Rule of law: new mechanism aims to protect EU budget and values

The EU has adopted rules which make it possible to stop payments from the EU budget to member states that do not respect the rule of law.

On 16 December 2020, Parliament approved an agreement with the Council presidency on legislation establishing a mechanism that would allow the suspension of budget payments to a member state violating the rule of law.

The decision on the suspension will have to be taken by the Council acting by a qualified majority on the proposal of the European Commission.
The new rules apply from 1 January 2021. Hungary and Poland have brought cases before the European Court of Justice questioning the legality of the mechanism, but these do not suspend its application.

Parliament has consistently argued that the mechanism is in place and the Commission has a legal duty to defend the EU's financial interests. In resolutions adopted in March, June and July 2021, Parliament urged the Commission to act and said it is ready to take legal action against the Commission if it fails to fulfil its obligations.

MEPs have been warning that European values are at risk and that EU funds from the long-term budget and the recovery plan should not be put into the hands of those working against democracy and fundamental rights in Europe.

In a report adopted on 7 October 2020, MEPs called for reinforcement of the rule of law across Europe through a new mechanism and for effective sanctions on member states found to be in violation. They also insisted that the EU institutions should agree clear rules that link receiving EU funds to how a member state respects the rule of law.

**What is rule of law?**

Rule of law is laid down in the EU treaties as one of the values on which the Union is based. It means that governments should be bound by law, that they should not take arbitrary decisions and that citizens should be able to challenge their actions in independent courts.

It also enshrines the fight against corruption, which unfairly favours some to the detriment of others, and the safeguarding of media freedom, thus ensuring the public is properly informed about the work of government.

Rule of law is a common concern among Europeans. In a 2019 Eurobarometer survey, at least 85% of respondents across the EU considered each of the different aspects of the rule of law as essential or important. Another survey, from October 2020, found that 77% of Europeans support the concept that the EU should only provide funds to EU countries if they are in compliance with the rule of law and democratic principles.

**EU mechanisms for the protection of rule of law**

The EU has existing tools at its disposal to protect the rule of law. On 30 September 2020, the European Commission published the first annual rule of law report that monitors both positive and negative developments relating to the rule of law in all member states. It has been monitoring Romania and Bulgaria since they joined the EU in 2007.

There is also dialogue on the rule of law in the Council. The German presidency held country-specific discussions for the first time in November, starting with five EU countries.
If the Commission is of the view that a member state is violating EU law, it can start infringement proceedings that may lead to financial sanctions determined by the European Court of Justice. Another procedure, under Article 7 of the Treaty on European Union, allows the Council to make recommendations or decide by unanimity on sanctions against a member state, including the suspension of membership rights.

**The case for further measures**

MEPs have argued that existing tools are insufficient. While there are ongoing hearings in the Council under Article 7 regarding Poland and Hungary, Parliament has expressed its regret about the lack of significant progress by the two member states in addressing the issues.

In a plenary debate on 5 October 2020, MEPs welcomed the annual rule of law report launched by the Commission, but called for more action on enforcement. “Monitoring alone will not bring back judicial independence in Poland, nor will it save the Index media [outlet] in Hungary,” said Michal Šimečka (Renew Europe, Slovakia).

Šimečka drafted a report adopted on 7 October, calling for a mechanism that consolidates existing instruments and establishes an Annual Monitoring Cycle, with country-specific recommendations, timelines and targets for implementation. The cycle should serve as the basis for triggering Article 7 or suspending budget funds for a member state.

**Protecting EU financial interests**

Corruption or dependent courts may mean there is no protection against misuse of EU money allocated to a member state. The Commission put forward a legislative proposal in 2018 that aims to defend the Union’s financial interests, should deficiencies in the rule of law be detected.

Parliament adopted its position on the proposal in early 2019. The file was linked to the outcome of the negotiations on the EU long-term budget and Parliament insisted that an agreement on the 2021-2027 budget was only possible if there was sufficient progress on this legislation.

EU leaders agreed in July 2020 to introduce rule of law conditionality, i.e. to make receipt of EU funds by a member state dependent on its respect for the rule of law. The German Council presidency put forward a compromise proposal in early autumn, which MEPs criticised as insufficient during the plenary debate on 5 October.

“A mechanism that cannot ever be triggered in practice due to backdoors or indecisive processes serves only the interests of those who do not wish to see any measures taken,” said Petri Sarvamaa (EPP, Finland).

**Agreement with the Council**

MEPs started negotiations with the Council in October. Parliament’s co-rapporteurs on the file were Sarvamaa and Eider Gardiazabal Rubial (S&D, Spain).
An agreement was reached on 5 November 2020. Parliament’s negotiators secured a broad scope of the legislation, ensuring it will not only apply to cases of corruption and fraud, but will also cover systemic breaches of fundamental values, such as democracy or the independence of the judiciary, when those breaches affect – or risk affecting – the management of EU funds.

The agreed text also protects the final beneficiaries of the funds such as students, farmers or NGOs. They will be able to file a complaint to the Commission via a web platform, which will assist them in ensuring they receive the due amounts.

“For us it was crucial that final beneficiaries won’t be punished for the wrongdoing of their governments and that they continue receiving funds that have been promised to them,” said Gardiazabal Rubial.

Find out more
Facebook Live with budgetary control committee chair Monika Hohlmeier on the informal agreement with Council (9 November)