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**COMMUNICATION FROM THE COMMISSION**

**Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget**

## 1. INTRODUCTION

1. The European Union is based on the rule of law<sup>1</sup>. Respect for the rule of law is one of the values on which the Union is founded, which are common to the Member States, as set out in Article 2 of the Treaty on European Union (TEU) and in the preambles to the TEU and to the Charter of Fundamental Rights of the European Union.
2. The Union budget is one of the main instruments to express the principle of solidarity (Article 2 TEU), one of the fundamental principles of Union law, based on the mutual trust between the Member States to responsibly use common resources from the Union budget. However, that mutual trust is itself based on the commitment of each and every Member State to comply with the obligations incumbent upon it under European Union law and to continuously respect the values contained in Article 2 TEU, which include the value of the rule of law. Compliance by a Member State with the values contained in Article 2 TEU is a condition for the enjoyment of all the rights deriving from the application of the Treaties to that Member State<sup>2</sup>.
3. The Regulation on a general regime of conditionality for the protection of the Union budget<sup>3</sup> (the ‘Conditionality Regulation’) aims at protecting the Union budget against breaches of the principles of the rule of law that affect or seriously risk affecting its sound financial management or the protection of the financial interests of the Union in a sufficiently direct way. The Conditionality Regulation is a permanent instrument applying beyond the limits of a given multiannual financial framework.<sup>4</sup>
4. The purpose of these guidelines is to explain five aspects of the Conditionality Regulation: (i) the conditions for the adoption of measures; (ii) the relation between the Conditionality Regulation and other instruments; (iii) the proportionality of the measures to be proposed to the Council; (iv) the procedure and assessment process; and (v) the protection of the rights of final recipients or beneficiaries.
5. These guidelines are not legally binding and do not create or alter any right or obligation as compared to those laid down in the TEU and the Treaty on the Functioning of the European Union (TFEU), the Financial Regulation<sup>5</sup>, the

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<sup>1</sup> See judgment of 23 April 1986, *Les Verts v Parliament*, C-294/83, ECLI:EU:C:1986:166, paragraph 23. See also the judgment of 20 April 2021, *Repubblica v Il-Prim Ministru*, C-896/19, ECLI:EU:C:2021:311, paragraphs 61 to 65.

<sup>2</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, ECLI:EU:C:2022:97, paragraph 126 and 129.

<sup>3</sup> 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, OJ L 433I, 22.12.2020, p. 1.

<sup>4</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21, ECLI:EU:C:2022:98, paragraph 188.

<sup>5</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, OJ L 193, 30.7.2018, p. 1.

Conditionality Regulation, the OLAF Regulation<sup>6</sup>, the EPPO Regulation<sup>7</sup> or other relevant Union acts, as interpreted by the Court of Justice and the General Court (the ‘Court of Justice of the European Union’<sup>8</sup>).

## 2. CONDITIONS FOR THE ADOPTION OF MEASURES

6. The objective of the Conditionality Regulation is the protection of the Union budget in the case of breaches of the principles of the rule of law in a Member State. The Conditionality Regulation sets out a series of conditions that must be fulfilled to initiate the procedure established by it.
7. In accordance with Article 4(1) of the Conditionality Regulation, ‘[a]ppropriate measures shall be taken where it is established in accordance with Article 6 that 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’. Pursuant to Article 4(2), breaches of the principles of the rule of law shall concern one or more of the situations referred to in that Article. Where that is the case, those breaches fall within the scope of the Conditionality Regulation.
8. The Commission will initiate the procedure set out in Article 6 of the Conditionality Regulation where it finds that the conditions set out in Article 4 are met. The Court of Justice has held that these conditions are met only where the Commission finds that there are reasonable grounds to consider that (i) at least one of the rule of law principles referred to in Article 2(a) of the Conditionality Regulation has been breached in a Member State, (ii) the said breach concerns at least one of the situations attributable to an authority of a Member State or at least one instance of conduct of such authorities referred to in Article 4(2) of that Regulation, in so far as those situations or that conduct is relevant to the sound financial management of the Union budget or for the protection of the Union’s financial interests, (iii) the said breach affects or risks seriously affecting that sound financial management or those financial interests, in a sufficiently direct way, with a genuine<sup>9</sup> or real link between those breaches and that effect or serious risk of effect<sup>10</sup>. When the conditions of Article 4 are met, the Commission will initiate the

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<sup>6</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 248, 18.9.2013, p. 1.

<sup>7</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’), OJ L 283, 31.10.2017, p. 1.

<sup>8</sup> See Article 19(1) TEU.

<sup>9</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, ECLI:EU:C:2022:97, paragraph 165.

<sup>10</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21, ECLI:EU:C:2022:98, paragraph 288.

procedure unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively. That procedure ensures the protection of the procedural rights of the Member State concerned.

9. When assessing cases under the Conditionality Regulation, the Commission will apply a comprehensive, proactive, risk-based and targeted approach, aiming at ensuring its effective application and thus at safeguarding the Union budget and protecting the Union's financial interests.

### **2.1. Relevant breaches of the principles of the rule of law**

10. The Court of Justice has clarified that Article 2(a) of the Conditionality Regulation *'states... that the concept of 'the rule of law', as defined for the purposes of the application of the said regulation, 'shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU'. It follows that respect for those values and principles – in so far as they form part of the very definition of the value of 'the rule of law' contained in Article 2 TEU or, as is apparent from the second sentence of that article, are closely linked to a society that respects the rule of law – may be required in the context of a horizontal conditionality mechanism such as that established by the contested regulation.'*<sup>11</sup>
11. Article 2(a) of the Conditionality Regulation merely sets out, for the sole purposes of that Regulation, a number of the principles that it covers and which are the most relevant in the light of its purpose, which is to ensure the protection of the Union budget.<sup>12</sup> That provision is not intended to provide an exhaustive definition of the concept of rule of law.
12. As regards fundamental rights, the Court has clarified that the reference to them *'is made only by way of illustration of the requirements of the principle of effective judicial protection'*. The principle of non-discrimination, by contrast, is part of the definition of the rule of law in its own right: *'it is clear that a Member State whose society is characterised by discrimination cannot be regarded as ensuring respect for the rule of law, within the meaning of that common value'*.<sup>13</sup>
13. Recital 15 of the Conditionality Regulation refers to *'individual breaches'* and to *'breaches that are widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by such authorities.'* The Conditionality Regulation covers both individual and systemic breaches, which are covered in so far as

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<sup>11</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21, ECLI:EU:C:2022:98, paragraph 154.

<sup>12</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, ECLI:EU:C:2022:97, paragraph 227.

<sup>13</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, ECLI:EU:C:2022:97, paragraph 229 and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21, ECLI:EU:C:2022:98, paragraph 324.

they are relevant for the sound financial management of the Union budget or for the protection of the Union's financial interests.' Thus, the Commission can assess both actions or failures to act by the public authorities.

14. Article 3 of the Conditionality Regulation is intended to facilitate the application of the Conditionality Regulation by providing a list of situations that may be indicative of breaches of the principles of the rule of law<sup>14</sup>. As this list is merely indicative, other actions, practices or omissions of public authorities or other legal situations covered by Article 4(1) of the Regulation may be relevant under the Conditionality Regulation.
15. The Court has held that 'there is *a clear relationship* between, on the one hand, respect for the value of the rule of law and, on the other hand, the efficient implementation of the Union budget, in accordance with the principles of sound financial management, and the protection of the financial interests of the Union'<sup>15</sup>. The Court has added that '*sound financial management and those financial interests are liable to be seriously compromised by breaches of the principles of the rule of law committed in a Member State, since those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the financing conditions laid down by EU law [...]*'.<sup>16</sup>
16. The Court has held that compliance with those financing conditions and objectives pursued by the Union when it finances expenditure '*cannot be fully guaranteed in the absence of effective judicial review designed to ensure compliance with EU law; the existence of such review, both in the Member States and at EU level, by independent courts and tribunals, is of the essence of the rule of law*'<sup>17</sup>. This is without prejudice to the requirement of a sufficiently direct link to the Union budget.
17. Breaches of the principles of the rule of law shall concern one or more of the situations or conducts of relevant public authorities or attributable to such authorities, insofar as they are relevant for the sound financial management of the Union budget or for the protection of the financial interests of the Union<sup>18</sup>.
18. The Court has held that such relevance can be presumed as regards the activities of the authorities referred to in points (a) and (b) of Article 4(2) of the Conditionality

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<sup>14</sup> A list of indicative breaches of the principles of the rule of law is also included in Annex I to the Guidelines.

<sup>15</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 130; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 148.

