



**2021/2071(INI)**

29.6.2021

## **OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Budgets and for the Committee on Budgetary Control

on the creation of guidelines for the application of the general regime of  
conditionality for the protection of the Union budget  
(2021/2071(INI))

Rapporteur for opinion (\*) : Terry Reintke

(\*) Associated committee – Rule 57 of the Rules of Procedure

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## SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Budgets and on the Committee on Budgetary Control, as the committees responsible, to incorporate the following suggestions into its motion for a resolution:

1. Regrets the European Council conclusions of 10 and 11 December 2020 on the Rule of Law Conditionality Regulation and considers that they contravene Articles 15 and 17 of the TEU and Article 288 of the TFEU insofar as they introduce unnecessary legal uncertainty; regrets that the Commission committed not to propose any measures under the regulation until it develops guidelines, whose finalisation is subject to the delivery of the judgement of the Court of Justice in the action for annulment brought by Hungary and Poland; reminds that actions brought before the Court of Justice shall not have suspensory effect in accordance with the Treaties;
2. Stresses that measures under the Regulation are necessary in particular in cases where other procedures set out in Union legislation would not allow the Union budget to be protected more efficiently; recalls that grave, permanent and systematic violations of the values listed in Article 2 of the TEU are taking place in some Member States and are left without adequate response and undermine the EU's financial interests; recalls that the Commission should also make a full use of all instruments of the Rule of Law toolbox, including infringement procedures according to Article 258 TFEU and procedures according to Article 7 TEU;
3. Reiterates that the Rule of Law Conditionality Regulation as adopted by the co-legislators, does not foresee the development of any guidelines therefore its legal effect, as of 1 January 2021, cannot be subject to the adoption of such guidelines, regrets the delay following the development of the guidelines by the Commission for the application of the Regulation;
4. Notes that after the Commission decided to prepare the Guidelines the Parliament in its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism requested the Commission to submit the guidelines by 1 June 2021 the latest; regrets that the Commission has handed over the draft guidelines on the application of the Regulation with 2 weeks delay; is of the opinion that the draft guidelines in its current form simply repeat the provisions of the regulation, have little or no added value and do not contain any additional information, which could contribute to the proper application of the Regulation; concludes therefore that the Commission's guidelines are part of its delaying tactic of the application of the Regulation; considers that under the pretext of avoiding a potential annulment of the measures adopted pursuant to the Regulation by the Court of Justice, the Commission is neither addressing democratic, fundamental rights and rule of law violations and backsliding in the Member States nor meeting the expectations in regard to the operationalisation of this instrument; believes that the Commission should report to all of the competent parliamentary committees active in the field of rule of law on a quarterly basis regarding new and ongoing cases under investigation;
5. Deplores the time wasted by the Commission since the entry into force of the Regulation; urges the Commission to act promptly and without any further delay in the

application of the Regulation and to investigate swiftly and thoroughly any potential individual or systemic breaches of the principles of the rule of law in the Member States that 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; reiterates that the situation in some Member States already warrants immediate investigation under the Regulation and triggering of the procedure in accordance with Article 6(1) of the Regulation;

6. Welcomes the call upon the Commission to act sent by its President on 23 June 2021; is strongly of the opinion that the Parliament has to continue its necessary preparations under Article 265 of the TFEU against the Commission; is of the opinion that non-action or slow action by the Commission is a strong political signal not only to the European institutions and the Member States but also to the European citizens;
7. Reminds that guidelines must not alter, expand or narrow a regulation and that they must respect the intention of the co-legislators; stresses that the legislators did not foresee that the Commission adopts guidelines, implementing or executive acts to clarify the conditions of application of the Regulation; underlines that the purpose of the guidelines consists of outlining the procedure, definitions and methodology of the concrete application by the Commission; asks the Commission to avoid strict or exhaustive definitions of the concepts, as this would be in contradiction with the Regulation; considers that interpretation of abstract concepts is a dynamic process which cannot be predefined in one document; believes that the guidelines should fully respect the interpretation of relevant concepts by the Court of Justice of the European Union and the Venice Commission; points to the obligation of ensuring the availability of EU funding to final recipients, in line with the Regulation; calls on the Commission to confirm that breaches of the rule of law in a Member State which result from decisions or events that took place prior to 1 January 2021 fall within the scope of the Regulation as long as their effect is still ongoing;
8. Reminds that in accordance with the Regulation, the Commission shall take into account relevant information when assessing the possibly breaches of the rule of law by a Member State from available sources and recognised institutions, including judgments of the Court of Justice of the European Union, reports of the Court of Auditors, the Commission's annual Rule of Law Report and EU Justice Scoreboard, reports of the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) as relevant, and conclusions and recommendations of relevant international organisations and networks, including Council of Europe bodies such as the Council of Europe Group of States against Corruption (GRECO) and the Venice Commission, in particular its rule-of-law checklist, and the European networks of supreme courts and councils for the judiciary;
9. Considers that the Commission's annual Rule of Law report aims to ensure an objective, impartial, fair and qualitative assessment of breaches of the principles of rule of law and is an important complementary source for the purposes of the Regulation; believes that where the conclusions of the annual reports highlight individual or systemic breaches of the rule of law which 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, they should be directly linked to the triggering of

