**Follow-up to the European Parliament non-legislative resolution on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget**

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2. **Reference number:** [2021/2071 (INI)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/2891(RSP)) / A9-0226/2021 / P9\_TA-PROV(2021)0348
3. **Date of adoption of the resolution:** 8 July 2021
4. **Competent Parliamentary Committee:** Committee on Budgets (BUDG), Committee on Budgetary control (CONT)
5. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution adopts the European’s Parliament own initiative report on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget. With this resolution, the Parliament contributes to the consultation process on the draft guidelines on the application of Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget (“Regulation”) that were transmitted by the Commission to the Parliament and the Member States for their comments on 14 June 2021.

The resolution repeats the call for a swift activation of the Regulation. It stresses that the Regulation is directly applicable and not subject to the adoption of any guidelines or additional interpretation. It therefore calls upon the Commission to investigate swiftly any potential breaches of the principles of the rule of law in the Member States under the Regulation and to report to the Parliament regularly and proactively on new and ongoing cases under investigation. Finally, the Parliament welcomes the letter of 23 June 2021 of its President calling on the Commission to take action, on the basis of Article 265 of the Treaty on the Functioning of the European Union (TFEU), in order to fulfil its obligations under the Regulation.

As regards the guidelines, the resolution includes suggestions of the Parliament to the draft text and calls upon the Commission to take them into account in the final version of the guidelines. The suggestions are largely in line with the current text of the draft guidelines.

1. **Response to requests and overview of action taken, or intended to be taken, by the Commission:**
2. The Commission has been duly applying Union law and complying with the requirements of the Regulation since 1 January 2021, the date on which the Regulation became applicable (paragraph 5[[1]](#footnote-1)). The Commission agrees with the Parliament that the application of the Regulation is not subject to the adoption of guidelines. Therefore, the Commission is already applying the Regulation, as it is assessing breaches of principles of the rule of law that may be relevant under the Regulation. The Commission will initiate the procedure under the Regulation where it finds that it has reasonable grounds to consider that the conditions of Articles 4 and 6 of the Regulation are fulfilled.
3. Article 5(4) of the Regulation requires the Commission to provide information and guidance for the benefit of final recipients or beneficiaries on the obligations of the Member States on which measures are imposed (paragraphs 1-3). To fulfil that obligation, the Commission has prepared guidance for the benefit of final recipients or beneficiaries of Union funding, included in the draft guidelines distributed to the European Parliament and the Member States for consultation. The guidelines also explain the procedure and the way the Commission will be assessing cases under the Regulation. The guidelines do not change the law as set by the Regulation but only clarify how the Commission will apply it (paragraph 3).
4. The Commission fully recognises the importance of the Parliament as a partner throughout the implementation of the Regulation (paragraphs 7 and 8). The Commission consulted the Parliament on the draft guidelines and welcomes the Parliament’s contribution to the development of the final version of the guidelines. In the context of potential cases under the Regulation, the Commission will ensure that the European Parliament is kept duly informed. First, the Commission will inform the European Parliament each time it sends a written notification to a Member State, as well as of any appropriate measures the Commission proposes. It will also inform the Parliament of measures 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 is committed to participate actively in such dialogues. The Commission will also report to the European Parliament on the application and effectiveness of the Regulation as a whole by January 2024.

Breaches of the principles of the rule of law (paragraphs 9-18)

1. The draft guidelines underline that the Regulation covers both individual and systemic breaches (paragraphs 9 and 10). As the Regulation applies since 1 January 2021, the Commission considers that its application will normally focus on budgetary commitments under the 2021-2027 multiannual financial framework (MFF), and later on future MFFs. Measures may also address earlier commitments, in particular with regard to breaches that are recurring and ongoing. The Commission takes note of the request from the Parliament on this point and will reflect on whether there is any need for clarification on this point in the final version of the guidelines.
2. Furthermore, the draft guidelines clarify that other practices or omissions of public authorities or other legal situations covered by Article 4(1) of the Regulation may be relevant under the Regulation, as well as the list of situations that may be indicative of rule of law breaches in Article 3 of the Regulation (paragraph 11). Consequently, when assessing breaches of the principles of the rule of law, the Commission will take into account the list in Article 3 of the Regulation as well as other practices or omissions by public authorities.
3. With regard to the situations or conducts of public authorities listed in Article 4(2) of the Regulation, the draft guidelines already reference Article 4(2)(h) (paragraph 12). This paragraph of the guidelines covers any other situation or conduct of authorities that are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union. Concerning the relevance of the situations indicated in paragraph 13, the draft guidelines point out that non-effective or untimely cooperation with the European Public Prosecutor’s Office (EPPO) and the European Anti-Fraud Office (OLAF) constitutes a possible ground for action under the Regulation. This may include for example any action or inaction by a Member State that may materially prevent the EPPO from being fully operational, effective and independent.
4. As regards the assessment process (paragraphs 14 and 17), the Commission agrees with the Parliament about the need for a qualitative assessment of potential cases under the Regulation. Section 5 of the draft guidelines explains how the Commission will carry out its assessment, which needs to be objective, impartial and fair. In this respect, the Commission’s annual Rule of Law Report is one of the sources the Commission will use to identify and assess relevant breaches of the principles of the rule of law, in line with recital 16 of the Regulation. This has already been clarified in section 5.2.1 of the draft guidelines (paragraph 15). While the Conditionality Regulation and the Commission’s annual Rule of Law Report have different objectives and should remain separate, the findings of the report feed the Commission’s assessment under the Regulation, and references to adopted measures under the Regulation may be included in the relevant Country Chapters of the annual Rule of Law Report.
5. Concerning the meaning of government entity (paragraph 18), the relevant definition is laid down in Article (2)(b) of the Regulation, which corresponds with the Financial Regulation.
6. The Commission has also prepared a complaint form through which complainants can notify it of alleged breaches of the principles of the rule of law under the Regulation, which is annexed to the draft guidelines (paragraph 16). The form will contribute to making accessible important information that will add to the sources that the Commission has already been screening since 1 January 2021. To facilitate the submission of complaints, the Commission has set up a dedicated mailbox (BUDG-CONDITIONALITY-REGIME-COMPLAINTS@ec.europa.eu) through which alleged rule of law breaches relevant to the Regulation may be brought to the Commission’s attention. The Commission will clarify in the final version of the guidelines that it will ensure that the rules set out in Directive (EU) 2019/1937[[2]](#footnote-2) will be complied with.

