Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States

2018/0136(COD) - 12/07/2018 - Court of Auditors: opinion, report

OPINION No 1/2018 of the Court of Auditors concerning the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

The Court of Auditors **welcome the aim of the Commission's legislative initiative** to protect the Union budget against generalised deficiencies as regards the rule of law in a Member State, which affect or risk affecting the sound financial management or the protection of the financial interests of the Union.

General remarks: the Court of Auditors agrees with the Commission's view that the proposed mechanism should be based on the need to **respect the rule of law** as a precondition for ensuring compliance with the principles of sound financial management of EU funds. It also recognises that the **independence and impartiality of the judiciary** are essential to ensure sound financial management and the protection of the EU budget.

The Court finds that the proposal for a regulation **assigns the Commission more discretionary power** in the process than the current rules to counter any breach against one of the fundamental values set out in Article 2 TEU. The Commission would start the procedure if it finds it has 'reasonable grounds' to believe that the conditions had been met. In reaction to the Commission's finding, the Member State concerned should provide all required information and may submit its observations, which the Commission should take into account.

In this proposed mechanism, however, the Commission's proposal is deemed accepted unless rejected or modified by the Council. Blocking the Commission's proposal would require a qualified majority of the Council within one month ('reversed qualified majority voting'). The European Parliament would only be informed of any proposed or adopted measures. The adoption of the Commission's proposal under the reversed qualified majority voting by the Council contributes to the discretionary power provided to the Commission in the proposal.

The Court considers that it would have been essential for the Commission to carry out a **specific stakeholder consultation** before publishing the proposal. Similarly, conducting an impact assessment prior to the publication of the proposal would have allowed for better informed decision-making.

The Court of Auditors makes **five recommendations** to the legislative bodies. The latter should:

> **1. setting clear and specific criteria**: (i) for defining what constitutes a generalised deficiency as regards the rule of law, which puts sound financial management at risk; (ii) for determining the extent of measures, either in the proposed regulation or in possible implementing rules. When setting the criteria, the sources of guidance, which the Commission used in the context of EU accession negotiations, as well as in the Cooperation and Verification Mechanism to track the progress of a Member State could be taken into consideration;
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> **2.** specify the basis for setting time limits by which the Member State concerned has to provide the **required information as well as introducing similar deadlines** for the Commission whenever

appropriate, for example as regards the lifting of measures in case the underlying generalised deficiencies have ceased to exist;

3. request the Commission to assess in detail in its proposal to the Council **how the legitimate interests of final beneficiaries will be safeguarded** for all measures in the proposal (such as the reduction of commitments or the suspension of commitments or payments). The Commission to carry out an assessment in the absence of such a request at its own initiative, if there are grounds justifying it;

4. request the Commission, before deciding on which appropriate measures to propose, assess the **possible budgetary implications** of a reduction in the EU funding for the national budget of the Member State concerned with due regard to the principles of proportionality and non-discrimination;

5. clarify that the provisions relating to the **European Public Prosecutor's Office** can, after its establishment, only be applicable to the participating Member States.