Basic information

2018/0136(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States **Subject** 8.30.10 Principles common to the Member States, EU values 8.70.02 Financial regulations 8.70.03 Budgetary control and discharge, implementation of the budget 8.70.04 Protecting financial interests of the EU against fraud	

Key players

European Parliament

Joint committee responsible	Rapporteur	Appointed
BUDG Budgets	GARDIAZABAL RUBIAL Eider (S&D)	30/08/2018
CONT Budgetary Control	SARVAMAA Petri (PPE)	30/08/2018
	Shadow rapporteur CHRISTOFOROU Lefteris (EPP) MANDA Claudiu (S&D) KÖRNER Moritz (Renew) CSEH Katalin (Renew) FREUND Daniel (Greens /EFA) GEESE Alexandra (Greens /EFA) CZARNECKI Ryszard (ECR) RZOŃCA Bogdan (ECR) LAPORTE Hélène (ID) KUHS Joachim (ID) OMARJEE Younous (GUE /NGL)	

Former joint committee responsible	Former rapporteur	Appointed
BUDG Budgets	GARDIAZABAL RUBIAL Eider (S&D)	30/08/2018

CONT Budgetary Control	SARVAMAA Petri (PPE)	30/08/2018
	Shadow rapporteur GONZÁLEZ PONS Esteban (PPE) AYALA SENDER Inés (S&D) JÄÄTTEENMÄKI Anneli (ALDE) ALI Nedzhmi (ALDE) DE JONG Dennis (GUE/NGL) OMARJEE Younous (GUE/NGL) STAES Bart (Verts/ALE) GIEGOLD Sven (Verts/ALE) VALLI Marco (EFDD)	

Former committee for opinion	Former rapporteur for opinion	Appointed
REGI Regional Development	MIHAYLOVA Iskra (ALDE)	22/11/2018
LIBE Civil Liberties, Justice and Home Affairs (Associated committee)	REINTKE Terry (Greens/EFA)	14/10/2019
AFCO Constitutional Affairs	SCHOLZ Helmut (GUE/NGL)	20/06/2018

Council of the European Union	
European Commission	

Commission DG	Commissioner
Secretariat-General	OETTINGER Günther

European Court of Auditors

Key events

Date	Event	Reference	Summary
		COM(2018)0324	Summary

02/05/2018	Legislative proposal published		
11/06/2018	Committee referral announced in Parliament, 1st reading		
05/07/2018	Referral to associated committees announced in Parliament		
05/07/2018	Referral to joint committee announced in Parliament		
13/12/2018	Vote in committee, 1st reading		
18/12/2018	Committee report tabled for plenary, 1st reading	A8-0469/2018	Summary
16/01/2019	Debate in Parliament		
17/01/2019	Decision by Parliament, 1st reading	T8-0038/2019	Summary
17/01/2019	Results of vote in Parliament		
17/01/2019	Matter referred back to the committee responsible for interinstitutional negotiations		
04/04/2019	Decision by Parliament, 1st reading	T8-0349/2019	Summary
04/04/2019	Results of vote in Parliament		
12/11/2019	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
13/11/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 73)		
12/11/2020	Approval in committee of the text agreed at 2nd reading interinstitutional negotiations		
14/12/2020	Council position published	09980/1/2020	Summary
14/12/2020	Committee referral announced in Parliament, 2nd reading		
14/12/2020	Vote in committee, 2nd reading		
14/12/2020	Committee recommendation tabled for plenary, 2nd reading	A9-0262/2020	Summary
16/12/2020	Decision by Parliament, 2nd reading	T9-0356/2020	Summary
16/12/2020	Debate in Parliament		
16/12/2020	Final act signed		
16/12/2020	End of procedure in Parliament		
22/12/2020	Final act published in Official Journal		

Technical information

Procedure reference	2018/0136(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Euratom Treaty A 106a-pa Rules of Procedure EP 59 Rules of Procedure EP 61 Treaty on the Functioning of the European Union TFEU 322-p1
Mandatory consultation of other institutions	European Court of Auditors

