

Commission Proposes Loss of EU Money if Rule of Law is Not Respected

News

Thomas Wahl

On 2 May 2018, the Commission tabled its [proposals for a new long-term EU budget](#), also referred to as Multiannual Financial Framework (“MFF”). The new framework would follow the current budget period that ends in 2020. The MFF would therefore cover the period from 2021 to 2027, and it especially takes into account the EU-27 after the withdrawal of the UK.

The MFF translates the Union’s political priorities into financial terms. The priorities are identified on the basis of the “White Paper on the Future of Europe” of 1 March 2017, the agenda set out by Commission President *Jean-Claude Juncker* in his “State of the Union address” of 14 September 2016, the Bratislava conclusions by the Heads of State or Government of 16 September 2016, and the Rome Declaration of 25 March 2017 (for these events, [eucrim 1/2017](#), p. 3 et seq.). Other important preparatory documents were the [Commission’s Reflection Paper on the future of EU Finances of June 2017](#) and the Commission’s [Communication of 14 February 2018](#) setting out the options for the future EU budget.

The Commission proposes a long-term budget of €1,135 billion in commitments (expressed in 2018 prices) over the said period from 2021 to 2027. This is equivalent to 1.11 % of the EU-27’s gross national income (GNI). This level of commitment translates into €1,105 billion (= 1.08 % of GNI) in payments (again expressed in 2018 prices). The [keywords](#) for the new MMF are “a budget for a Europe that protects, empowers and defends,” and “a budget that is modern, simple and flexible.” The [major general guidelines](#) in the proposal are the following:

- Clear budget focus on “EU added value,” i.e., the EU will invest in the “big” areas in which the EU can have a greater impact than public spending at the national level;
- Pooling of resources so that key investments can be taken, e.g., cutting-edge research projects that bring together the best researchers from across Europe, investments in satellites or in expensive supercomputers, etc.;
- Clearer budget and closer alignment with political priorities, including a reduction in funding programmes and bringing together fragmented funding sources;
- Reduction of the administrative burden for beneficiaries and intermediaries;
- More coherent rules on the basis of a single rule book;
- Streamlining of state aid rules;
- More flexibility, i.e., enabling the EU to respond to unforeseen demands quickly and effectively; this includes the establishment of a “Union Reserve” – a new tool that comes into play in case of unforeseen events, crises, or trade disruptions;

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- Reform and modernisation of EU spending in the agriculture and cohesion sectors;
- Introduction of a “basket” of new own resources, including revenues from the Emissions Trading System, a new Common Consolidated Corporate Tax Base, and national contributions from non-recycled plastic packaging waste.
- Fairer and more transparent budget by simplifying and reforming the current, complicated system of rebates and “rebates on rebates.”

Note should be taken, in particular, of the Commission’s proposal to interlink sound management of the long-term budget with respect for the rule of law. In this context, the Commission proposes a “Regulation on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States” (COM(2018) 324 final). The Commission aims to forge a link between respect for the rule of law, mutual trust, and financial solidarity. Therefore, the Commission is advocating that the EU should be equipped with appropriate measures to protect the Union’s financial interests if generalised deficiencies regarding the rule of law in a specific Member State cause the risk of financial loss. This new legal framework would go beyond the current rules by which the EU Member States and its beneficiaries must already show that their rules and procedures for financial management of EU money are robust and that funding is efficiently protected from abuse or fraud. The new legislative proposal defines general deficiencies concerning the rule of law in a Member States as they affect the principles of sound financial management or the protection of the EU’s financial interests. The occurrence of the defined situations would open the door for an EU reaction, which may include:

- Suspension of payments or of the implementation of the legal commitment or a termination of the legal commitment;
- Prohibition from entering into new legal commitments;
- Suspension of the approval of one or more programmes or an amendment thereof;
- Reduction of pre-financing;

As regards the procedure, the Commission suggests that the measures be proposed by the Commission and adopted by the Council through the so-called “reverse qualified majority voting.” This means that the Commission’s decision would be deemed to have been adopted by the Council, unless it decides, by qualified majority, to reject the Commission proposal within one month of its adoption by the Commission. The European Parliament should also be fully involved at all stages.

The new rules are a clear reaction from part of the Commission to a number of recent events and developments in some EU Member States that have shaken the presumption that all EU Member States ensure the rule of law and have in-built safeguards to protect citizens from any state power abuse. The EP and the public called for the introduction of legal consequences for EU financing if the rule of law is not respected in a Member State. The proposed mechanism would, however, only affect state institutions and not the individual beneficiaries of EU funding. Member States would therefore be obliged to continue the implementation of the affected programmes and make payments to beneficiaries, such as Erasmus students, researchers, or civil society institutions.

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