Questions and answers: Commission guidance on the conditionality mechanism
Brussels, 2 March 2022

1. **What is the role of the rule of law conditionality regulation?**

For the European Commission, it is a priority to protect citizens’ money and make sure that every euro from the budget is spent in line with the rules and generates added value. The Commission works continuously and closely with Member States and with the other EU institutions towards this objective, and has traditionally used a series of tools to that end.

For the 2021–2027 budget and NextGenerationEU, an additional layer of protection has been introduced: [Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget](https://eur-lex.europa.eu/eli/reg/2020/2092/oj). It makes sure that the EU is better equipped to protect the budget by dealing with breaches of the principles of the rule of law that affect or risk affecting the EU budget.

This new conditionality regime allows the EU to take measures – for example suspension of payments or financial corrections – to protect the budget.

At the same time, the final recipients and beneficiaries of Union funds should continue to receive their payments directly by the Member States concerned.

The instrument complements other tools and procedures to protect the EU budget, for example checks and audits or financial corrections, or investigations by the [European Public Prosecutor’s office](https://ec.europa.eu/olaf/en) or by the [EU’s anti-fraud office OLAF](https://olaf.ec.europa.eu). The Commission can only recur to the regulation if the other EU budget protection tools cannot protect the EU budget more effectively.

Together with the instruments already in place, the regulation is making sure that every euro goes where it is needed and creates added value for the citizens.

2. **What is the role of the guidelines that the Commission has published today?**

The guidelines that the Commission has published today seek to clarify a number of elements related to the application of the conditionality regulation.

The guidelines are essential to ensure clarity and predictability as to how the Commission will apply the regulation. They help clarify the conditions that would trigger the application of the regulation, how third parties can report information and how the rights of the final recipients and beneficiaries of EU funding will be protected.

3. **How were these guidelines prepared?**

The guidelines have been prepared through a comprehensive process, including preparatory work by the European Commission, and consultations with the European Parliament and the EU Member States.

This process fully recognises the importance of the European Parliament and EU Member States as partners throughout the implementation of the regulation. The guidelines also take into account the judgements of the European Court of Justice in cases C-156/21 and C-157/21 concerning the legality of the Conditionality Regulation, released on 16 February 2022.

4. **What do these guidelines foresee?**

The purpose of the guidelines is to explain five aspects of the Conditionality Regulation:

- the conditions to adopt measures;
- the complementarity between the conditionality regulation and other EU budget protection tools;
5. Under what conditions will the Commission initiate the procedure under the conditionality regulation?

The Commission will initiate the procedure under the conditionality regulation where it has reasonable grounds to consider the following points, as detailed in the guidelines, fulfilled:

- at least one of the rule of law principles referred to in the conditionality regulation has been breached in a Member State. These includes the principles of legality, legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection, separation of powers, non-discrimination and equality before the law.
- the breach concerns situations or conducts of public authorities or can be attributed to them, if they are relevant for the sound financial management of the Union budget or for the protection of the financial interests of the Union. This includes authorities implementing the EU budget and carrying out financial control, monitoring and audit; investigation and public prosecution services; national courts or administrative authorities; authorities implementing the Recovery and Resilience Plans; or those collecting the sources of revenue for the EU budget.
- the breach affects or risks seriously affecting the sound financial management of the EU budget or the protection of the EU's financial interests, covering both revenue and expenditure of the budget. There must also be a sufficiently direct relation between the breach and its effects. This assessment will be made on a case-by-case basis.

When the conditions are met, 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.

6. What is the relation between the conditionality regulation and other EU budget protection instruments?

Before proposing any measures, the Commission will assess whether other procedures would not allow it to protect the Union budget more effectively. These could include the early detection and exclusion system; interruption or suspension of payments, or financial corrections under shared management. In the case of the Recovery and Resilience Facility at the heart of the NextGenerationEU recovery plan, it is possible to proceed with the reduction and recovery of amounts in cases of serious irregularities that have not been corrected by the Member States.

