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► B 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)

Corrected by:

► C1 Corrigendum, OJ L 373, 21.10.2021, p. 94 (2020/2092)



**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**

Article 1

Subject matter

This Regulation establishes the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) ‘the rule of law’ refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU;
- (b) ‘government entity’ means a public authority at any level of government, including national, regional and local authorities, as well as Member State organisations within the meaning of point (42) of Article 2 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁽¹⁾ (the ‘Financial Regulation’).

Article 3

Breaches of the principles of the rule of law

For the purposes of this Regulation, the following may be indicative of breaches of the principles of the rule of law:

- (a) endangering the independence of the judiciary;
- (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 or failing to ensure the absence of conflicts of interest;

⁽¹⁾ 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, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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- (c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

*Article 4***Conditions for the adoption of measures**

1. Appropriate 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.

2. For the purposes of this Regulation, breaches of the principles of the rule of law shall concern one or more of the following:

- (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 audit, and the proper functioning of effective and transparent financial management and accountability systems;
- (c) 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;
- (d) the effective judicial review by independent courts of actions or omissions by the authorities referred to in points (a), (b) and (c);
- (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 OLAF and, subject to the participation of the Member State concerned, with EPPO in their investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation;
- (h) 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.



Article 5

Measures for the protection of the Union budget

1. Provided that the conditions set out in Article 4 of this Regulation are fulfilled, one or more of the following appropriate measures may be adopted in accordance with the procedure set out in Article 6 of this Regulation:

- (a) where the Commission implements the Union budget in direct or indirect management pursuant to points (a) and (c) of Article 62(1) of the Financial Regulation, and where a government entity is the recipient:
 - (i) a suspension of payments or of the implementation of the legal commitment or a termination of the legal commitment pursuant to Article 131(3) of the Financial Regulation;
 - (ii) a prohibition on entering into new legal commitments;
 - (iii) a suspension of the disbursement of instalments in full or in part or an early repayment of loans guaranteed by the Union budget;
 - (iv) a suspension or reduction of the economic advantage under an instrument guaranteed by the Union budget;
 - (v) a prohibition on entering into new agreements on loans or other instruments guaranteed by the Union budget;
- (b) where the Commission implements the Union budget under shared management with Member States pursuant to point (b) of Article 62(1) of the Financial Regulation:
 - (i) a suspension of the approval of one or more programmes or an amendment thereof;
 - (ii) a suspension of commitments;
 - (iii) a reduction of commitments, including through financial corrections or transfers to other spending programmes;
 - (iv) a reduction of pre-financing;
 - (v) an interruption of payment deadlines;
 - (vi) a suspension of payments.

2. Unless the decision adopting the measures provides otherwise, the imposition of appropriate measures shall not affect the obligations of government entities referred to in point (a) of paragraph 1 or of Member States referred to in point (b) of paragraph 1 to implement the programme or fund affected by the measure, and in particular the obligations they have towards final recipients or beneficiaries, including the obligation to make payments under this Regulation and the applicable sector-specific or financial rules. When implementing Union funds under shared management, Member States concerned by measures adopted pursuant to this Regulation shall report to the Commission on their compliance with those obligations every three months from the adoption of those measures.

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The Commission shall verify whether applicable law has been complied with and, where necessary, take all appropriate measures to protect the Union budget, in line with sector-specific and financial rules.

3. The measures taken shall be proportionate. They shall be determined in light of the actual or potential impact of the breaches of the principles of the rule of law on the sound financial management of the Union budget or the financial interests of the Union. The nature, duration, gravity and scope of the breaches of the principles of the rule of law shall be duly taken into account. The measures shall, insofar as possible, target the Union actions affected by the breaches.

4. The Commission shall provide information and guidance for the benefit of final recipients or beneficiaries on the obligations by Member States referred to in paragraph 2 via a website or an internet portal. The Commission shall also provide, on the same website or internet portal, adequate tools for final recipients or beneficiaries to inform the Commission about any breach of these obligations that, in the view of these final recipients or beneficiaries, directly affects them. This paragraph shall be applied in a manner that ensures the protection of persons reporting on breaches of Union law, in line with the principles set out in Directive (EU) 2019/1937 of the European Parliament and of the Council ⁽¹⁾. Information provided by final recipients or beneficiaries in accordance with this paragraph shall be accompanied by proof that the concerned final recipient or beneficiary has lodged a formal complaint with the relevant authority of the Member State concerned.

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5. On the basis of the information provided by the final recipients or beneficiaries in accordance with paragraph 4 of this Article, the Commission shall do its utmost to ensure that any amount due from government entities or Member States as referred to in paragraph 2 of this Article is effectively paid to final recipients or beneficiaries, in accordance with in particular Article 69, point (b) of Article 74(1) and Article 104 of Regulation (EU) 2021/1060.

