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DRAFT REPORT

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

Committee on Budgets
Committee on Budgetary Control

Rapporteurs: Eider Gardiazabal Rubial, Petri Sarvamaa

(Joint committee meetings - Rule 58 of the Rules of Procedure)

Rapporteur for the opinion (*):
Terry Reintke, Committee on Civil Liberties, Justice and Home Affairs

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

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

The European Parliament,

– having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget[1] ('the Regulation'),

– having regard to its resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulation[2],

– having regard to its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism[3],

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the joint deliberations of the Committee on Budgets and the Committee on Budgetary Control under Rule 58 of the Rules of Procedure,

– having regard to the opinion of the Committee on Civil Liberties, Justice and Home Affairs,

– having regard to the report of the Committee on Budgets and the Committee on Budgetary Control (A9-0000/2021),

A. whereas the Regulation entered into force on 1 January 2021 and has been binding in its entirety and directly applicable in all Member States since that date;

B. whereas the Commission declared that it would develop guidelines for the application of the Regulation;

1. Takes note of the Commission's intention to develop guidelines for the application of the Regulation; reiterates once again its view that the text of the Regulation is clear and does not require any additional interpretation in order to be applied;

2. Highlights that guidelines are not legally binding; notes that the Commission is deviating from its usual practice of drafting guidelines for the application of a legal act only in cases where the actual implementation of the act over a certain period of time shows the need for guidance;

[1] OJ L 433I, 22.12.2020, p. 1.
[2] Texts adopted, P9_TA(2020)0360.
[3] Texts adopted, P9_TA(2021)0103.

3. Recalls that guidelines cannot alter, expand or narrow the text of the Regulation; emphasises that in order to add any value, guidelines must clarify how the legislative provisions of the Regulation will be applied in practice and therefore outline the procedure, definitions and methodology that the Commission will apply;

4. Urges the Commission to avoid any further delay in the application of the Regulation and to investigate swiftly and thoroughly any potential 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;

5. Asks the Commission to report to Parliament on a quarterly or semi-annual basis regarding new and ongoing cases under investigation, starting as soon as possible with the first cases;

Breaches of the principles of the rule of law

6. Underlines that the Regulation applies both to individual breaches of the principles of the rule of law and to 'systemic' breaches that are widespread or are a result of recurrent practices or omissions by public authorities, or general measures adopted by such authorities;

7. Draws particular attention to the list of indicative breaches of the principles of the rule of law laid down in Article 3 of the Regulation; calls on the Commission to investigate potential occurrences of the breaches included in that list in the Member States, while pointing out that other practices or omissions by public authorities may also be relevant;

8. Recalls that identification of breaches of the principles of the rule of law requires objective, impartial, fair and thorough qualitative assessment by the Commission, taking into account relevant information from available sources and recognised institutions;

9. Recalls that measures under the Regulation are taken where 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; underlines that this implies a comprehensive, proactive, risk-based approach on the part of the Commission to safeguard Union spending even before actual payments are made;

Protecting the Union budget

10. Emphasises the clear link between respect for the rule of law and the efficient implementation of the Union budget in accordance with the principles of sound financial management: economy, efficiency and effectiveness;

11. Recalls that measures under the Regulation are necessary in particular in cases where other procedures set out in sector-specific or financial legislation would not allow the Union budget to be protected more effectively; stresses that this does not mean that the Regulation is to be considered as a 'last resort', but rather that the Commission can use

a wide range of procedures to protect the Union's financial interests, to be chosen on a case-by-case basis depending on their efficiency and effectiveness;

12. Points out that the Regulation covers all Union funds and applies to 'systemic' breaches as well as to cases of serious risk to the sound financial management of the Union budget or the protection of the financial interests of the Union, which may be difficult to address by other Union procedures that only apply to specific spending programmes and relate to effects on the budget that have already occurred;

13. Underlines that 'systemic' breaches, for instance those affecting the functioning of the justice system, the independence of judges or the neutrality of public authorities, have in general a clear indirect impact on the proper management, spending and control of Union funds;

Adoption of measures

14. Recalls that Article 6 of the Regulation sets out all steps and a precise timeline for the adoption of measures under the Regulation; underlines that the procedure for adopting and lifting measures respects the principles of objectivity, non-discrimination and equal treatment of Member States and is to be conducted using a non-partisan and evidence-based approach;

15. Recalls that the Council is bound to act upon any proposal of the Commission to adopt appropriate measures under the Regulation within a period of one month, which may be extended by a maximum of two additional months in exceptional circumstances;

16. Recalls that measures taken under the Regulation should be proportionate, in the light of the actual or potential impact on the sound financial management of the Union budget or the financial interests of the Union, taking into account the nature, duration, gravity and scope of the breaches of the principles of the rule of law; considers that, in general, the seriousness of that impact will reflect the seriousness of the breaches;

Final recipients and beneficiaries

17. Recalls that, unless the decision adopting the measures states otherwise, the imposition of appropriate measures under the Regulation does not affect the obligations of Member States towards final recipients or beneficiaries, including the obligation to make payments;

18. Calls on the Commission to implement Article 5(4) of the Regulation and swiftly set up a website or internet portal with information and guidance for the benefit of final recipients or beneficiaries and with adequate tools for them to inform the Commission about any breach of the legal obligation to continue making payments after measures pursuant to this Regulation are adopted, such as a simple and structured complaint form;

19. Stresses that, in shared management, measures under the Regulation cannot be considered to affect the availability of funding for payments to beneficiaries; recalls also that Member States concerned by those measures must regularly report to the Commission on compliance with their obligations towards final recipients or

beneficiaries;

20. Calls on the Commission to analyse all information at its disposal and do its utmost to ensure that any amount due from government entities or Member States is in fact paid to final recipients or beneficiaries, which may entail recovering payments that have been made or making financial corrections by reducing Union support to programmes in line with applicable sector-specific and financial rules;

21. Instructs its President to forward this resolution to the Council and the Commission.