The guidelines provide two indicative criteria to determine the effectiveness of the conditionality regulation as compared to other instruments:

- Firstly, the scope of the effect and/or extent of risk the breach may entail: this is relevant as other procedures may relate only to specific spending programmes or already materialised effects. The conditionality regulation would therefore be more effective for breaches that are widespread or where the effect has not materialised yet.
- Secondly, the types of remedies available and their suitability to different situations to address the relevant breach: When the EU budget is or risks being affected in a wide manner, due for instance to lack of independence of national courts, the wide variety of possibilities under the Conditionality Regulation that could be imposed until the breach is brought to an end might protect the Union budget more effectively than measures focused on a specific programme or instrument.

7. What does it mean that the measures need to be proportionate?

The Commission will propose proportionate measures, which means that they must be suitable and necessary to address the issues found and protect the EU budget or the EU's financial interests, without going beyond what is required to achieve this goal.

To assess whether the measures are proportionate, the Commission will take into account the nature, duration, gravity and scope of the breaches of the rule of law principles at stake. The guidelines provide details on each of these elements.

In addition, the Commission may consider other factors, in particular, the intention of the Member State to put an end to the breach, the degree of cooperation of the Member State with the
Commission, or a possible persistence or repetition of the breaches. In its proposal to the Council to adopt measures, the Commission will indicate specific programmes or funds affected or at risk of being affected by the breaches and propose measures related to those programmes or funds. In exceptional circumstances, the measures may also be disconnected from the funds that were/are being affected.

8. **How will the Commission carry out this assessment?**

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 of each Member State. The guidelines set out the principles of the methodology that the Commission will use.

To gather information to feed into its assessment, the Commission will use various sources of information. These include the Commission's annual [Rule of Law report](#) and the EU Justice Scoreboard, decisions by the Court of Justice of the European Union, reports from the European Court of Auditors, the European anti-fraud office OLAF and the European Public Prosecutor's Office, as well as conclusions by relevant international organisations.

Complaints are also a useful source of information for the Commission to establish whether the conditionality regulation should be triggered. Any third party that is aware of information and evidence about relevant breaches of the principles of the rule of law is invited to send a complaint, and a [complaint form](#) is available on the Commission’s website. The Commission may also contact the Member State concerned to gather information or explanations it may need for its assessment.

The guidelines explain the different steps of the **formal procedure under the conditionality regulation**, from sending out of a written notification, to the proposal of measures to the Council and their adoption.

Once measures under the regulation have been introduced, the Commission will continue to regularly monitor and reassess the situation in the Member States concerned, taking into account any evidence submitted, as well as the adequacy of any remedial measures adopted by those Member States.

The guidelines also explain how measures can be lifted.

9. **How are the rights of final recipients and beneficiaries of Union funding protected?**

A key principle in the application of the 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 refuse to honour their obligations, the beneficiaries or final recipients concerned 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. Further information is available on the dedicated Commission website.

10. **When will the Commission act further in the application of the regulation?**

The Commission has been applying the regulation since January 2021.

Ever since, the Commission has been monitoring the situation across the EU countries and collecting relevant information. The Commission’s annual [Rule of Law report](#), decisions by the Court of Justice of the European Union, reports from the European Court of Auditors, as well as conclusions by relevant international organisations are all feeding into the Commission’s analysis.

Complaints are also a useful source of information for the Commission to establish whether the conditionality regulation should be triggered. The Commission published a [complaint form](#) inviting the wide public to send a complaint about possible cases under the conditionality regulation.

Moreover, under the conditionality regulation, the Commission may contact the EU Member State concerned and request information. The information requested will feed into the Commission’s assessment of whether the conditions to send Member States a notification under the conditionality regime are fulfilled.

The Commission will start the procedure if the necessary conditions are fulfilled.
For More Information

Press release
Guidelines
Rule of law conditionality regulation – legal text
Rule of law conditionality regulation on the web

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