▼B*Article 6***Procedure**

1. Where the Commission finds that it has reasonable grounds to consider that the conditions set out in Article 4 are fulfilled, it shall, unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively, send a written notification to the Member State concerned, setting out the factual elements and specific grounds on which it based its findings. The Commission shall inform the European Parliament and the Council without delay of such notification and its contents.

2. In light of the information received pursuant to paragraph 1, the European Parliament may invite the Commission for a structured dialogue on its findings.

⁽¹⁾ 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).

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3. When assessing whether the conditions set out in Article 4 are fulfilled, the Commission shall take into account relevant information from available sources, including decisions, conclusions and recommendations of Union institutions, other relevant international organisations and other recognised institutions.

4. The Commission may request any additional information it requires to carry out the assessment referred to in paragraph 3, both before and after having sent the written notification pursuant to paragraph 1.

5. The Member State concerned shall provide the required information and may make observations on the findings set out in the notification referred to in paragraph 1 within a time limit to be specified by the Commission, which shall be at least one month and not more than three months from the date of notification of the findings. In its observations, the Member State may propose the adoption of remedial measures to address the findings set out in the Commission's notification.

6. The Commission shall take into account the information received and any observations made by the Member State concerned, as well as the adequacy of any proposed remedial measures, when deciding whether to submit a proposal for an implementing decision on the appropriate measures. The Commission shall carry out its assessment within an indicative time limit of one month from the receipt of any information from the Member State concerned or of its observations, or, when no information or observations are received, from the expiry of the time limit set in accordance with paragraph 5, and in any event within a reasonable time frame.

7. Where the Commission intends to make a proposal pursuant to paragraph 9, it shall, before doing so, give the Member State the opportunity to submit its observations, in particular on the proportionality of the envisaged measures, within one month.

8. When assessing the proportionality of the measures to be imposed, the Commission shall take into account the information and guidance referred to in paragraph 3.

9. Where the Commission considers that the conditions of Article 4 are fulfilled and that the remedial measures, if any, proposed by the Member State under paragraph 5 do not adequately address the findings in the Commission's notification, it shall submit a proposal for an implementing decision on the appropriate measures to the Council within one month of receiving the Member State's observations or, in the event that no observations are made, without undue delay and in any case within one month of the deadline set in paragraph 7. The proposal shall set out the specific grounds and evidence on which the Commission based its findings.

10. The Council shall adopt the implementing decision referred to in paragraph 9 of this Article within one month of receiving the Commission's proposal. If exceptional circumstances arise, the period for the adoption of that implementing decision may be extended by a maximum of two months. With a view to ensuring a timely decision, the Commission shall make use of its rights under Article 237 TFEU, where it deems it appropriate.

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11. The Council, acting by a qualified majority, may amend the Commission's proposal and adopt the amended text by means of an implementing decision.

*Article 7***Lifting of measures**

1. 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 of Article 4 are no longer fulfilled.

2. 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 any evidence submitted by the Member State concerned, as well as the adequacy of any new remedial measures adopted by the Member State concerned.

Where the Commission considers that the conditions of Article 4 are no longer fulfilled, it shall submit to the Council a proposal for an implementing decision lifting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has been remedied in part, it shall submit to the Council a proposal for an implementing decision adapting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has not been remedied, it shall address to the Member State concerned a reasoned decision and inform the Council thereof.

When the Member State concerned submits a written notification pursuant to paragraph 1, the Commission shall submit its proposal or adopt its decision within one month of receiving that notification. This period may be extended in duly justified circumstances, in which case the Commission shall without delay inform the Member State concerned of the reasons for the extension.

The procedure set out in paragraphs 3, 4, 5, 6, 9, 10 and 11 of Article 6 shall apply by analogy as appropriate.

3. Where measures concerning the suspension of the approval of one or more programmes or amendments thereof referred to in point (i) of Article 5(1)(b) or the suspension of commitments referred to in point (ii) of Article 5(1)(b) are lifted, amounts corresponding to the suspended commitments shall be entered in the Union budget subject to Article 5 of Council Regulation (EU, Euratom) 2020/2093 ⁽¹⁾. Suspended commitments of year n may not be entered in the budget beyond year n+2.

⁽¹⁾ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (see page 11 of this Official Journal).

*Article 8***Informing the European Parliament**

The Commission shall immediately inform the European Parliament of any measures proposed, adopted or lifted pursuant to Articles 5, 6 and 7.

*Article 9***Reporting**

The Commission shall report by 12 January 2024 to the European Parliament and the Council on the application of this Regulation, in particular on the effectiveness of the measures adopted.

*Article 10***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.