risk of insufficient coordination with other instruments compounding the Rule of Law toolbox resulting in an incoherent approach. Our analysis indicates that this risk, on the whole, has not materialised.

The **Hungarian RRP** is coherent with the analysis of priorities and concerns presented in the Commission's Rule of Law Reports. Besides, there has been an explicit intention by the Commission to ensure that support from the RRF is implemented in synergy with other EU instruments to address the most important challenges related to the rule of law in Hungary. To start with, the key implementation steps of the remedial measures proposed by the Hungarian government in the context of the Conditionality procedure are incorporated in the Hungarian RRP as super milestones, offering an efficient way to combine the two mechanisms³⁰. In addition to that, the criteria of the four super milestones of the judicial reform package in Hungary's RRP (C9.R15, C9.R16, C9.R17 and C9.R18) are mentioned as criteria required for the fulfilment of the judicial independence aspect of the 'horizontal' enabling condition on the Charter of Fundamental Rights under the EU cohesion funds³¹. Therefore, without the adoption of these reforms, Hungary can access neither cohesion policy funds nor the RRF. Finally, one of the judicial reforms incorporated in the Hungarian RRF plan is tied to compliance with a judgement of the Court of Justice of the EU³².

The **Polish RRP** is also aligned with the analysis of the Polish judicial system presented in the Commission's rule of law reports. The focus on the disciplinary regime is also coherent with previous Commission infringement procedures launched in response to the violation of EU law by the former disciplinary chamber. However, as pointed out by some experts³³ as well as an action brought by the four largest associations of judges in Europe against the Polish RRP³⁴,

³⁰ See e.g. Schwarz (2023) Rule of law-related 'super milestones' in the recovery and resilience plans of Hungary and Poland

³¹ The disbursement of EU cohesion funds is conditioned to the compliance of certain 'horizontal enabling conditions', among which the condition to comply with the EU charter of fundamental rights when programming and implementing EU funds. For a more detailed description, see Rubio et al. (2023)

³² Namely judgment C-564/19

³³ Sessa, Duro; Marques, Filipe and Morijn, John (2023)

³⁴ "Four European organisations of judges sue EU council for

disregarding EU Court's judgements on decision to unblock funds to Poland", press release from AEAJ, EAJ, Judges for Judges and Medel, August 28th, 2022 (<https://www.aeaj.org/media/files/2022-08-29-86-Poland%20Action%20for%20anulment%20EU%20Council%20PRESS%20RELEASE-%20EN%20-%20in%20to%20circulate.pdf>)

the actions required by the RRP are not fully coherent with the implementation of the ECJ rulings which declare the nullity of the former Disciplinary Chamber as well as all the decisions taken by this institution. By allowing a review of decisions taken by the former Disciplinary Chamber on a case-by-case basis rather than declaring their nullity, these experts consider that the NRRP “creates an alternative legal reality in which Poland may be financially rewarded for enacting “reforms” that fall short of its true obligations under EU law, undermining the authority of the ECJ and its decisions”.

The **Romanian RRP** is fully aligned with the priorities and recommendations set out by the rule of law reports and the former CVM. It includes major reforms committed under the CVM, such as the revision of the three ‘Justice Laws’, and the amendment of the Criminal Code and Criminal Procedure Code to ensure alignment with the relevant decisions of the Constitutional Court. The 2018 CVM recommendation requests to revise the laws by taking into account the recommendations issued by the Venice Commission and GRECO. When describing this reform, the annex to the CID also mentions the need to take into account recommendations made in the CVM reports as well as the GRECO reports and opinions from the Venice commission. However, this procedural requisite is not included in milestone 423.

EU Added Value

To what extent, could similar results/impact be achieved with a different instrument at Union level or by Member States?

Summary

Assessing the ‘added value’ of the RRF is very difficult as it implies comparing an expected situation (the expected results from implementing the RRP) to a counterfactual scenario (what would have happened in the absence of the RRF). The perception of national experts however is overall positive.

In **Hungary**, the reluctance of the government to introduce these reforms in the draft of the RRP provides evidence that such reforms would not have been introduced in the absence of an incentive to access EU support. The link of these reforms to RRF funds constituted an important motivation but equally important was the risk of seeing EU cohesion funds blocked due to the non-fulfilment of the horizontal enabling condition on compliance with the Charter of Fundamental Rights.

In **Poland**, experts consider that the RRF has induced some positive legislative actions but has not been fully effective in bringing about the expected results in terms of strengthening the independence and impartiality of courts (which is the explicit goal of milestone F1G). According to national experts, various reasons explain this lack of effectiveness such as the fact that very few people are aware that RRF funds are conditioned on the rule of law reforms and the way in which RRF funds are delivered (in tranches of payments conditioned on the implementation of the corresponding reforms and investment) which makes possible for a reluctant government to ‘play time’ without the effects being visible to the population.

In **Romania**, national experts note that the added value of the RRF in promoting the amendments to the justice laws is less clear-cut as these amendments were also required under the CVM. Various experts from different countries note that a positive feature of the RRP is that the reform commitments are very transparent and detailed in the form of milestones. This allows experts or civil society organisations to keep track of progress done by Member States and monitor the decisions taken by the Commission as well as preventing the procedure from potentially being decried as politically arbitrary.

