



Council of the European Union
General Secretariat

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From: General Secretariat of the Council
To: Delegations
Subject: Draft European Council conclusions

1. The European Council recalls that the European Union, its Member States and its institutions are all committed to promoting and respecting the values on which the Union is founded, including the rule of law, as laid down in the Treaties. It also recalls that Article 7 TEU establishes the procedure to address the breaches of the Union's values under Article 2 TEU.
2. With a view to finding a mutually satisfactory solution and addressing the concerns expressed with regard to the draft Regulation on a general regime of conditionality for the protection of the Union budget, more particularly with regard to the way in which this Regulation will be applied, the European Council underlines that the Regulation is to be applied in full respect of Article 4(2) TEU, notably the national identities of Member States inherent in their fundamental political and constitutional structures, of the principle of conferral, as well as of the principles of objectivity, non-discrimination and equal treatment of Member States.

The European Council agrees on the following:

- a) The objective of the Regulation on a general regime of conditionality for the protection of the Union budget is to protect the Union budget, including Next Generation EU, its sound financial management and the Union's financial interests. The Union budget, including Next Generation EU, must be protected against any kind of fraud, corruption and conflict of interest.
- b) The application of the conditionality mechanism under the Regulation will be objective, fair, impartial and fact-based, ensuring due process, non discrimination and equal treatment of Member States.
- c) With a view to ensuring that these principles will be respected, the Commission intends to develop and adopt guidelines on the way it will apply the Regulation, including a methodology for carrying out its assessment. Such guidelines will be developed in close consultation with the Member States. Should an action for annulment be introduced with regard to the Regulation, the guidelines will be finalised after the judgment of the Court of Justice so as to incorporate any relevant elements stemming from such judgment. The Commission President will fully inform the European Council. Until such guidelines are finalised, the Commission will not propose measures under the Regulation.
- d) The application of the mechanism will respect its subsidiary character. Measures under the mechanism will be considered only where other procedures set out in Union law, including under the Common Provisions Regulation, the Financial Regulation or infringement procedures under the Treaty, would not allow to protect the Union budget more effectively.

- e) The measures under the mechanism will have to be proportionate to the impact of the breaches of the rule of law on the sound financial management of the Union budget or on the Union's financial interests, and the causal link between such breaches and the negative consequences on the Union's financial interests will have to be sufficiently direct and be duly established. The mere finding that a breach of the rule of law has taken place does not suffice to trigger the mechanism.
- f) The triggering factors set out in the Regulation are to be read and applied as a closed list of homogenous elements and not be open to factors or events of a different nature. The Regulation does not relate to generalised deficiencies.
- g) Any formal opening of the procedure will be preceded by a thorough dialogue with the Member State concerned so as to give it the possibility to remedy the situation.
- h) The Commission will bear full responsibility for autonomously assessing whether the conditions for the adoption of measures exist, whether it relies on its own information or on that from third parties. It will bear full responsibility for the accuracy and relevance of the information and findings on which it bases its assessment. Where such information and findings, whichever their origin, are used for the purposes of the Regulation, the Commission will ensure that their relevance and use will be determined exclusively in light of the Regulation's aim to protect the Union's financial interests.
- i) The measures adopted under the mechanism will be promptly reviewed at the initiative of the Member State concerned or by the Commission at the latest one year after their adoption by the Council. In case the Commission decides not to submit a proposal to lift the measures, it will state the reasons for its decision and will inform of them at a meeting of the Council.
- j) In case the Member State concerned submits a request as set out in recital 26 of the Regulation, the President of the European Council will put the item on the European Council agenda. The European Council will strive to formulate a common position on the matter.

- k) The Regulation has been negotiated as an integral part of the new budgetary cycle, and therefore, it will apply as from 1 January 2021 and the measures will apply only in relation to budgetary commitments starting under the new Multiannual Financial Framework, including Next Generation EU.
3. The European Council welcomes the Commission's intention to adopt a Declaration, to be entered in the minutes of the Council when deciding on the Regulation, expressing its commitment to apply the elements referred to in paragraph [2] above which fall within the remit of its responsibilities in the application of the Regulation.
4. The European Council agrees that the elements in paragraphs [1 to 3] above constitute an appropriate and lasting response to the concerns expressed, without prejudice to the rights of Member States under Article 263 TFEU. Against this background, it invites the European Parliament and the Council to immediately take the necessary steps for the adoption of the whole package of relevant instruments, including the Multiannual Financial Framework Regulation and the Own Resources Decision. Member States will do their utmost to approve the Own Resources Decision in accordance with their respective constitutional requirements with a view to its prompt entry into force.
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