<sup>16</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 131; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 149.

<sup>17</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 132; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 150.

<sup>18</sup> An indicative list of these specific situations is also included in Annex I to the Guidelines.

Regulation, namely the authorities implementing the Union budget and carrying out financial control, monitoring and audit<sup>19</sup>.

19. Regarding investigation and public prosecution services, the proper functioning of those services is caught, under point (c) of that provision, only in so far as it relates to breaches of EU law concerning the implementation of the Union budget or the protection of the financial interests of the Union. The same applies to the prevention and sanctioning, by national courts or administrative authorities, of the breaches of EU law mentioned in point (e). As regards the judicial review referred to in point (d), it is caught only in so far as it concerns the conduct of the authorities referred to in points (a) to (c). The recovery of funds unduly paid, provided for in point (f), covers only funds from the Union budget, which is also the case for cooperation with OLAF and the EPPO, mentioned in point (g). Lastly, point (h) expressly refers to any other situations 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.<sup>20</sup>
20. The consequence of this understanding is that, as regards national authorities whose activities are general and not confined to the implementation or protection of the Union budget, their conduct or situations that constitute a breach of the principles of the rule of law will only fall within the scope of the Regulation insofar as it is relevant for the sound financial management of the Union budget or for the protection of the Union's financial interests.
21. The Commission notes that, among these specific situations or conduct of public authorities, non-effective or untimely cooperation with the EPPO and OLAF constitutes a ground for action under the Conditionality Regulation<sup>21</sup>. As regards the EPPO<sup>22</sup>, the scope of this cooperation includes the obligation for the competent national authorities of the Member States participating in the EPPO to actively assist and support the criminal investigations and prosecutions of the EPPO<sup>23</sup>. As regards OLAF, the scope of this cooperation includes the right for OLAF<sup>24</sup> to carry out on-the-spot checks and inspections, with the assistance needed to carry them out effectively, and to have access to the relevant information, data and documents either to decide whether or not to open an investigation or to carry out investigations effectively and without undue delay. It also includes the related obligations for the Member State concerned,

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<sup>19</sup> See judgement of 16 February 2022, *Hungary v. Parliament and Council*, C-156/21, ECLI:EU:C:2022:97, paragraph 143.

<sup>20</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/-21, ECLI:EU:C:2022:97, paragraph 143.

<sup>21</sup> See point (g) of paragraph 2 of Article 4 of the Conditionality Regulation.

<sup>22</sup> See relevant provisions of Council Regulation (EU) 2017/1939, cited above.

<sup>23</sup> This is without prejudice to the obligations of non-participating Member States to cooperate with the EPPO, under applicable Union rules, when it exercises its competences in participating Member States and requires such cooperation.

<sup>24</sup> In line with the provisions of Regulation (EU, Euratom) No 883/2013, cited above.

including<sup>25</sup> to: (i) inform OLAF<sup>26</sup>, (ii) provide OLAF with the assistance needed in order to carry out its tasks effectively in the conduct of such investigation<sup>27</sup>, (iii) take appropriate precautionary measures, in particular measures to safeguard relevant evidence<sup>28</sup>, (iv) take appropriate action on the basis of information provided by OLAF, before OLAF takes a decision whether or not to open an investigation<sup>29</sup>, and (v) ensure appropriate and timely follow-up to OLAF reports and recommendations upon completion of its investigations, reporting back to OLAF on the action taken<sup>30</sup>.

22. Compliance by the Member State concerned with these obligations is indeed essential to ensure an effective protection of the financial interests of the Union. The Commission will therefore monitor the effective and timely cooperation with OLAF, in view of the principles established in Article 3 of the Conditionality Regulation. This is particularly important for Member States that do not participate in the enhanced cooperation regarding the EPPO, as in those Member States, OLAF is competent to investigate allegations of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Moreover, a systematic lack of follow-up of OLAF recommendations may amount to conduct of public authorities that could be concerned by a breach of the principles of the rule of law under the Conditionality Regulation.
23. Furthermore, Article 4(2)(h) covers any other situations 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. The Court has held that Article 4(2)(h) has to be interpreted in conjunction with Article 4(1), which is the *'the very core of the horizontal conditionality mechanism established by that regulation'*<sup>31</sup> The Court has also held that Article 4(2) of the Conditionality Regulation, *'in particular point (h) thereof, is neither such as to render non-exhaustive the situations covered by the conditionality mechanism established by the contested regulation nor insufficiently precise to form part of it'*.<sup>32</sup>
24. To give one possible example, a situation or conduct of (or omissions by) authorities within the meaning of Article 4(2)(h) of the Conditionality Regulation may cover the proper functioning of the authorities in charge of land registries and of related controls

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<sup>25</sup> These obligations are foreseen in Regulation (EU, Euratom) No 883/2013. The list provided in these Guidelines is not exhaustive.

<sup>26</sup> Article 8 of Regulation (EU, Euratom) No 883/2013.

<sup>27</sup> Article 3 of Regulation (EU, Euratom) No 883/2013.

<sup>28</sup> Article 7(7) of Regulation (EU, Euratom) No 883/2013.

<sup>29</sup> Article 5(5) of Regulation (EU, Euratom) No 883/2013.

<sup>30</sup> Article 11(3) and (5) of Regulation (EU, Euratom) No 883/2013.

<sup>31</sup> See judgement of 16 February 2022, Hungary v. Parliament and Council, C-156/21, ECLI:EU:C:2022:97, paragraph 294.

<sup>32</sup> See judgements of 16 February 2022, Hungary v. Parliament and Council, C-156/21, ECLI:EU:C:2022:97, paragraph 301; and Poland v Parliament and Council, C-157/21, ECLI:EU:C:2022:98, paragraph 173.

on leasing and/or ownership of agricultural land (including law enforcement actions, where appropriate), insofar as such leasing and/or ownership is relevant to the receipt of subsidies under the Common Agricultural Policy of the Union.

25. It is worth recalling that the Conditionality Regulation applies to all EU funds. In this respect, the co-legislators have also clarified that the Conditionality Regulation may be triggered where the proper functioning of the authorities implementing their Recovery and Resilience Plans is not ensured, in line with Article 8 of Regulation (EU) 2021/241 ('RRF Regulation')<sup>33</sup>. The Court of Justice also clarified that the Conditionality Regulation can also relate to breaches of the principles of the rule of law affecting the collection of the Union's own resources<sup>34</sup>.

## **2.2. Effects on the sound financial management of the Union budget or the protection of the financial interests of the Union**

26. According to Article 4(1) of the Conditionality Regulation, for a given conduct or situation to fall within the scope of the Conditionality Regulation, the Commission needs to identify a breach of the principles of the rule of law and to assess whether such a breach (i) affects, or seriously risks affecting, the sound financial management of the Union budget or the protection of the financial interests of the Union, (ii) in a sufficiently direct way. This assessment should be made on a case-by-case basis.
27. The first condition in paragraph 24 above (see point (i): 'affects'), requires that the identified breach of the principles of the rule of law has an effect on the sound financial management of the Union budget or on the financial interests of the Union.
28. That effect may consist, first, in implementing the Union budget in a way that is not compliant with the principles of sound financial management as enshrined in Article 317 TFEU and in the rules adopted for the implementation of the Union budget. In particular, Article 2(59) of the Financial Regulation defines 'sound financial management' as 'implementation of the budget in accordance with the principles of economy, efficiency and effectiveness'. Articles 33 to 36 of the Financial Regulation set out in more detail the meaning, scope and consequences of those principles.
29. Second, that effect may also be established in relation to breaches of the principles of the rule of law that are detrimental to the protection of the financial interests of the Union, enshrined in Article 325 TFEU and in the relevant secondary legislation. In particular, according to Article 63(2) of the Financial Regulation, this covers all legislative, regulatory and administrative measures designed, inter alia, to prevent, detect and correct irregularities and fraud in the implementation of the budget. The

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<sup>33</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.

<sup>34</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 186.



‘financial interests of the Union’ are defined in Article 2(1) of Regulation No 883/2013 as including ‘revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them’. Moreover, according to the case law of the Court of Justice, the concept of ‘financial interests of the Union’, within the meaning of Article 325(1) TFEU, encompasses both revenue made available to the Union budget but also expenditure covered by that budget<sup>35</sup>.