Stage reached in procedure	Procedure completed
Committee dossier	CJ13/9/01459

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE628.374	03/10/2018	
Amendments tabled in committee		PE630.466	09/11/2018	
Committee opinion	AFCO	PE627.943	22/11/2018	
Committee opinion	REGI	PE627.807	23/11/2018	
Committee opinion	LIBE	PE629.627	05/12/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0469/2018	18/12/2018	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T8-0038/2019	17/01/2019	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0349/2019	04/04/2019	Summary
Committee draft report		PE660.258	13/11/2020	
Amendments tabled in committee		PE660.383	19/11/2020	
Committee recommendation tabled for plenary, 2nd reading		A9-0262/2020	14/12/2020	Summary
Text adopted by Parliament, 2nd reading		T9-0356/2020	16/12/2020	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	09980/1/2020	14/12/2020	Summary
Document attached to the procedure	14018/2020	14/12/2020	
Draft final act	00064/2020/LEX	16/12/2020	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2018)0324	02/05/2018	Summary
Commission response to text adopted in plenary	SP(2019)443	12/06/2019	
Commission communication on Council's position	COM(2020)0843	14/12/2020	
Follow-up document	COM(2024)0017	12/01/2024	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_CHAMBER	COM(2018)0324	26/06/2018	
Contribution	PT_PARLIAMENT	COM(2018)0324	03/07/2018	
Contribution	DE_BUNDESRAT	COM(2018)0324	04/10/2018	
Contribution	CZ_SENATE	COM(2018)0324	24/10/2018	
Contribution	FR_ASSEMBLY	COM(2018)0324	23/01/2019	
Contribution	FR_ASSEMBLY	COM(2018)0324	24/06/2019	
Contribution	IT_CHAMBER	COM(2018)0324	30/04/2020	
Contribution	FR_ASSEMBLY	COM(2018)0324	19/12/2022	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofA	Court of Auditors: opinion, report	N8-0085/2018 OJ C 291 17.08.2018, p. 0001	12/07/2018	Summary
CofR	Committee of the Regions: opinion	CDR2389/2018	09/10/2018	
EESC	Economic and Social Committee: opinion, report	CES2955/2018	17/10/2018	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32020R2092R(04)
OJ L 000 05.12.2023, p. 0000

Corrigendum to final act 32020R2092R(02)
OJ L 373 21.10.2021, p. 0094

Regulation 2020/2092
OJ L 433I 22.12.2020, p. 0001

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;
>
> **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.

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

2018/0136(COD) - 18/12/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgets and the Committee on Budgetary Control adopted the joint report by Eider GARDIAZABAL RUBIAL (S&D, ES) and Petri SARVAMAA (EPP, FI) on 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

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:

- 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;

- 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;

- 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;

- the prevention and sanctioning of tax evasion and tax competition and the proper functioning of authorities contributing to administrative cooperation in tax matters;

- 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.

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.

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

2018/0136(COD) - 04/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution on 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, closing its first reading.

The European Parliament’s position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Uphold Union values

Parliament recalled that 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. It stressed that 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.

The Union has at its disposal a multitude of instruments and processes for ensuring full and proper application of the principles and values laid down in the TEU, but there is currently no swift, effective response coming from the Union institutions, in particular to ensure sound financial management. The existing instruments should be enforced, evaluated and complemented in the framework of a rule of law mechanism to be adequate and effective.

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

The identification of a generalised deficiency requires a thorough qualitative assessment by the Commission. That assessment shall be objective, impartial and transparent and be based on information from all relevant sources, taking into account the criteria used in the context of Union accession negotiations, in particular the chapters of the acquis on judiciary and fundamental rights, on justice, freedom and security, on financial control and on taxation, as well as the guidelines used in the context of tracking the progress of a Member State, and from recognised institutions, including judgments of the Court of Justice of the European Union and the European Court of Human Rights, resolutions of the European Parliament.

Members proposed that an advisory panel of independent experts in constitutional law and financial and budgetary matters 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.

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

2018/0136(COD) - 02/05/2018 - Legislative proposal

PURPOSE: to protect the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the rule of law is **one of the essential values** upon which the Union is founded. As recalled by Article 2 of the Treaty on European Union, these values are common to the Member States. Respect for these values must therefore be ensured throughout all Union policies. This includes the **EU budget**, where respect for fundamental values is an essential precondition for sound financial management and effective EU funding.