The added value of RRF measures can be conceptualised as the likelihood of comparable measures being adopted in the absence of this instrument. Assessing this ‘added value’ is very difficult as it implies comparing an expected situation (the expected results from implementing the RRP) to a counterfactual scenario (what would have happened in the absence of RRF). Here below we report the responses of the various national experts and stakeholders to this question.

In the case of **Hungary**, the reluctance of the government to introduce these reforms in the draft of the RRP provides evidence that such reforms would not have been introduced in the absence of the risk of not having access to EU support. The link of these reforms to RRF funds constituted an important motivation but equally important was the risk of seeing EU cohesion funds blocked due to non-compliance with the Charter of Fundamental Rights. As explained above, the Commission has explicitly tied the criteria required to ensure the fulfilment of the judicial aspect of the ‘horizontal’ enabling condition on the Charter of Fundamental Rights³⁵ to the fulfilment of the four justice reforms included in the RRP³⁶. Therefore, combining both instruments (RRF and cohesion policy) created additional incentive – and therefore added value – to adopt the reforms.

In the case of **Poland**, national experts acknowledge that other EU instruments such as the penalties imposed by the ECJ or Article 7 procedure have been rather fruitless. However, so far, despite positive legislative actions being taken, the RRP has not been fully effective in bringing about the expected results. According to national experts, various reasons explain this lack of effectiveness. On the one hand, the RRF is perceived by the population (and portrayed by the government) as a vehicle to support Poland’s economy. Very few people are aware of the fact that RRF funds are conditioned on rule of law reforms. On the other hand, given the way in which RRF funds are delivered (in tranches of payments conditioned on the implementation of the relevant reforms and investments) a delay in receiving an RRF payment does not have an immediate and visible effect on the population. It is hence possible for a reluctant government to ‘play time’ without being punished by public opinion.

In the case of **Romania**, national experts note that the added value of the RRF in promoting the amendments to the justice laws is less clear-cut as these amendments were also required under the CVM. They acknowledge that the inclusion of these reforms into the Plan shows that the Union takes these reforms very seriously. They also alert that the recent closure of the CVM may pose a problem of communication for the Commission if it decides that the three Justice laws, as adopted, fail to fulfil the requisites imposed by the RRP milestone. Even if the recommendations under the CVM and the requisites imposed by the milestone of the RRP are not identical, and even if note from the Commission announcing the closure of the CVM explicitly says that “this assessment is without prejudice to the assessment of the fulfilment of the relevant milestones and targets in Romania’s recovery and resilience plan”, in the eyes of the public opinion the closure of the CVM means that the amendment of the justice reforms has been greenlighted by the Commission. Finally, various experts from different countries agree that a positive feature of the RRP is that the reform commitments are very transparent and are detailed in the form of milestones included in the Annex to the Council Implementing Decisions. This feature not only allows experts or civil society organisations to keep track of progress done by Member States and monitor the decisions taken by the Commission but has also value in preventing the procedure from potentially being decried as politically arbitrary.

³⁵ The disbursement of EU cohesion funds is conditioned to the compliance of certain ‘horizontal enabling conditions’, among which the condition to comply with the EU charter of fundamental rights when programming and implementing EU funds. For a more detailed description, see Rubio et al. (2023)

³⁶ This explicit link between the justice reforms and the compliance with the horizontal enabling condition on the Charter of Fundamental Rights is detailed in the Commission’s implementing acts of the various Cohesion policy operational programmes.

Annex 1: Interviewees

Stakeholder category	Country	Date of the interview
Anti-corruption expert and former director of the Romanian Ministry of Justice	RO	21.06.2023
President of the municipal Court of Appeal	RO	28.06.2023
NGO expert	HU	07.07.2023
Academic	HU	07-07.2023
Member of Judge Association	PL	13.07.2023
Government official	HU	20.07.2023
Academic	PL	4.08.2023 (written response)
Academic	PL	29.09.2023
Academic	HU	No response
Academic	PL	No response
Member of Judge Association	PL	No response
Legal expert	PL/HU	No response
Academic	RO	No response
Academic	RO	No response
Academic	RO	No response
Government official	RO	No response
Member of the association of judges	RO	No response
Academic	PL	Rejected
Academic	PL	Rejected
Academic	PL	Rejected

Annex 2: Literature

Amnesty International Hungary, Eötvös Károly Institute and the Hungarian Helsinki Committee (2023) Assessment of Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan in light of the super milestones set out in the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary

Amnesty International Hungary, the Eötvös Károly Institute, the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, K-Monitor and Transparency International Hungary (2023b) Assessment of compliance by Hungary with conditions to access European Union funds

Anderson, C. et M. De Tollaere (2020), Supporting institutional resilience ', in *Development Co-operation Report 2020 : Learning from Crises, Building Resilience*, Éditions OCDE, Paris, <https://doi.org/10.1787/5f8f7af9-en>.