30. Furthermore, when determining the extent of the effect on the Union budget or the financial interests of the Union, the Commission will duly take into account criteria such as the nature, duration, seriousness and scope of the identified breaches of the principles of the rule of law, which may vary depending on the characteristics of those breaches.<sup>36</sup> In addition, the intention of the relevant Member State to put an end to the breach of the principles of the rule of law, including the degree of its cooperation with the Commission under the Conditionality Regulation may be relevant, among others, for the purpose of measuring the impact, duration and scope of the relevant breach on the sound financial management of the Union budget or the financial interests of the Union<sup>37</sup>.
31. As regards the situation where breaches of the principles of the rule of law entail a ‘serious risk’ affecting the sound financial management of the Union budget or the protection of the financial interests of the Union, the Court has found that ‘*it would be incompatible with the requirements of sound financial management of the Union budget and the protection of the financial interests of the Union to limit the adoption of appropriate measures to cases of proven effects on that sound financial management or those financial interests. Such limitation would be liable to compromise the purpose of the ... Regulation.*’<sup>38</sup> The prevention of the effects referred to in Article 4(1) of the Regulation is ‘a permanent and horizontal requirement of EU financial legislation’.<sup>39</sup> A “serious risk” may be established in cases where the effects of the relevant breach of the principles of the rule of law, although not yet proven, can nevertheless be reasonably

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<sup>35</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 265; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 297.

<sup>36</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 331; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 361.

<sup>37</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 332.

<sup>38</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 262.

<sup>39</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 266; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 298.

foreseen, since there is a high probability that they will occur<sup>40</sup>. It must therefore be demonstrated that the risk has a high probability of occurring, in relation to the situations or to the forms of conduct of the authorities referred to in Article 4(2) of the Conditionality Regulation. For instance, if certain acts of national authorities implementing Union funds through public procurement, or collecting the Union's own resources, or carrying out financial control, monitoring and audit of Union funds, or investigating allegations of fraud, corruption or other breaches of Union law in the implementation of Union funds or revenue, cannot be effectively reviewed by fully independent courts, this may entail a serious risk insofar as the Union funds and the financial interests of the Union are concerned.

32. Finally, it is not sufficient that a 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. According to Article 4(1) of the Conditionality Regulation, the breach of the principles of the rule of law should do that 'in a sufficiently direct way' (second condition in paragraph 24 above (see point (ii))).
33. Pursuant to this requirement, it should be established that there is a sufficiently direct relation between the breach of the principles of the rule of law and its effects, or serious risks thereof, on the sound financial management of the Union budget or on the protection of the financial interests of the Union. The Court of Justice has considered that the terms 'in a sufficiently direct way' require that the link between the breach of the principles of the rule of law and the impact or risks for the Union budget should be 'genuine' or 'real'.<sup>41</sup> This means that the procedure of the Regulation should not be triggered with regard to situations in which the connection is merely hypothetical, too uncertain or too vague.

### **3. THE RELATION BETWEEN THE CONDITIONALITY REGULATION AND OTHER PROCEDURES SET OUT IN UNION LEGISLATION**

34. Where the Commission finds that it has reasonable grounds to consider that the conditions for the adoption of measures under the Conditionality Regulation are fulfilled, before starting the procedure it will consider whether appropriate measures are necessary, i.e. whether other procedures set out in Union legislation for the protection of the Union budget would not allow it to protect the Union budget more effectively, as established by Article 6(1) of the Conditionality Regulation.

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<sup>40</sup> See judgement of 16 February 2022, *Hungary v. Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 262.

<sup>41</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 288.

35. In effect, the Union financial legislation and the applicable sector-specific rules already provide for other procedures to protect the Union budget.
36. For instance, the Financial Regulation provides for an early-detection and exclusion system ('EDES')<sup>42</sup>, allowing the Commission to detect persons or entities representing risks threatening the protection of the financial interests of the Union early, and to exclude them from receiving funds from the Union budget, if certain conditions are met.
37. Moreover, the Commission may impose interruption or suspension of payments, and shall impose financial corrections on the Member States<sup>43</sup> if they do not comply with applicable law and do not protect the financial interests of the Union when they implement the Union budget under shared management<sup>44</sup>.
38. Under the RRF Regulation and the financing and loan agreements signed pursuant to it, the Commission has the right to reduce proportionately the support and recover any amount due to the Union budget in cases of fraud, corruption, conflict of interests affecting the interests of the Union that have not been corrected by the Member States. In addition, a number of recovery and resilience plans include measures directly linked to rule of law issues, whose satisfactory fulfillment is necessary for the release of payments under the RRF.
39. Nevertheless, it might not always be possible to trigger those procedures in relation to situations of breaches of the principles of the rule of law, such as those listed in Articles 3 and 4(2) of the Conditionality Regulation. There may also be situations where the measures under the Conditionality Regulation can be more effective in protecting the Union budget than procedures of Regulation (EU) 2021/1060 (CPR<sup>5</sup>) or Regulation (EU) 1306/2013 and, as from 1 January 2023 Regulation (EU) 2021/2116, as the latter may only be launched under the specific grounds listed in those Regulations<sup>45</sup> and may

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<sup>42</sup> See Financial Regulation, Article 135.

<sup>43</sup> See Financial Regulation, Article 101(8); also see, for instance, Articles 96, 97 and 104 of Regulation (EU) 2021/1060 of the European Parliament and the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, and Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy ('CPR') OJ L 231, 30.6.2021, p. 159, and Article 52 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549.

<sup>44</sup> See Financial Regulation, Article 63(2); also see, for instance, Articles 69(3) and 103 CPR, as well as Article 58 of Regulation (EU) 1306/2013 and as from 1 January 2023, Article 57 of Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013, OJ L 435, 6.12.2021, p. 187.

<sup>45</sup> Payments may be interrupted if: (a) there is evidence to suggest a serious deficiency for which corrective measures have not been taken; (b) the Commission has to carry out additional verifications

only relate to expenditure already declared by the Member State to the Commission. For instance, the effective application and implementation of the EU Charter of Fundamental Rights is a horizontal enabling condition in the meaning of Article 15 CPR. This enabling condition is a prerequisite condition for the effective and efficient implementation of the specific objectives of a programme. Under the CPR, if a Member State does not fulfil an enabling condition, the Commission shall not reimburse the expenditure related to operations linked to the concerned specific objective(s), with the exception of those expenditures that contribute to the fulfilment of the corresponding enabling condition. This measure applies only after the relevant programme or its amendment has been approved by the Commission. In cases of breaches of the principles of the rule of law in relation to the EU Charter of Fundamental Rights that affect the implementation of a Union programme, the Conditionality Regulation may be more effective insofar as it also provides for the possibility to suspend the approval or amendment of a programme and, as a consequence, further strengthen the protection of the Union budget thanks to its preventive effect.

40. In considering whether the procedure established by the Conditionality Regulation protects the Union budget more effectively than other procedures, the Commission, building on the enforcement of sector-specific legislation and without prejudice to its powers and obligations set therein, will take into account an open set of criteria, to be applied in light of the specific circumstances of each situation. In some situations, the Commission could apply the Conditionality Regulation alongside or following the adoption of sector-specific or financial measures that it may be bound to take, when the Conditionality Regulation would more effectively protect the Union budget and the financial interests of the Union, thereby demonstrating its added value. Otherwise, the added value and effectiveness of the Regulation, as a general and horizontal instrument aimed at protecting the Union budget and the financial interests of the Union, would be deprived of its useful effect.
41. The Commission considers that the following indicative criteria may be used to determine the effectiveness of the protection provided by the Conditionality Regulation as compared to other existing instruments to protect the Union's financial interests.

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following receipt of information that expenditure in a payment application may be linked to an irregularity. Payments may be suspended, if: (a) the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 96 CPR; (b) there is a serious deficiency; (c) the expenditure in payment applications is linked to an irregularity that has not been corrected; (d) there is a reasoned opinion by the Commission in respect of an infringement procedure under Article 258 TFEU on a matter that puts at risk the legality and regularity of expenditure. Financial corrections shall be made, if: (a) there is a serious deficiency which has put at risk the support from the Funds already paid to the programme; (b) expenditure contained in accepted accounts is irregular and was not detected and reported by the Member State; (c) the Member State has not complied with its obligations under Article 97 prior to the opening of the financial correction procedure by the Commission.