Protecting the Union budget (paragraphs 19-23):

1. Systemic breaches or persistent violations of democracy and fundamental rights, provided they qualify as breaches of the principles of the rule of law for the purposes of the Regulation may indeed trigger the application of the Regulation (paragraphs 20 and 23). However, the Regulation requires the Commission to establish that a breach 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. If a sufficiently direct link with the budget cannot be established, the Regulation will not apply. This is the reason why the Commission needs to carefully assess and build up an evidence-based and robust analysis of potential cases, including as regards the link between the identified breach and the effect it may have on the Union budget. Thus, each case will be assessed on its own merits and on the basis of concrete evidence available to the Commission, as a one size fits all approach would not be appropriate. This approach is reflected in the draft guidelines.
2. Moreover, the draft guidelines describe the elements that the Commission will examine when assessing the proportionality of the measures. In that regard, the guidelines state that where breaches are systemic or widespread, these factors should be taken into account as regards the proportionality of the measures to be proposed.
3. The Commission does not consider the Regulation as a “last resort” instrument (paragraphs 21-22) and it will apply it in accordance with the intention of the co-legislators, i.e. where procedures already established under other Union legislation would not allow it to protect the Union budget more effectively. The Commission’s objective is to protect the Union budget and the Union’s financial interests in the most effective manner and the Regulation is a tool complementing all the other tools the Commission has at its disposal for such protection. In that regard, the Commission has laid down in the draft guidelines indicative criteria that may be used to determine the effectiveness of the protection provided under the Regulation as compared to other existing instruments to protect the financial interests of the Union.

Adoption of measures (paragraphs 24-28):

1. Article 6(4) of the Regulation provides for the possibility for the Commission to request any additional information from the Member State concerned, including before sending a written notification (paragraph 25). The Commission services will contact the concerned Member State where that is necessary for the Commission to complete its preliminary assessment. The Commission will make use of that possibility reasonably and within a defined time limit, as also explained in the draft guidelines.
2. In the same vein, in accordance with recital 23 of the Regulation, the Commission is committed to make the most appropriate use of its rights under Article 237 TFEU and the Council’s Rules of Procedure with a view to ensuring that the Council takes a timely decision on the proposal for measures (paragraph 26). This commitment is reflected as well in the draft guidelines.
3. The Commission agrees with the Parliament on the need to ensure a consistent and transparent approach for the application of the Regulation (paragraphs 26 and 27). The purpose of the guidelines is precisely to bring clarity and predictability in the way the Commission will apply the Regulation.

Protection of final recipients and beneficiaries (paragraphs 29-34):

1. The Commission considers that the conclusion on whether the rights of beneficiaries or final recipients may be legitimately affected by some measures requires a case by case analysis (paragraph 31). Therefore, in line with the draft guidelines and as suggested by the Parliament, the Commission will assess any relevant information in this respect. Should the Commission be aware of cases where the beneficiary or final recipient has been involved in or taken advantage of the situation created by the rule of law breach, it could be opportune that the measures to be adopted under the Regulation also have an impact on that beneficiary or recipient. In such cases, the Commission will include its conclusions in this regard in its proposal to the Council.
2. The guidelines already include a specific section providing guidance on the rights of beneficiaries and final recipients in case of imposition of measures by the Council (paragraph 32). The Commission refers in that section to a specific portal/ website where citizens, including beneficiaries or final recipients, may seek informal guidance. This portal/ website will also include a complaint form and may be accompanied in due course with a Frequently Asked Questions document. At the same time, recipients and beneficiaries of Union funds may also use the mailbox (BUDG-CONDITIONALITY-REGIME-COMPLAINTS@ec.europa.eu) set up by the Commission to ask questions in relation to their rights.
3. The guidelines also present the way in which the Commission will verify whether payment obligations towards final recipients or beneficiaries set under the Regulation and other applicable Union law have been complied with (paragraph 34). This will be done on the basis of the reporting by the Member States in the context of shared management, but also on any other information at the disposal of the Commission, including through complaints received. Where necessary, it will do its utmost to ensure that any amount due from government entities or Member States is effectively paid to final recipients or beneficiaries in accordance with the relevant sector-specific rules. This may entail, for instance, the application of financial corrections in line with applicable Union law. The Commission may also decide to open infringement proceedings against the Member State concerned to ensure compliance with the Member State’s obligation enshrined in Article 5(2) of the Regulation.

1. All references to paragraphs refer to the Resolution and not the draft guidelines, unless otherwise stated [↑](#footnote-ref-1)
2. Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17. [↑](#footnote-ref-2)