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

2018/0136(COD) - 17/01/2019 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 397 votes to 158, with 69 abstentions, amendments to 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 matter was referred back to the competent committee for interinstitutional negotiations.

The main amendments adopted in plenary concern the following issues:

Uphold Union values

Member States should uphold their obligations and set an example by genuinely fulfilling them and move towards a **shared culture of the rule of law** as a universal value to be applied by all concerned even-handedly. Full respect for and promotion of those principles is an essential prerequisite for the legitimacy of the European project as a whole and a basic condition for building citizens' trust in the Union.

Generalised deficiencies

A new article has been proposed to define what constitutes generalised deficiencies as regards the rule of law where they affect or risk affecting the principles of sound financial management or the protection of the financial interests of the Union:

- endangering the independence of judiciary, including setting any limitations on the ability to exercise judicial functions autonomously by externally intervening in guarantees of independence, by constraining judgement under external order, by arbitrarily revising rules on the appointment or terms of service of judicial personnel, by influencing judicial staff in any way that jeopardises their impartiality or by interfering with the independence of attorneyship;

- failing to prevent, correct and sanction arbitrary or unlawful decisions by public authorities, including by law enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interests;

- limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules, lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law;

- endangering the administrative capacity of a Member State to respect the obligations of Union membership, including the capacity to effectively implement the rules, standards and policies that make up the body of Union law;

- measures that weaken the protection of the confidential communication between lawyer and client.

Risks for the financial interests of the Union

A generalised deficiency as regards the rule of law in a Member State may be established when one or more of the following, in particular, are affected or risk being affected: (i) the proper functioning of the market economy, thereby respecting competition and market forces in the Union as well as implementing effectively the obligations of membership, including adherence to the aim of political, economic and monetary union; (ii) the proper functioning of the authorities carrying out financial control, monitoring and internal and external audits, and the proper functioning of effective and transparent financial management and accountability systems; (iii) the proper functioning of investigation and public prosecution services in relation to the prosecution of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget; (iv) the prevention and sanctioning of tax evasion and tax competition and the proper functioning of authorities contributing to administrative cooperation in tax matters; (v) the proper implementation of the Union budget following a systemic violation of fundamental rights.

Adopting and lifting measures and involvement of the Parliament

In order to protect the Union's financial interests from the risk of financial loss caused by generalised deficiencies as regards the rule of law in a Member State, the European Union shall be granted the possibility to adopt appropriate measures in such cases. Members proposed a more balanced mechanism, which puts Parliament and Council on the same footing.

The Commission shall lift measures with suspensive effect and propose to the European Parliament and the Council to lift in full or in part the budgetary reserve of the measures in question, if the situation leading to the imposition of those measures has been sufficiently remedied. This decision shall only enter into force if Parliament and the Council do not reject it within one month.

Panel of independent experts and lifting of measures

An advisory panel of independent experts in constitutional law and financial and budgetary matters shall be established with the objective to assist the Commission in its assessment of generalised deficiencies. That panel shall undertake an independent annual assessment of the issues as regards the rule of law in all Member States that affect or risk affecting the sound financial management or the protection of the financial interests of the Union, taking into account information from all relevant sources and recognised institutions.

Measures for the protection of the Union budget

The Commission shall provide information and guidance for the benefit of final recipients or beneficiaries on the obligations by Member States via a website or internet portal. It shall also provide, on the same website or portal, adequate tools for final recipients or beneficiaries to inform the Commission about any breach of these obligations that, in the view of these final recipients or beneficiaries, directly affects them.

Information provided by final recipients or beneficiaries may only be taken into account by the Commission if accompanied by a proof that the concerned final recipient or beneficiary has lodged a formal complaint to the competent authority.