42. One first criterion relates to the scope of the effect on the Union budget and/or the extent of risk the breach of the principles of the rule of law may entail for the efficiency of its sound financial management or the protection of the financial interests of the Union. In particular, procedures under other Union financial rules may only apply to specific spending programmes and could therefore be insufficient, in some cases, for breaches of the principles of the rule of law that are ‘widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by such authorities’.<sup>46</sup> This may also happen where breaches of the principles of the rule of law carry a serious risk of affecting the sound financial management of the Union budget or the protection of the financial interests of the Union, whereas other Union financial rules could instead relate to already materialised effects on the Union budget. For instance, where national laws limit criminal liability for fraud or corruption, or weaken the anti-fraud and anti-corruption legal framework or the prevention of conflicts of interest, cases of fraud, corruption or conflict of interest cases might not be effectively investigated and prosecuted, and this could give rise to serious risks for the sound financial management of the Union budget or for the protection of the financial interests of the Union. In the same line of reasoning, general laws precluding an effective judicial review by independent courts of decisions of national authorities managing in whole or in part Union funds may also entail serious risks for the sound financial management of the Union budget. In such situations, the Commission may conclude that the use of the Conditionality Regulation might be more effective than other Union instruments.
43. Another relevant criterion relates to the types of remedies available and their suitability to different situations. The Conditionality Regulation provides a large variety of possibilities to address the specificities of the relevant breach of the principles of the rule of law that may be applied cumulatively<sup>47</sup>. Should the remedies available pursuant to other Union legislation be less appropriate to address the relevant breach of the principles of the rule of law, the Conditionality Regulation could be considered more effective. Such situations could occur where the Union budget is or risks being affected in a wide manner, due for instance to national law precluding effective judicial review of administrative decisions to implement the Union budget or obstructing referrals of relevant cases to the Court of Justice of the European Union, or due to lack of independence of national courts. In such cases, suspensive or prohibitive measures under the Conditionality Regulation imposed cumulatively until the relevant breach of the principles of the rule of law is brought to an end, might protect the Union budget more effectively as they could prevent adverse effects on the sound financial management of the Union budget and on the financial interests of the Union. This could

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<sup>46</sup> See recital 15 of the Conditionality Regulation.

<sup>47</sup> See Article 5 of the Conditionality Regulation.

cover situations where the overall financial risks for the Union budget and the financial interests of the Union exceed the risks that can be addressed by the measures addressed to a specific programme and available under one sectoral instrument.

#### **4. MEASURES THAT COULD BE PROPOSED BY THE COMMISSION - PROPORTIONALITY**

44. In line with article 5(3) of the Conditionality Regulation, once the Commission has established that the conditions to trigger the application of the Conditionality Regulation are fulfilled, it will propose to the Council measures that are proportionate<sup>48</sup>, which means that they must be suitable and necessary to address the issues found and protect the Union budget or the financial interests of the Union, without going beyond what is required to achieve their aim.
45. The Court of Justice has held that pursuant to Article 5(3) of the Regulation the measures should be strictly proportionate, i.e ‘limited to what is strictly necessary in the light of the actual or potential impact of breaches of the principles of the rule of law on the financial management of the Union budget or the financial interests of the Union’<sup>49</sup>.
46. In this context, the Commission will duly take into account the nature, duration, seriousness and scope of the breaches of the principles of the rule of law at stake<sup>50</sup>. As these criteria help to determine the extent of the impact, which may vary depending on the characteristics of the breaches of the principles of the rule of law found, their consideration influences the assessment of the proportionality of the measures<sup>51</sup>. While it is not possible to define and weigh all the possible types of breaches of the principles of the rule of law beforehand, as well as their exact impact on the Union budget or the financial interests of the Union, at this stage and in the absence of experience in the application of the Conditionality Regulation, the Commission will examine the elements below in relation to each of these characteristics.
47. As regards the nature of a breach, all breaches of the principles of the rule of law are relevant for the application of the Conditionality Regulation to the extent that they affect or seriously risk affecting the sound financial management of the Union budget or the financial interests of the Union. However, the situations mentioned in Article 3 of the Conditionality Regulation have a particular importance, as they are expressly mentioned therein. This, however, does not mean that other breaches of the principles

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<sup>48</sup> See Article 5(3) of the Conditionality Regulation.

<sup>49</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 112.

<sup>50</sup> See Article 5(3) of the Conditionality Regulation.

<sup>51</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 331; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 361.

of the rule of law of a similar nature will be considered less important. In its assessment, the Commission will also take due account of other features of the breach of the principles of the rule of law, such as whether it is intrinsically or closely linked with the process under which Union funds are used by the Member State concerned (for instance in cases of improper functioning of the public authorities deciding on the award of grants or contracts financed through the Union budget), in which case the impact on the Union budget or the financial interests of the Union may be particularly significant.

48. As regards the duration, it is likely that the longer a breach of the principles of the rule of law lasts, or the more recurrent it is, the more it will generally adversely affect or seriously risk affecting the sound financial management of the Union budget or the financial interests of the Union. Thus, this conclusion will also have a bearing on the Commission's assessment on the proportionality of the measures it may propose.
49. As regards the gravity of a breach of the principles of the rule of law, the Commission considers that, when one or several breaches of the principles of the rule of law concern important parts of the public sector of a Member State, such as the legislative branch and/or the judiciary which may have potential negative impact on the management of the Union budget by national authorities, or where the breach(es) of the principles of the rule of law are systemic or widespread, these factors should be taken into account as regards the proportionality of the measures. Concerning the scope of the breach of the principles of the rule of law, the Commission considers that, when a breach of the principles of the rule of law affects or risks affecting multiple programmes or funds of the Union, its impact on the Union budget or the financial interests of the Union can be expected to be substantial. In general, the gravity of the breach of the principles of the rule of law under the Conditionality Regulation will tend to be reflected in the gravity of its actual or potential impact on the sound financial management of the Union budget or the financial interests of the Union.
50. The Commission considers that the cumulative presence or absence of the above-mentioned elements considered in light of the actual or potential impact of the relevant breach of the principles of the rule of law on the Union budget or on the protection of the financial interests of the Union may guide the proportionality assessment of measures to be proposed under the Regulation. Therefore, a systemic breach of the principles of the rule of law affecting in a cumulative manner and/or for a significant period of time the sound financial management of the Union budget or the financial interests of the Union may justify proposing measures entailing a significant financial impact for the Member State concerned.
51. In addition to these elements, the Commission may also consider other factors, in particular, the intention of the Member State to put an end to the breach of the

principles of the rule of law, the degree of cooperation of the Member State concerned<sup>52</sup>, or its refusal to cooperate sincerely with the Commission in the context of the procedures pursuant to the Conditionality Regulation, or a possible persistence or repetition of similar breaches of the principles of the rule of law, despite earlier recommendations or proposals of measures made by the Commission. The intention and the degree of cooperation of the Member State are also relevant for the purpose of determining the duration and scope of a breach of the principles of the rule of law.<sup>53</sup> The Commission will ensure an objective and impartial assessment when considering these factors.

52. The Conditionality Regulation requires the measures to target, insofar as possible, the ‘Union actions affected by the breaches’.<sup>54</sup> In its proposal, the Commission will indicate specific programmes or funds affected by the breaches of the principles of the rule of law or those that risk being affected and propose, insofar as possible, measures targeting those programmes or funds. However, in cases where this is not possible, including in cases where the breach of the principles of the rule of law has an impact on the collection of the Union’s own resources, the Conditionality Regulation permits the adoption of measures relating to Union actions other than those affected by the breach of the principles of the rule of law. The Court of Justice has held that this could relate to situations where the latter actions cannot<sup>55</sup> or can no longer be targeted, or can be targeted only inadequately, in order to achieve the objective of the Conditionality Regulation, which consists in ensuring the protection of the Union budget as a whole, with the result that those measures are necessary in order to achieve that objective<sup>56</sup>. Otherwise, the Conditionality Regulation would not be able to attain its objective. Moreover, in cases where the Conditionality Regulation is applied additionally or subsequently to other Union legislation, the Commission will take into account the overall impact of the measures to ensure respect for the principle of proportionality.
53. For its assessment on the proportionality of the proposed measures, the Commission, pursuant to Article 6(8) of the Conditionality Regulation, must also take into account the same sources used to identify breaches of the principles of the rule of law, as cited in section 5.2 of these guidelines.

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<sup>52</sup> See Recital 18 of the Conditionality Regulation.

<sup>53</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 332.

<sup>54</sup> See Article 5(3) of the Conditionality Regulation.

<sup>55</sup> For instance, in cases where the effect of the breach of the principles of rule of law will be established on revenues of the Union budget.

<sup>56</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 275.