The Commission considers that the European Union should be given the possibility to adopt the rules necessary for the protection of the Union's budget in the case of generalised deficiencies as regards the rule of law in the Member States.

The proposal is based on the 2014 Commission Communication "A new EU framework to strengthen the rule of law", the February 2018 Commission Communication "A new and modern multiannual financial framework for a European Union that implements its priorities efficiently beyond 2020" and the standards and principles developed by the Council of Europe.

CONTENT: this proposal for a Regulation establishes the rules necessary for the **protection of the Union's budget in the case of generalised deficiencies as regards the rule of law** in the Member States.

Measures: appropriate measures shall be taken where a generalised deficiency as regards the rule of law in a Member State affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union such as: (i) the proper functioning of the authorities of that Member State implementing the EU budget, in particular in the context of public procurement procedures; (ii) the proper functioning of investigative services in the context of the fight against **fraud and corruption**; (iii) effective judicial control by independent courts of acts or omissions of the abovementioned authorities; (iv) jeopardised the independence of the judiciary.

Content of measures: the proposal lists the type of measures that could be taken and specifies that Member States receiving EU funds should receive them. This concerns in particular the **suspension of payments or the implementation of the legal commitment** or a prohibition on entering into new legal commitments where the Commission implements the Union budget directly or indirectly.

Procedure: measures should be on the basis on a **Council decision following a proposal from the Commission**. The decision shall be deemed to have been adopted by the Council, unless it decides, by qualified majority, to reject the Commission proposal within one month of its adoption by the Commission. The European Parliament should also be fully involved at all stages.

Proportionality: measures need to be adopted in full respect of the principles of transparency and proportionality. It is also important to ensure that the consequences of measures have a sufficient connection with the aim of the funding. This also points to the need to ensure that the **consequences fall on those responsible** for identified shortcomings. It should therefore reflect the fact the individual beneficiaries of EU funding, such as Erasmus students, researchers or civil society organisations, cannot be considered responsible for such breaches.

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 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Budgets and the Committee on Budgetary Control adopted the recommendation for second reading contained in the report by Petri SARVAMAA (EPP, FI) and Eider GARDIAZABAL RUBIAL (S&D, ES) on the Council 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.

The competent committees recommended that the European Parliament approve the Council's position at first reading without amendment.

The Council's position at first reading reflects the agreement reached between the Parliament and the Council in the framework of the inter-institutional negotiations at the early second reading stage.

The proposed Regulation aims at establishing a general regime of conditionality for the protection of the EU budget where infringements of the principles of the rule of law in a Member State affect or are likely to affect in a sufficiently direct manner the sound financial management of the EU budget or the protection of the EU's financial interests.

In a joint statement annexed to the Recommendation, the Parliament, the Council and the Commission agreed to consider including the content of this Regulation into Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (Financial Regulation) upon its next revision.

For its part, the Commission for its part will consider accompanying the report to the European Parliament and the Council on the application of the Regulation, if necessary, with appropriate proposals.

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.

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

2018/0136(COD) - 16/12/2020 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution approving the Council's 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.

The proposed Regulation aims at establishing a general regime of conditionality for the protection of the EU budget where infringements of the principles of the rule of law in a Member State affect or are likely to affect in a sufficiently direct manner the sound financial management of the Union budget or the protection of the Union's financial interests.

Application to systemic violations of the rule of law

The new legislation should apply where EU funds are directly misused, such as in cases of corruption or fraud. It should apply to systemic violations of fundamental EU values such as democracy or the independence of the judiciary.

The regulation sets out the measures to be adopted in cases of violation of the principles of the rule of law and the procedure for their adoption. These measures include suspension of payments and commitments, suspension of the disbursement of instalments or early repayment of loans or a reduction in financing under existing commitments.

Protection of final beneficiaries

The proposed mechanism would ensure that any measures taken would be proportionate and would provide tools to enhance the protection of the final recipients or beneficiaries. To enhance the protection of final recipients or beneficiaries, the Commission will have to provide information and guidance through a website or internet portal.

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. Implementing powers should be conferred on the Council, which should act by qualified majority on a proposal from the Commission.

In a joint statement annexed to the Recommendation, the Parliament, the Council and the Commission agreed to consider including the content of this Regulation in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (Financial Regulation) when it is next revised.