**Follow up to the European Parliament non-legislative resolution on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism**

1. **Resolution tabled pursuant to Rule 132(2) of the European Parliament's Rules of Procedure**
2. **Reference numbers:** 2021/2582 (RSP) / B9-0208/2021 / P9\_TA-PROV(2021)0103
3. **Date of adoption of the resolution:** 25 March 2021
4. **Competent Parliamentary Committee:** N/A
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The European Parliament adopted the resolution on 25 March 2021 with a large majority (529 in favour, 148 against and 10 abstentions). It follows a debate on the application of Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget (the “Regulation”) during the Parliament’s plenary session of 11 March 2021.

As stated already in the resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the resolution reiterates the position expressed by the Parliament on the direct applicability of the Regulation from 1 January 2021. In that context, the resolution calls on the Commission to avoid any further delay in the application of the regulation.

The resolution states that the situation in some Member States as regards the respect for the principles of the rule of law requires immediate consideration and calls on the Commission to act on it **(paragraph 7)**. It regrets the absence of written notifications to the Member States in line with the regulation so far despite many concerns about the breaches of the rule of law identified in the Commission’s 2020 Rule of Law Report, which have an impact on the sound financial management of the Union budget **(paragraph 9)**. The resolution calls on the Commission to inform regularly the European Parliament about all ongoing investigations into breaches of the principles of the rule of law under the Regulation **(paragraph 10)**. Furthermore, it asks the Commission to introduce in the annual Rule of Law Report a specific section with analysis of cases that could fall within the scope of application of the regulation **(paragraph 11)**.

The resolution also recalls that the application of the regulation cannot be subject to the adoption of the guidelines, and calls on the Commission to adopt the guidelines at the latest by 1 June 2021 and consult the Parliament prior to their adoption **(paragraph 13)**. Finally, it informs that the Parliament will consider actions for failure to act under Article 265 of the Treaty on the Functioning of the European Union (TFEU) in case the Commission does not fulfil its obligations and does not provide the Parliament with the required information by 1 June 2021 **(paragraph 14)**.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

The Commission is fully committed to fulfil its task of enforcing the regulation in accordance with its terms and requirements, and is working to identify breaches of the rule of law principles that would be relevant under the regulation as from 1 January 2021. All possible relevant breaches affecting the sound financial management of the Union budget and the financial interests of the Union after that date will be considered.

With respect to **paragraphs 7 and 9** of the resolution, the Commission would like to point out that since January 2021 it has been assessing information from the sources cited in the regulation and other available sources to identify possible breaches of the principles of the rule of law in the Member States that would fall within the scope of the regulation. The information from those sources will be taken into account in the Commission’s thorough qualitative assessment under the regulation. More particularly, the Annual Rule of Law Report is one of the sources mentioned in the regulation. However, issues reported therein may not be automatically taken up by the Commission for the purposes of the regulation: the Commission must conduct a thorough qualitative assessment that can take the Rule of Law Report into account but cannot be based exclusively on it. In this respect, in addition to all the available sources of information, the Commission may also engage in a dialogue with the Member State concerned[[1]](#footnote-1) with a view to collecting additional information for its objective, impartial and fair assessment in line with the conditions of the regulation.

The Commission should have reasonable grounds to consider that the conditions for the application of the regulation are fulfilled, and in particular, that any identified breach of the principles of the rule of law affects or seriously risks 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 Commission will initiate the procedures under the regulation unless it considers that other procedures set out in Union legislation would allow it to protect the Union’s budget more effectively.

With respect to **paragraph 10** of the resolution, the Commission will keep the European Parliament informed in accordance with the obligations under the regulation, as established by the co-legislators. First, the Commission will inform the European Parliament each time it sends a written notification to a Member State pursuant to Article 6 of the regulation, as well as on any appropriate measures proposed, adopted or lifted by the Council. Second, the Parliament has the possibility to invite the Commission to a formal structured dialogue once the Commission has sent a written notification to a Member State. The Commission will also report to the European Parliament on the application and effectiveness of the regulation as a whole by January 2024.

Inrelation to **paragraph** **11**, the Commission would like to stress that the general regime of the conditionality procedure and the Rule of Law Report are two distinct instruments with different objectives and scope. The general regime of conditionality is a budgetary instrument designed to remedy adverse effects of breaches of the principles of the rule of law on the sound financial management of the Union budget and on the financial interests of the Union. Therefore, not every breach of the rule of law principles is relevant for the application of the regulation, only those that affect or seriously risk affecting the sound financial management of the Union’s budget or the financial interests of the Union in a sufficiently direct way. The Rule of Law Report has a different purpose and is a preventive tool, aiming at deepening the awareness about the situation of the rule of law in the Member States to prevent challenges from emerging or deepening. Therefore, the two instruments should remain separate. However, as mentioned, the report is a source that will be taken into account in the Commission’s thorough qualitative assessment when identifying and addressing relevant breaches of the principles of the rule of law under the regulation. In addition, references to Council decisions on appropriate measures under the regulation may be included in the relevant Country Chapters of the annual Rule of Law Report.

With regard to **paragraph 13**, the Commission, as is normal with new complex legislation, is currently working on guidelines concerning certain aspects of the application of the regulation. The Commission has shared on 14 June the draft guidelines with the European Parliament (and the EU Member States). Comments can be submitted until 31 August 2021. The Commission agrees with the Parliament that the application of the regulation is not subject to the adoption of guidelines. As mentioned, the Commission is already applying the regulation, as it is assessing relevant breaches under the Regulation. The Commission will start the procedure if the conditions of Articles 4 and 6 of the regulation are fulfilled. The Commission is also aware that Poland and Hungary have challenged the validity of the regulation before the Court of Justice of the European Union and has requested the Court of Justice to intervene in the court proceedings to defend its validity. The Commission will take the judgment into account when finalising the guidelines, insofar as relevant.

1. In accordance with Article 6(4), the Commission may also contact the Member State concerned to request additional information. This may lead to a dialogue, with a view to increasing cooperation and possibly addressing concerns at an early stage of the procedure [↑](#footnote-ref-1)