## 5. PROCEDURE AND METHODOLOGY OF THE ASSESSMENT PROCESS

### 5.1. Commission's preliminary assessment

54. To identify and assess breaches of the principles of the rule of law under the Conditionality Regulation, the Commission will carry out a thorough qualitative assessment on a case-by-case basis, taking due account of the specific circumstances and contexts, which will lie on the principles and features of the methodology set out in the following paragraphs of these Guidelines.
55. The Commission will carry out its assessment in an objective, impartial and fair<sup>57</sup> manner.
56. Objectivity requires the assessment to be based on actual facts or evidence that the Commission has at its disposal. In addition to the various contacts between the Commission, other bodies and the Member States, Article 6(4) of the Conditionality Regulation also makes clear that the Commission can request supplementary information necessary to carry out its assessment and it will do so when it considers this appropriate. For example, it may request additional information aimed at confirming the fulfillment of the conditions for the application of the Conditionality Regulation, assessing the extent of the impact on the Union's budget or on the protection of the financial interests of the Union (or risk thereof), or assessing more in detail any remedial measures that the Member State has put in place or is planning to put in place. Given that one of the key aims of the Conditionality Regulation is to be used as a preventive tool to protect the Union budget and the financial interests of the Union, the Commission endeavours to ensure a sincere dialogue and cooperation with the Member State concerned, while keeping the procedure at the right pace.
57. Impartiality in the assessment of cases under the Conditionality Regulation implies equal treatment among the Member States. Article 4(2) TEU also requires the Union to respect the equality of Member States before the Treaties. In line with the consistent case law of the Court of Justice of the European Union, this means first and foremost that comparable situations must not be treated differently and that different situations must not be treated alike, unless such treatment is objectively justified<sup>58</sup> on the basis of the specific circumstances characterising each concrete situation. While the Commission must make its assessments taking into account the particular features of the legal system of the Member State in question and the discretion it enjoys in implementing the principles of the rule of law, this does not mean that the obligations as to the result to be achieved stemming from them may vary from one Member State to

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<sup>57</sup> See Recital 16 of the Conditionality Regulation.

<sup>58</sup> See, among other cases, judgment of 20 September 1988, *Kingdom of Spain v Council of the European Communities*, 203/86, ECLI:EU:C:1988:420, paragraph 25. For a more recent case, see judgment of 8 October 2020, *Universitatea 'Lucian Blaga' Sibiu and Others*, C-644/19, ECLI:EU:C:2020:810, paragraph 44.

another. The Court of Justice has held that respect for the rule of law should be assessed on the basis of uniform criteria, and that the content of the principles of the rule of law is clear, establishes clear and precise binding obligations of result, and are well-known to the Member States.<sup>59</sup> The Court of Justice held that Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of the principles listed in Article 2(a) of the Regulation<sup>60</sup>.

58. As regards the fairness of the assessment under the Conditionality Regulation, the Commission considers that it implies taking a comprehensive view on all the circumstances under consideration to identify breaches of the principles of the rule of law that are relevant under the Conditionality Regulation.
59. The Commission services will first check whether the relevant sources refer to a breach of the principles of the rule of law that has already been identified, or, if not previously identified, whether there are reasonable grounds to consider that such a breach of the principles of the rule of law has taken place. For that purpose, the Commission considers that final rulings of the Court of Justice of the European Union are conclusive. It will then check whether that breach of the principles of the rule of law concerns a situation or conduct of authorities that are relevant for the sound financial management of the Union budget or for the protection of the Union's financial interests, as provided for in Article 4(1) and (2) of the Regulation.
60. Secondly, as the mere finding that a breach of the principles of the rule of law exists does not suffice to trigger the Conditionality Regulation, the Commission services will assess whether the breach of the principles of rule of the law affects or seriously risks affecting the sound financial management of the Union budget or the financial interests of the Union, considering the criteria analysed in section 2.2 of these Guidelines. The Commission will give particular importance to corrective measures or other remedies it has already taken in similar cases under the procedures referred to in section 3 above or other procedures of Union law, provided those had a link with situations that are indicative of breaches of the principles of the rule of law pursuant to the Conditionality Regulation.
61. The Commission services will finally assess whether the identified breach of the principles of the rule of law has a sufficiently direct link with the effects on the sound financial management of the Union budget or the financial interests of the Union. For this purpose, the Commission considers that final rulings of the Court of Justice of the European Union and previous corrective measures or other remedies it has already

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<sup>59</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 233 and 235; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 265 and 283.

<sup>60</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 240.

taken in similar cases under the procedures referred to in section 3 above as particularly relevant.

## **5.2. Sources of information**

62. The Commission endeavours to assess issues relevant for the application of the Conditionality Regulation in a diligent and thorough manner, based on a wide range of evidence, insofar as that is relevant to fulfil the conditions for the application of the Conditionality Regulation. The range and scope of evidence will be considered based on the merits of each case, taking into account all the relevant circumstances. The Commission will ensure that the information it uses is relevant and that the sources of that information are reliable.

### **5.2.1. General sources of information**

63. The Commission will strive to use several sources to identify, crosscheck and assess relevant breaches of the principles of the rule of law in order to reach its own conclusions on whether the conditions of the Regulation are met. The Conditionality Regulation, in its recital 16, cites specific sources such as ‘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 OLAF and the EPPO and information provided by them, as relevant, and conclusions and recommendations of any 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.’
64. In addition to those sources, which do not have a specific or absolute probative value, the Commission will also take into account other relevant information, where appropriate. That may include, for instance, the annual Commission reports on the “Protection of the European Union’s financial interests — Fight against fraud” (“PIF reports”) and the related annual resolutions of the European Parliament, the information on which Commission, OLAF and EPPO relevant reports were based, information contained in Commission services’ audit reports, as well as information received from national authorities and stakeholders, and other information in the public domain, such as judgments of national courts or decisions of national authorities.
65. The Commission also has the possibility to directly contact other bodies and recognised institutions, such as the national anti-fraud coordination service (‘AFCOS’). While recital 16 of the Conditionality Regulation states that the Commission ‘could consult the European Union Agency for Fundamental Rights and the Venice Commission if necessary for the purpose of preparing a thorough qualitative assessment’, the possibility of such consultations is not limited to these two bodies and the Commission will contact any institution or body it considers necessary in view of identifying breaches of the principles of the rule of law and enhancing the assessment of cases under the Conditionality Regulation.

### 5.2.2. Complaints

66. Another valuable source of information is the submission of substantiated complaints by any third party that may be aware of relevant information and evidence about breaches of the principles of the rule of law that may 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.
67. As a budgetary tool, the Conditionality Regulation does not afford remedies or rights of redress that a complainant may seek<sup>61</sup>. Complainants seeking remedial measures addressed to them, including damages, cannot obtain them from the Commission but may consider filing complaints with national authorities or lodge actions before national courts. The European Union offers means to submit complaints at EU level. In particular, for the case of a Member State that does not comply with Union law, any citizen, business or other stakeholder can report an infringement to the Commission<sup>62</sup>.
68. After receiving a complaint relating to the Conditionality Regulation, the Commission services will assess whether it contains substantiated information and evidence that the Commission may use for its assessment under the Conditionality Regulation. In this respect, it has to be noted that complaints that refer to breaches of the principles of the rule of law without any indication as to the effect they may have or the risks they may present on the sound financial management of the Union budget or on the protection of the financial interests of the Union will not be sufficient to consider that the conditions under the Regulation are fulfilled, unless the Commission establishes this effect or these risks on additional grounds. Depending on the circumstances of each case, the Commission services may invite the complainant to provide additional information to substantiate the complaint within a specific time limit. If no additional information is provided within the set time limit, the Commission will keep record of the information submitted but may not follow up on the complaint.
69. Where the information submitted is sufficiently substantiated and relevant for the purposes of the Commission's assessment, the Commission services may request further information or evidence if needed. If considered appropriate, the Commission services may also meet the complainant or their representatives to clarify the allegations made and discuss specific issues related to the complaint. The Commission services may also contact other bodies or institutions in relation to the information submitted by the complainant to corroborate or complement the information and evidence provided by the complainant, in line with Article 6(4) of the Conditionality Regulation.

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<sup>61</sup> This is without prejudice to the protection of the legitimate rights of final recipients and beneficiaries of Union funding under the Conditionality Regulation, see section 6 below.

<sup>62</sup> A list of these other resources, including the complaint form for a breach of Union law, is available at [https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level\\_en](https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en).

70. The Commission will endeavour to inform complainants of the action that it proposes to take on a complaint within an indicative time frame of [cf. eight months] from the receipt of the complaint. This is, however, subject to the circumstances of the individual case and is, in particular, dependent on whether the Commission has received sufficient information from the complainant. Should the Commission decide to initiate the procedure established by Article 6 of the Conditionality Regulation and propose appropriate measures to the Council, it will in principle inform the complainant (1) after sending the notification letter to the Member State and (2) after sending its proposal to the Council.
71. To facilitate the submission of complaints under the Conditionality Regulation, the Commission has setup within its Central Financial Service of its Directorate General for Budget the dedicated mailbox BUDG-CONDITIONALITY-REGIME-COMPLAINTS@ec.europa.eu through which a third party may bring to the Commission's attention alleged breaches of the principles of the rule of law relevant to the Conditionality Regulation. Annex II to the Guidelines provides the information that may be included when contacting the Commission, as well as a recommended form that may be used to submit such complaints. Unless agreed otherwise, the identity of the complainant will be kept strictly confidential and the Commission will ensure that the rules set out in Directive (EU) 2019/1937<sup>63</sup> are complied with.

