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

2018/0136(COD) - 14/12/2020 - Council position

The Council adopted its position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget.

Aim and scope

The Regulation aims at establishing a general regime of conditionality for the protection of the Union budget when 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.

The scope of the measures has been extended to ensure that the conditionality mechanism would apply to resources allocated through Next Generation EU and when the Union budget is implemented through loans and other instruments guaranteed by the Union budget.

The following may be indicative of breaches of the principles of the rule of law:

- endangering the independence of the judiciary;

- failing to prevent, correct or 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 interest;

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

Measures in case of violations

The Council's position defines the measures to be adopted in the event of a breach of the principles of the rule of law and the procedure to be followed for their adoption. These measures would include:

- suspension of payments and commitments,

- the suspension of the disbursement of instalments or the early repayment of loans,

- a reduction of funding under existing commitments, and

- a prohibition on entering into new commitments with recipients or concluding new agreements on loans or other instruments guaranteed by the EU budget.

Conditions for the adoption of measures

The mechanism would ensure that any measures taken would be proportionate and would provide tools to enhance the protection of the final recipients or beneficiaries.

The principle of proportionality should apply when determining the measures to be adopted, in particular taking into account: (i) the seriousness of the situation;(ii) the time which has elapsed since the relevant conduct started; (iii) the duration and recurrence of the conduct; (iv) the intention, the degree of cooperation of the Member State concerned in putting an end to the breaches of the principles of the rule of law; (v) the effects on the sound financial management of the EU budget or the financial interests of the Union.

To strengthen the protection of the final recipients or beneficiaries, the Commission should provide information and guidance via a website or internet portal, together with adequate tools to inform the Commission about any breach of the legal obligation of government entities and Member States to continue making payments after measures pursuant to this Regulation are adopted. The Commission should follow up on such information to verify whether the applicable rules have been respected.

Lifting of measures

The procedure for adopting and lifting the measures should respect the principles of objectivity, non-discrimination and equal treatment of Member States and should be conducted according to a non-partisan and evidence-based approach.

In particular, any Member State concerned by the procedure leading to the possible adoption of measures would have the opportunity to comment on the findings, to propose remedial measures and to comment on the proportionality of the measures envisaged.

Implementing powers should be conferred on the Council, which should act on the basis of a Commission proposal.

The Commission should keep the European Parliament informed of any measures proposed, adopted and lifted under the Regulation. It should report to the European Parliament and the Council on the application of the Regulation three years after its entry into force.