

# Commission Publishes Guidelines on Application of Conditionality Mechanism



## News

**Thomas Wahl**

On 2 March 2022, the European Commission published [guidelines on the application of Regulation 2020/2092](#) setting out the general regime of conditionality for the protection of the Union budget (the “Conditionality Regulation”). The Regulation ensures that the EU can financially sanction breaches of the principles of the rule of law that affect or risk affecting the EU budget by EU Member States (→ [eucrim 3/2020, 174-176](#)). The guidelines come after the CJEU judgments of 16 February 2022 which dismissed actions against the novel EU rules brought by Poland and Hungary (→ [related link](#)).

The purpose of the guidelines is to explain more clearly and precisely how the Commission will apply Regulation 2020/2092. They are divided into the following thematic chapters:

- Conditions for the adoption of measures;
- The relation between the Conditionality Regulation and other procedures set out in Union legislation to protect the EU budget;
- The proportionality of measures that could be proposed by the Commission;
- Procedure and methodology of the assessment process;
- The protection of the rights of final recipients and beneficiaries.

Regarding the question when the Commission will initiate the procedure set out in the Regulation, the guidelines clarify that the following conditions must be met:

- At least one of the rule-of-law principles referred to in Art. 2(a) of the Conditionality Regulation has been breached in a Member State (these concern, for example, principles of legality, legal certainty, effective judicial protection, separation of powers and equality before the law);
- 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 Art. 4(2) of the Conditionality 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 (authorities could be for example authorities implementing the EU budget and carrying out financial control, monitoring and audit; investigation and public prosecution services; national courts or administrative authorities);
- The said breach affects or risks seriously affecting that sound financial management or those financial interests, covering both revenue and expenditure. There must also be a sufficiently direct relation between the breach and its effect.

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The guidelines stress that the Commission will initiate the procedure unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively. Indicative criteria for more effectiveness of the conditionality mechanism are:

- Scope of the effect and/or extent of risk the breach may entail – for example if other procedures only relate to specific programmes or relate to already materialized effects on the Union budget;
- Types of remedies available and their suitability to different situations to address the relevant breach – for example, if the Union budget is affected in a wide manner due to lack of independence of national courts.

The guidelines define the principles upon which the Commission will carry out its assessments. There will be thorough qualitative assessments on a case-by-case basis, taking due account of the specific circumstances and contexts of each Member State. The assessments will also be carried out in an objective, impartial and fair manner. Assessments will be based on a wide range of evidence and reliable information sources. The latter includes CJEU judgments, reports of the Court of Auditors, the Commission's annual Rule of Law Report and EU Justice Scoreboard, reports of OLAF and the EPPO and information provided by them, as well as conclusions and recommendations of any relevant international organisations and networks (e.g. the CoE bodies GRECO and the Venice Commission). Another important source will be complaints by any third party. For this purpose a [complaint form](#) is available on the [Commission's website](#).

The guidelines further explain the different steps of the formal procedure under the Conditionality Regulation, from sending out a written notification to the Member State concerned to the proposal of measures to the Council and their adoption. The procedure for lifting measures is also set out.

A key principle in the application of the Conditionality Regulation is that the final recipients and beneficiaries of EU funding should not be affected by measures taken under the regulation. To ensure that, the Member States concerned by the regulation should continue to make any payments due to these recipients or beneficiaries. If the Member States concerned refuses to honour their obligations, the beneficiaries or final recipients should first turn to the competent national authorities. If this is not possible or does not lead to the expected outcome, they can address the Commission.

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