### **5.2.3. Preliminary contacts with the Member State concerned**

72. The Commission may contact the Member State concerned before sending the written notification pursuant to Article 6(1) of the Conditionality Regulation, if this is necessary for its preliminary assessment. Thus, if, following a complaint or on the basis of any other information gathered, the Commission is not yet in a position to determine whether it has reasonable grounds to consider that the conditions set out in Article 4 of the Regulation are fulfilled, it should be able to contact the Member State concerned to gather the information or explanations it may need within a reasonable and appropriate time limit. Within the same time limit, the Member State may use the opportunity to remedy the situation.
73. In such cases, the Commission will endeavour to have an open dialogue with the Member State concerned, with a view to enabling enhanced cooperation and possibly addressing concerns at an early stage. This approach also reflects the principle of sincere cooperation, as enshrined in Article 4(3) TEU, as well as that one of the key aims of the Conditionality Regulation is prevention. Where the Commission requests initial written clarifications from a Member State, it will set deadlines reflecting the breadth and complexity of the clarifications requested.

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<sup>63</sup> 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.

74. If the Member State concerned does not react or cooperate within the timeframe set by the Commission, the Commission will finalise its preliminary assessment on the basis of the information it has at its disposal, without delay.
75. The Commission will apply the same principles of objectivity, impartiality and fairness for all Member States during any preliminary contacts with the Member States, in cases where such preliminary contacts have been considered necessary, as it will do throughout the procedure and its assessment.

### **5.3. Formal procedure pursuant to Article 6 of the Conditionality Regulation**

76. Where the Commission finds that it has reasonable grounds to consider that the conditions for the adoption of measures under the Conditionality Regulation are fulfilled and that other procedures set out in Union legislation would not allow it to protect the Union budget more effectively, it will send a written notification to the Member State concerned, setting out the factual elements and specific grounds on which it has based its findings, and initiate the procedure pursuant to Article 6 of the Conditionality Regulation (the ‘procedure’).
77. The Member State concerned should provide the required information and may propose or adopt remedial measures to address the Commission’s findings set out in the written notification or the request for observations in line with article 6(7) of the Conditionality Regulation, within a time limit specified by the Commission, which shall be at least one month and not more than three months from the date of the notification or the request for observations.<sup>64</sup> Following the exchanges provided by Article 6, paragraphs 1 to 7, of the Conditionality Regulation, if the Commission finds that the conditions for the application of the Conditionality Regulation are fulfilled and considers that the remedial measures that may have been offered are not adequate, it will propose the adoption of measures to the Council to protect the Union budget or the Union’s financial interests.
78. When deciding whether to propose measures, the Commission will duly assess the information received and any observations made by the Member State concerned throughout the procedure<sup>65</sup>, as well as the adequacy of any remedial measures proposed in the course of the procedure. To conduct its assessment on the measures that may be proposed, the Commission will also rely on all the information gathered in the context of any possible preliminary contacts with the Member State concerned, including before initiating the procedure, where relevant, as well as any relevant information from available sources, including decisions, conclusions and recommendations of Union institutions and bodies, other relevant international organisations and other recognised institutions.

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<sup>64</sup> See Article 6(5) of the Conditionality Regulation.

<sup>65</sup> See Article 6(7) of the Conditionality Regulation.

79. In addition to guaranteeing the procedural rights of the Member State concerned, the procedure will also be conducted in accordance with the principles of objectivity, non-discrimination and equal treatment of the Member State concerned, and will be conducted according to a non-partisan and evidence-based approach<sup>66</sup>. In accordance with recital 23 of the Conditionality 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<sup>67</sup> with a view to ensuring that the Council takes a timely decision on the proposal for measures<sup>68</sup>.

#### **5.4. Procedure for lifting measures**

80. After the adoption of the measures by the Council, the Commission will regularly monitor the situation in the Member State concerned. According to Article 7(2) of the Conditionality Regulation, at the request of the Member State concerned, or on its own initiative and at the latest one year after the adoption of measures by the Council, the Commission shall reassess the situation in the Member State concerned, taking into account the evidence submitted by it, as well as the adequacy of any remedial measures adopted by the Member State concerned.

81. The Member State concerned may, at any time, adopt new remedial measures and submit to the Commission a written notification including evidence to show that the conditions for the adoption of the measures are no longer fulfilled.

82. When assessing the written notification submitted by the Member State concerned or any other information the Commission gathered after the adoption of the measures by the Council, the Commission will proceed in line with the methodology and principles of objectivity, impartiality and fairness detailed in section 5.1 of these Guidelines. To conduct its assessment, the Commission will rely on all sources of information mentioned in section 5.2 of these Guidelines<sup>69</sup>, gathered after the adoption of the measures by the Council.

83. If, following the assessment of the written notification submitted by the Member State or the assessment of any other information the Commission gathered after the adoption of the measures by the Council, the Commission cannot reasonably determine that the situation leading to the adoption of measures has been remedied, it may request additional information from the Member State concerned or any third party that may dispose relevant information, before concluding its assessment, in line with Articles 7(2) last paragraph and 6(4) of the Conditionality Regulation.

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<sup>66</sup> See Recital 26 of the Conditionality Regulation.

<sup>67</sup> Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure, OJ L 325, 11.12.2009, p. 35.

<sup>68</sup> See Article 6(10) of the Conditionality Regulation.

<sup>69</sup> In line with Articles 7(2) last paragraph and 6(3) of the Conditionality Regulation.

84. The Member State concerned should provide the required information and may propose or adapt the initially proposed remedial measures to address the Commission's concerns, within a time limit specified by the Commission, which shall be at least one month and not more than three months from the date of the notification or the request for observations.<sup>70</sup> Following these exchanges and the Commission's final assessment, if the Commission considers that the situation leading to the adoption of the measures has been remedied, it will submit to the Council a proposal for an implementing decision lifting the adopted measures, in line with Article 7(2) of the Conditionality Regulation. Where the Commission finds that the situation leading to the adoption of the measures has been remedied in part, it will submit to the Council a proposal for an implementing decision adapting the adopted measures.
85. Measures may be lifted or adapted where the breaches of the principles of the rule of law, despite persisting, no longer have an impact on the Union budget or the protection of the financial interests of the Union<sup>71</sup>. Where the Commission finds that the situation leading to the adoption of the measures has not been remedied, it shall address to the Member State concerned a reasoned decision and inform the Council thereof.
86. In addition to guaranteeing the procedural rights of the Member State concerned, the procedure will also be conducted in accordance with the principles of objectivity, non-discrimination and equal treatment of the Member State concerned, and will be conducted according to an impartial and evidence-based approach<sup>72</sup>. In accordance with recital 23 of the Conditionality 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<sup>73</sup> with a view to ensuring that the Council takes a timely decision on the proposal for lifting or adapting the measures<sup>74</sup>.

## **6. PROTECTION OF THE LEGITIMATE RIGHTS OF FINAL RECIPIENTS AND BENEFICIARIES OF UNION FUNDING UNDER THE CONDITIONALITY REGULATION**

87. Measures adopted under the Conditionality Regulation will have a financial or economic impact. However, such impact should be limited to the Member State concerned or in specific cases to certain national entities managing the funds. Unless

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<sup>70</sup> See Article last sentence of Article 7(2) in combination with Article 6(5) of the Conditionality Regulation.

<sup>71</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 178; and judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 217.

<sup>72</sup> See Recital 26 of the Conditionality Regulation.

<sup>73</sup> Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure, OJ L 325, 11.12.2009, p. 35.

<sup>74</sup> See Article 6(10) of the Conditionality Regulation.



the decision adopting the measures provides otherwise on the basis of duly justified grounds in line with applicable Union rules, the imposition of those measures should not affect the pre-existing obligations of government entities or of Member States to make payments to the final recipients or beneficiaries who are entitled to such payments under the corresponding Union programme or Fund.