Chis, Andrea-Annamaria (2023) Folosirea (in)adecvată a puterii în sistemul judiciar din România (2017-2023), Revista de Științe Politice și Relații Internaționale , XX, 3, pp. 195–228, București, 2023.

Dias, Cristina and Grigaité, Kristina (2021) Implementing Country Specific Recommendations in national Recovery and Resilience Plans - reforms related to public administration, the judicial system and business environment, European Parliament Research Service, in-depth analysis

Dimitrov, Georgi (2019) How and Why Did the Laggards Turn Out to Be the Forerunners of a Major Transformation in the EU's Integration Strategy? Bulgaria and Romania's Peculiar Role in Redefining the EU Integration Strategy, Southeastern Europe 43 (2019) 28-49

Dimitrovs, Alexej et al (2021) Of Jupiters and Bulls: the Cooperation and Verification Mechanism as a redundant special regime of the rule of law, EU Law Live, num 61, June 2021

Dumbrava, Horatius (2021), The rule of law and the EU's response mechanisms in case of violation: a Romanian Case Study, ERA Forum vol 22, 437–452

European Commission-DG JUST (2018) Study on the extent to which and how Member States used the ESF and the ERDF in the programming periods 2007-2013 and 2014-2020 to support their justice system- Final Report, 18 June 2018

European Commission (2023) The 2023 EU Justice Scoreboard, COM(2023) 309

Expert Forum (2022) The new justice laws as adopted by the Parliament: Reform or the return of old habits from the pre-accession period?, Policy Brief no. 146, October 2022

Farkas, Erika and Kadar, Andras (2023) Restoring the Rule of Law By Breaching It, blogpost at Verfassungblog.eu, 10 july 2023 (<https://verfassungsblog.de/restoring-the-rule-of-law-by-breaching-it/>)

Fromont, L, Van Waeyenberge, A. (2021) Trading rule of law for recovery? The new EU strategy in the post-Covid era. Eur Law J. 2021; 27(1-3): 132- 147. doi:10.1111/euj.12426

Iancu, Bogdan (2021) Hidden Continuities?: The Avatars of "Judicial Lustration" in Post-Communist Romania, German Law Journal, Vol 22, 1209–1230

IMF. (2017). "Reforming the Judiciary: Learning from the Experience of Central, Eastern, and South-eastern", in European Regional Outlook, chapter 2

Kmeriz, Marko (2019) EU Rule of Law Conditionality: Democracy or 'Stabilitocracy' Promotion in the Western Balkans?, in Dzankic et al, The Europeanisation of the Western Balkans: A Failure of EU Conditionality?, Palgrave macmillan

Kosař, D. (2018). Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe. German Law Journal, 19(7), 1567-1612. doi:10.1017/S2071832200023178

KOS (Komitetu Obrony Sprawiedliwości), Position of the Justice Defence Committee on the bill amending the Act on the Supreme Court and certain other Acts (form num 2870), 12 January 2023 (<http://themis-sedziowie.eu/materials-in-english/position-of-the-justice-defence-committee-kos-on-the-members-bill-amending-the-act-on-the-supreme-court-and-certain-other-acts-form-no-2870/>)

Lacatus, Corina and Sedelmeier, Ulrich (2020) Does monitoring without enforcement make a difference? The European Union and anti-corruption policies in Bulgaria and Romania after accession, Journal of European Public Policy, 27 (8) , pp. 1236-1255Marcisz, Paweł: *A Chamber of Certain Liability: A Story of Latest Reforms in the Polish Supreme Court, VerfBlog*, 2022/10/31

Mendelski, Martin (2012) EU-driven judicial reforms in Romania: a success story?, East European Politics Vol. 28, No. 1, March 2012, 23–42

Mendelski, Martin (2015) The EU's Pathological Power: The Failure of External Rule of Law Promotion in South Eastern Europe, Southeastern Europe Vol. 39 (2015) 318-346

'Nyugodtan alhatnak-e tovább a korruptak?', 24.hu, available here

Pech, Laurent; Wachowic, Patryk and Mazur, Dariusz (2021), Poland's Rule of Law Breakdown: A FiveYear Assessment of EU's (In)Action, Hague Journal on the Rule of Law, Vol 13, 1–43

Sessa, Duro; Marques, Filipe and Morijn, John (2023), The Action Brought by European Organisations of Judges against the Council of the European Union over the release of EU Recovery and Resilience Funds to Poland, Journal of Constitutional History, Vol 45, pp. 103-121

Vassileva, Radosveta (2020) Threats to the Rule of Law: The Pitfalls of the Cooperation and Verification Mechanism, in European Public Law, 2020, Vol 26, Issue 3, 741-768

Venice Commission of the Council of Europe (2022a), Romania: Urgent Opinion on the three Justice laws,CDL-AD(2022)045

Venice Commission of the Council of Europe (2022c), Romania: Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary, CDL-AD(2022)003, 18-19 March 2022

Whal, Thomas (2023), Hungary: Rule-of-Law Developments January – April 2023, blogpost at eucrim.eu (<https://eucrim.eu/news/hungary-rule-of-law-developments-january-april-2023/>), 28 June 2023.