the Conditionality Mechanism; asks the Commission to include in its annual Rule of Law Report a dedicated section with an analysis of such cases; calls on the Commission to clarify a methodology to create a clear and direct link, when relevant, between the annual reports and the Conditionality Mechanism;

10. Highlights that independent civil society, including NGOs, and citizens, are at the forefront to identify potential breaches of the rule of law at local and national level, and should therefore be involved in their reporting; calls on the Commission to establish, in the guidelines, an efficient, user-friendly, and easily accessible online one-stop shop for citizens and civil society to report both fraud and corruption cases related to EU Funds, as well as individual or systemic breaches in their Member State, guaranteeing confidentiality, and leading, where deemed relevant by its services, to further investigations by the OLAF, the EPPO or the Commission, and be in line with the Whistleblowers Directive;
11. Recalls that the Regulation provides a definition of the rule of law, which clearly states that it must be understood in relation to the other values and principles enshrined in Article 2 TEU, including fundamental rights, such as non-discrimination; is of the opinion that state-sponsored discrimination against minorities has a direct impact on the projects on which Member States decide or not to spend EU money, and therefore directly affect the financial interests of the Union;
12. Believes that transparency is essential to foster the confidence of Member States and citizens in the Conditionality Mechanism: highlights that the assessment of individual or systemic breaches with regard to the rule of law requires an impartial, fair and objective treatment of Member States, including non-partisan and evidence-based investigations; points out that each step of the procedure of the Regulation should therefore be taken in a fully transparent way; calls therefore on the Commission to set-up the transparency rules and principles that it will apply when triggering the Conditionality Mechanism;
13. Requests the Commission to include the Parliament's suggestions into the final version of the guidelines.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	29.6.2021
<b>Result of final vote</b>	<div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="margin-right: 10px;">+:</div> <div>52</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="margin-right: 10px;">-:</div> <div>12</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="margin-right: 10px;">0:</div> <div>2</div> </div>
<b>Members present for the final vote</b>	<p>Magdalena Adamowicz, Konstantinos Arvanitis, Malik Azmani, Katarina Barley, Fernando Barrena Arza, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareș Bogdan, Patrick Breyer, Saskia Bricmont, Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Marcel de Graaff, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Evin Incir, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Fabienne Keller, Peter Kofod, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Roberta Metsola, Nadine Morano, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Terry Reintke, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Sara Skyttedal, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoș Tudorache, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Elissavet Vozemberg-Vrionidi, Jadwiga Wiśniewska, Elena Yoncheva, Javier Zarzalejos</p>
<b>Substitutes present for the final vote</b>	Tanja Fajon, Miguel Urbán Crespo

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

52	+
NI	Laura Ferrara, Martin Sonneborn
PPE	Magdalena Adamowicz, Vladimír Bilčík, Vasile Blaga, Ioan-Rareș Bogdan, Lena Düpont, Andrzej Halicki, Jeroen Lenaers, Lukas Mandl, Roberta Metsola, Emil Radev, Paulo Rangel, Ralf Seekatz, Sara Skyttedal, Tomas Tobé, Elissavet Vozemberg-Vrionidi, Javier Zarzalejos
Renew	Malik Azmani, Anna Júlia Donáth, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Michal Šimečka, Ramona Strugariu, Dragoș Tudorache
S&D	Katarina Barley, Pietro Bartolo, Caterina Chinnici, Tanja Fajon, Maria Grapini, Sylvie Guillaume, Evrin Incir, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Birgit Sippel, Bettina Vollath, Elena Yoncheva
The Left	Konstantinos Arvanitis, Pernando Barrena Arza, Cornelia Ernst, Miguel Urbán Crespo
Verts/ALE	Patrick Breyer, Saskia Bricmont, Damien Carême, Alice Kuhnke, Terry Reintke, Diana Riba i Giner, Tineke Strik

12	-
ECR	Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Patryk Jaki, Nicola Procaccini, Jadwiga Wiśniewska
ID	Nicolas Bay, Nicolaus Fest, Jean-Paul Garraud, Marcel de Graaff, Annalisa Tardino, Tom Vandendriessche
NI	Milan Uhrík

2	0
ID	Peter Kofod
PPE	Nadine Morano

Key to symbols:

+ : in favour

- : against

0 : abstention