88. The measures may concern Union funds or Union programmes under all management modes of the Union budget, i.e. implemented directly (managed by the Commission departments, or through executive agencies<sup>75</sup>), indirectly (by one of the entities provided in Article 62(1)(c) of the Financial Regulation) or jointly with Member States (shared management<sup>76</sup>).
89. The imposition of measures does not alter the pre-existing obligations of government entities or Member States to implement the programme or fund under any management mode, in particular their legal obligations to make payments towards final recipients or beneficiaries, as provided for by the applicable Union instruments and the specific legal acts that created such obligations, unless the decision imposing the measures provides otherwise.
90. In other words, the government entities or Member States cannot use the appropriate measures adopted by the Council as a justification to release themselves from their pre-existing obligations towards the final recipients or beneficiaries, relating to payments under the relevant applicable rules
91. Article 5(2) of the Conditionality Regulation states that the obligations of government entities or Member States to implement the programme or fund shall not be affected by the imposition of appropriate measures, and in particular the obligations they have towards final recipients or beneficiaries, unless the decision adopting the measures provides otherwise. The Commission considers that the conclusion on whether the rights of beneficiaries or final recipients may be legitimately affected by the appropriate measures, requires a case-by-case analysis, and the Commission will assess any relevant information in this respect. At this stage, it considers that, in principle, when the beneficiary or final recipient has been involved in by the breach of the principles of the rule of law, such as in cases of corruption, systemic fraud and conflicts of interest, the measures to be adopted under the Conditionality Regulation may also have an impact on that beneficiary or recipient. Should the Commission be aware of such cases, the Commission will include in its proposal to the Council (i) its conclusion on whether particular final beneficiaries or recipients should be affected by the proposed measures, (ii) the reasons justifying this conclusion and (iii) its specific proposal as regards those beneficiaries or recipients.

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<sup>75</sup> See Article 62(1)(a) of Financial Regulation.

<sup>76</sup> See Article 63 of Financial Regulation.

## Information tools and reporting

92. Beneficiaries or final recipients of Union programmes or funds should be made aware of their rights under the Conditionality Regulation. To this end, the Commission has set up the dedicated webpage [https://ec.europa.eu/info/strategy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation\\_en](https://ec.europa.eu/info/strategy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en) where citizens, including beneficiaries or final recipients, may seek informal guidance. They may also submit information to the Commission about issues that are relevant for the application of the Conditionality Regulation by filling in and submitting the complaint form available at that webpage to the dedicated mailbox [BUDG-CONDITIONALITY-REGIME-COMPLAINTS@ec.europa.eu](mailto:BUDG-CONDITIONALITY-REGIME-COMPLAINTS@ec.europa.eu). The Commission will publish in its webpage information on the measures adopted by the Council upon the Commission's proposal, so that beneficiaries and final recipients are aware of the measures imposed to each Member State.
93. If, following the imposition of appropriate measures by the Council under the Conditionality Regulation, the Member State concerned refuses to honour its payments to beneficiaries or final recipients of Union programmes or funds concerned by the measures, the beneficiaries or final recipients concerned should first refer the matter to the competent national authorities by availing themselves of all actions at their disposal under the applicable national rules, including complaints to the relevant authority of the Member State concerned. In case any such action is not available or not effective<sup>77</sup>, the beneficiaries should inform the Commission and, when possible, provide relevant evidence in this respect. Member States should ensure that legal actions receive adequate follow-up, in compliance with the applicable legal framework.
94. Beneficiaries or final recipients could inform the Commission about potential breaches of Article 5(2) of the Conditionality Regulation, in case they are directly concerned. In their submissions, beneficiaries or final recipients should clearly state (i) the legal basis of their right to receive payment from the Member State, (ii) the failure of the Member State to comply with its obligation to pay under the rules of the relevant Union programme or fund, (iii) the legal actions already undertaken and the related outcome, if any, and provide all necessary evidence and supporting documentation to show the launching of the relevant legal actions, as well as the failure by the Member State to comply with its obligations under Article 5 of the Conditionality Regulation (if available). The submissions should contain all the information requested in Annex III to these Guidelines.
95. Under Article 339 TFEU and Article 17 of the Staff Regulations, the officials and other staff of the European Union must not disclose information covered by the obligation of

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<sup>77</sup> For instance, in cases where the national authorities unreasonably delay their reply/decision to the beneficiary's actions.

professional secrecy. The Commission will also ensure that the rules set out in Directive (EU) 2019/1937 will be complied with<sup>78</sup>.

96. When implementing Union funds under shared management, Member States concerned by measures adopted pursuant to the Conditionality Regulation are under the obligation to report to the Commission on the concrete steps they have taken to comply with their obligations to pay final recipients or beneficiaries under the Union fund or programme affected. Such reporting should include information and evidence of that compliance (e.g. relevant accounting records and supporting documents) and should take place every three months from the adoption of the measures<sup>79</sup>.
97. On the basis of the reporting provided in Article 5(2) of the Conditionality Regulation and any other proof provided by the Member State concerned or other information gathered, including through the information received from final recipients or beneficiaries, the Commission will verify whether the payment obligations towards final recipients or beneficiaries set under the Conditionality Regulation and other applicable Union law with respect to implementing funding under shared management, have been complied with. 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<sup>80</sup>. 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. Before taking any measure to ensure compliance of Member States with their obligation to pay the final recipients or beneficiaries, the Commission will ensure that the procedural rights of the Member State concerned are respected.

## **7. REVIEW OF THESE GUIDELINES**

98. The Commission may review these guidelines in due course, to take into account developments in its practice, relevant changes to Union legislation, or relevant case law of the Court of Justice of the European Union, while ensuring legal certainty. When reviewing the Guidelines, the Commission will consult the Member States and the European Parliament.

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<sup>78</sup> More information about how the Commission handles complaints can be found on: [https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level\\_en](https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en)

<sup>79</sup> See Article 5(2) and Recital 19 of the Conditionality Regulation.

<sup>80</sup> See Recital 19 of the Conditionality Regulation.

## ANNEX I

### Breaches of the principles of rule of law

#### *Examples indicative of breaches of the principles of the rule of law (Article 3 of the Conditionality Regulation)*

*(a) endangering the independence of the judiciary. On this matter, recital 10 of the Conditionality Regulation states that ‘the independence of the judiciary presupposes, in particular, that the judicial body concerned is able to exercise, both under the relevant rules and in practice, its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for rejection and dismissal of its members, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it.’*

*According to ECJ case law “the concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions”<sup>81</sup>.*

*(b) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by*

- law-enforcement authorities,*
- withholding financial and human resources affecting their proper functioning,*

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<sup>81</sup> Judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, C-64/16, ECLI:EU:C:2018:117, paragraph 44. See also among others, judgments of 24 June 2019, *Commission v Republic of Poland*, C-619/18, ECLI:EU:C:2019:531 and of 20 April 2021 *Repubblika v Il-Prim Ministru*, C-896/19, ECLI:EU:C:2021:311.

- failing to ensure the absence of conflicts of interest.

According to the case law of the Court of Justice of the European Union, these ‘situations may lead to a failure to observe the principle prohibiting the arbitrary exercise of power by the executive or the principle of effective judicial protection’<sup>82</sup>.

(c) limiting the availability and effectiveness of legal remedies, including through

- restrictive procedural rules,

- lack of implementation of judgments,

- limiting the effective investigation, prosecution or sanctioning of breaches of law.

In relation to the above, recitals 8 and 9 of the Conditionality Regulation state that:

‘(8) Sound financial management can only be ensured by Member States if public authorities act in accordance with the law, if cases of fraud, including tax fraud, tax evasion, corruption, conflict of interest or other breaches of the law are effectively pursued by investigative and prosecution services, and if arbitrary or unlawful decisions of public authorities, including law-enforcement authorities, can be subject to effective judicial review by independent courts and by the Court of Justice of the European Union.’

(9) The independence and impartiality of the judiciary should always be guaranteed, and investigation and prosecution services should be able to properly execute their functions. (...) The judiciary, and investigation and prosecution services should be endowed with sufficient financial and human resources and procedures to act effectively and in a manner that fully respects the right to a fair trial, including respect for the rights of defence. Final judgments should be implemented effectively. Those conditions are required as a minimum guarantee against unlawful and arbitrary decisions of public authorities that could harm the financial interests of the Union.’

**Examples of specific situations or conduct of authorities<sup>83</sup> that may be concerned by breaches of the principles of the rule of law (Article 4(2) of the Conditionality Regulation)**

(a) the proper functioning of the authorities implementing the Union budget, including loans and other instruments guaranteed by the Union budget, in particular in the context of public procurement or grant procedures.

(b) the proper functioning of the authorities carrying out financial control, monitoring and

<sup>82</sup> See judgement of 16 February 2022, *Hungary v Parliament and Council*, C-156/21 ECLI:EU:C:2022:97, paragraph 245 and the case law cited therein.

<sup>83</sup> These examples are merely indicative, as other situations 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 may also fall within the scope of the Conditionality Regulation (cf. point (h) of Article 4(2)).

*audit, and of effective and transparent financial management and accountability systems – on this point, the Court of Justice clarified that ‘the expression “effective and transparent financial management and accountability systems” [...] refers to the concept of “financial management”, which falls within the concept of “sound financial management” found in the Treaties themselves, in particular in Article 310(5) and the first paragraph of Article 317 TFEU, and defined in Article 2(59) of the Financial Regulation as the implementation of the budget in accordance with the principles of economy, efficiency and effectiveness. The expression “financial accountability”, for its part, reflects in particular the financial control, monitoring and audit obligations mentioned in [...] Article 4(2)(b) [of the Conditionality Regulation], while the expression “effective and transparent ... systems” implies the establishment of an ordered set of rules which ensure in an effective and transparent manner the said financial management and accountability’<sup>84</sup>.*

*The Court of Justice also clarified that the expression ‘financial accountability’ reflects in particular the financial control, monitoring and audit obligations mentioned in the said Article 4(2)(b), while the ‘effective and transparent ... systems’ imply the establishment of an ordered set of rules which ensure in an effective and transparent manner the said financial management and accountability.’<sup>85</sup>*

*(c) the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of:*

*- fraud, including tax fraud, especially where such fraud may result in failure to collect taxes such as VAT and custom duties directly affecting the resources necessary for the Union to attain its objectives and carry out its policies,*

*- corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union;*

*(d) the effective judicial review by independent courts of actions or omissions by the authorities referred to in points (a),b) and (c) of Article 4(2) of the Conditionality Regulation.*

*In particular, recital 9 of the Conditionality Regulation states that ‘the judiciary, and investigation and prosecution services should be endowed with sufficient financial and human resources and procedures to act effectively and in a manner that fully respects the right to a fair trial, including respect for the rights of defence. Final judgments should be implemented effectively. Those conditions are required as a minimum guarantee against unlawful and arbitrary decisions of public authorities that could harm the financial interests*

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<sup>84</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 333.

<sup>85</sup> See judgement of 16 February 2022, *Poland v Parliament and Council*, C-157/21 ECLI:EU:C:2022:98, paragraph 333.

*of the Union’ -*

*(e) the prevention and sanctioning of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities;*

*(f) the recovery of funds unduly paid;*

*(g) effective and timely cooperation with the European Anti-Fraud Office (‘OLAF’) and, subject to the participation of the Member State concerned, with the European Public Prosecutor’s Office (‘EPPO’) in their investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation;*

## ANNEX II

### **Elements that should be included in the complaint about alleged breaches of the principles of the rule of law under the Conditionality Regulation**

Complainants should include the following details when contacting the Commission about alleged breaches of the principles of the rule of law under the Conditionality Regulation:

- Identity and contact details<sup>86</sup>;
- Information about how the rule of law has been allegedly infringed (including which acts or omissions by public authorities are allegedly in breach of the principles of the rule of law) and relevant evidence;
- Information on how the alleged breach is relevant for the Conditionality Regulation (description of how it affects or seriously risk affecting the Union budget or the financial interests of the Union in a sufficiently direct way) and relevant evidence;
- List of supporting documents which could – if requested – be sent to the Commission.

To facilitate the submission of information relevant for the application of the Conditionality Regulation and ensure that the Commission receives relevant and structured information, the below template, as available on the webpage [https://ec.europa.eu/info/strategy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation\\_en](https://ec.europa.eu/info/strategy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en), could be used.

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<sup>86</sup> Disclosure of complainants' identities and information submitted by them to the Member State concerned is subject to their prior agreement and must comply, inter alia, with European Parliament and Council Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.





## Complaint – Breach of the principles of the rule of law affecting the Union budget or financial interests

Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (“Conditionality Regulation”)

This complaint form serves to notify the European Commission of breaches of the principles of the rule of law in a Member State that specifically 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.

To notify the European Commission of any other complaint related to the rule of law, please use instead the complaint form available at [https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/)

All fields marked with \* are mandatory. Please be concise and if necessary continue on a separate page.

### 1. Identity & contact details

	Complainant*	Your representative (if applicable)
Title* Mr/Ms/Mrs		
First name*		
Surname*		
Organisation:		
Address*		
Town/City *		
Postcode*		
Country*		
Telephone		
E-mail		
Language*		
Should we send correspondence to you or your representative*:	<input type="checkbox"/>	<input type="checkbox"/>

### 2. What is the breach of the principles of the rule of law complained about?\*

endangering the independence of the judiciary	<input type="checkbox"/>
failing to prevent, correct or sanction arbitrary or unlawful decisions by	<input type="checkbox"/>

public authorities, including by law- enforcement authorities, and including by withholding financial and human resources affecting their proper functioning	
failing to ensure the absence of conflicts of interest	<input type="checkbox"/>
limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments	<input type="checkbox"/>
limiting the effective investigation, prosecution or sanctioning of breaches of law	<input type="checkbox"/>
others	Please specify.

### 3. What does the alleged breach of the principles of the rule of law indicated in point 2 above affect in your view?\*

(more than one answer possible)

the proper functioning of the authorities implementing the Union budget, including loans and other instruments guaranteed by the Union budget, in particular in the context of public procurement or grant procedures	<input type="checkbox"/>
the proper functioning of the authorities carrying out financial control, monitoring and audit, and the proper functioning of effective and transparent financial management and accountability systems	<input type="checkbox"/>
the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union	<input type="checkbox"/>
the effective judicial review by independent courts of actions or omissions by the authorities referred to above	<input type="checkbox"/>
the prevention and sanctioning of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities	<input type="checkbox"/>
the recovery of funds unduly paid	<input type="checkbox"/>
effective and timely cooperation with OLAF in its investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation	<input type="checkbox"/>
[subject to the participation of the Member State concerned,] effective and timely cooperation with EPPO in its investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation	<input type="checkbox"/>
other situations 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	<input type="checkbox"/>

### 4 Which national measure(s) or practice(s) do you think amount to a breach of the principles of the rule of law under the Conditionality Regulation and why?\*

5 Describe the problem, providing facts and reasons for your complaint\* (max. 10000 characters):

6 How does the alleged breach of the principles of the rule of law 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?

6.1 How does the breach affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union?

6.2 Is the breach an individual or a systemic one? Please specify.

6.3 Has the effect on the sound financial management of the Union budget or the protection of the financial interests of the Union already materialised?

If yes, please explain how:

If no, please explain why there would be a serious risk for the sound financial management of the Union budget or the protection of the financial interests of the Union:

Please identify a sufficiently direct link between the alleged breach or breaches and the effects or risks for the sound financial management of the Union budget or the protection of the financial interests of the Union

## 7. Previous action taken to solve the problem\*

Have you already taken any action in the Country in question to solve the problem?\*

**IF YES**, was it:  Administrative  Legal/Judicial ?

7.1 Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

7.2 Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?\*

**IF NOT** please specify below as appropriate

- Another case on the same issue is pending before a national or EU Court
- No remedy is available for the problem
- A remedy exists, but is too costly or its use would be too lengthy
- Time limit for action has expired
- No legal standing (not legally entitled to bring an action before the Court) please indicate why:

- No legal aid/no lawyer
- I do not know which remedies are available for the problem
- Other – specify

8. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:

- Petition to the European Parliament – Ref:.....
- European Commission – Ref:.....
- European Ombudsman – Ref:.....
- Other – name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)


9. List any additional supporting documents/evidence which you could – if requested – send to the Commission.

 Don't enclose any documents at this stage.

### 10. Personal data\*

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

Yes  No

 *Your answer will not affect the way your complaint is handled. However, in some cases, disclosing your identity may make it easier for us to deal with your complaint.*

### ANNEX III

#### **Elements that should be part of the information from beneficiaries/final recipients of EU funding**

The following elements should in principle be part of the information submitted by beneficiaries or final recipients to the Commission about potential breaches of Article 5(2) of the Conditionality Regulation:

- Identity and contact details<sup>87</sup>;
- Information of the programme/fund concerned;
- Information on the alleged breach of Article 5(2) of the Conditionality Regulation;
- Supporting documents (including proof that the concerned final recipient or beneficiary has lodged a formal complaint with the relevant authority of the Member State concerned and any information and document regarding the outcome of such complaint, if available).

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<sup>87</sup> Disclosure of complainants' identities and information submitted by them to the Member State concerned is subject to their prior agreement and must comply, *inter alia*, with European Parliament and Council Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.