



Brussels, 14 December 2020

CM 5358/20

CADREFIN
RESPR
POLGEN
FIN
PROCED

COMMUNICATION

WRITTEN PROCEDURE

Contact: cedric.barra@consilium.europa.eu

Tel./Fax: +32.2-281.96.75

Subject: Multiannual Financial Framework (MFF) 2021-2027 and Recovery package
- End of Written Procedure

- 1) draft Council Regulation laying down the multiannual financial framework for the years 2021-2027
- *Request for the consent of the European Parliament*
- 2) draft Interinstitutional Agreement
- *Approval by the Council*
- *Request for the approval of the European Parliament and the Commission*
- 3) joint and unilateral declarations
- *Approval of the joint declarations*
- *Request for the approval of the European Parliament and the European Commission*
- 4) draft Regulation on a general regime of conditionality for the protection of the Union budget
- *Adoption of the Council first reading position and Statement of Reasons*
- *Approval of the joint statement*
- 5) draft Council Decision on the system of Own Resources of the European Union
- *Adoption*
- 6) draft Council Regulation establishing the European Union Recovery Instrument

- *Adoption*

7) draft letters to the European Parliament and the Commission

- *Approval*

Delegations are informed that the written procedure opened by CM 4742/20 of 11 December 2020 was completed on 14 December 2020 at 08:00, with the results outlined below.

1. Question 1

All delegations agreed to approve the forwarding of the draft **Council Regulation laying down the multiannual financial framework for the years 2021-2027** as set out in doc. ST 9970/20 + COR 1 (hr) + COR 2 (sv), as finalised by the legal/linguistic experts, to the European Parliament for its consent in accordance with Article 312(2) TFEU.

The required simple majority has been reached. Therefore **the Council agrees to request the consent of the European Parliament on the above-mentioned draft Council Regulation.**

The statement by Austria is reproduced in the Annex 1 to this CM and will be included in the summary of acts adopted by the written procedure as statement to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

2. Question 2

a) All delegations agreed to approve the draft **Interinstitutional Agreement** as set out in doc. ST 12723/20, as finalised by the legal/linguistic experts.

The required reinforced qualified majority has been reached. Therefore **the Council approves the above-mentioned draft Interinstitutional Agreement.**

The statement by Austria is reproduced in the Annex 1 to this CM and will be included in the summary of acts adopted by the written procedure as statement to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

- b) All delegations agreed to approve the **forwarding of the draft Interinstitutional Agreement** as set out in doc. ST 12723/20, as finalised by the legal/linguistic experts, to the European Parliament and the Commission for their approval.

The required simple majority has been reached. Therefore **the Council agrees to forward the above-mentioned draft Interinstitutional Agreement to the European Parliament and the Commission for their approval.**

3. Question 3

- a) All delegations agreed to approve the draft **joint declarations** set out in doc. ST 12793/20 + COR 1 (da) + COR 2 (cs) + COR 3 (et) + COR 4 (lt) + COR 5 (pl) + COR 6 (sl) + COR 7 (ga).

The required unanimity has been reached. Therefore the Council approves the above-mentioned draft joint declarations.

- b) All delegations agreed to approve the forwarding of the draft **declarations** set out in doc. ST 12793/20 + COR 1 (da) + COR 2 (cs) + COR 3 (et) + COR 4 (lt) + COR 5 (pl) + COR 6 (sl) + COR 7 (ga) to the European Parliament and the Commission for approval of the relevant ones.

The required simple majority has been reached. Therefore the Council agrees to forward the above-mentioned draft declarations to the European Parliament and the Commission for their approval.

The draft joint declarations contained therein are reproduced in the Annex 2 and will be included in the summary of acts adopted by the written procedure as statements to be entered into the Council's minutes when adopting the respective acts (MFF, IIA), in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

4. Question 4

On the draft **Regulation on a general regime of conditionality for the protection of the Union budget** as set out in doc. ST 9980/20, as finalised by the legal/linguistic experts:

- a) Except for Hungary and Poland who voted against, all delegations voted in favour.

The required qualified majority has been reached. Therefore **the Council has adopted its position at first reading on the above-mentioned Regulation and the Council Statement of Reasons as set out in ST 9980/20 ADD 1.**

The statements by Hungary and the Commission are reproduced in the Annex 3 to this CM and will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure."

- b) All delegations agreed to approve the draft joint statement set out in Annex 1 of doc. ST 13051/20.

The required qualified majority has been reached. Therefore **the Council has approved the accompanying joint statement as set out in Annex 1 of doc. ST 13051/20.**

The above-mentioned joint statement is reproduced in the Annex 3 to this CM and will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

5. **Question 5**

All delegations voted in favour of the adoption of the draft Council Decision on the system of Own Resources of the European Union as set out in doc. ST 10046/20 + REV 1 (bg, cs, da, es, et, fr, lv, mt, nl, pl, pt, sl and sv) + REV 1 COR 1 (nl) + REV 2 (de) + REV 3 (el) + REV 6 (ro), as finalised by the legal/linguistic experts.

The required unanimity has been reached. Therefore the above-mentioned Council Decision is adopted.

The statement by the Netherlands, as well as the joint statement by Estonia, Latvia and Lithuania are reproduced in the Annex 4 to this CM and will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

6. **Question 6**

All delegations voted in favour of the adoption of the draft Council Regulation establishing the European Union Recovery Instrument as set out in doc. ST 9971/20 + COR1 (it), as finalised by the legal/linguistic experts.

The required qualified majority has been reached. Therefore, the above-mentioned Council Regulation is adopted.

7. **Question 7**

All delegations agreed to approve the draft letters as set out in doc. ST 13027/20 to be sent to the European Parliament and the Commission respectively.

The required simple majority has been reached. Therefore the above-mentioned letters will be sent on behalf of the Council.

Statement by Austria

The Commission's declaration regarding climate contributions per programme indicates the following for the „International Thermonuclear Experimental Reactor“ (ITER): an expected contribution of 100% in view of achieving an overall target of at least 30% of the total amount of the Union budget and NGEU expenditures. In this context, Austria recalls that the targets in sectoral legislation/programmes shall comply with the objective of EU climate neutrality by 2050 and contribute to achieving the Union's new 2030 climate targets. However, ITER will not contribute to achieving the Union's new 2030 climate targets and the objective of EU climate neutrality by 2050 as the research and experimental reactor will not produce any electric energy within the next years. Likewise, even the follow-up project DEMO (DEMONstration power plant) will not yet be in a position to contribute to the goals of the Paris Agreement. It will rather lead to a net negative effect in CO² emissions during its construction.

Given,

- that the European Court of Auditors has highlighted that the EU climate coefficients applied in certain areas failed to respect the conservativeness principle developed by the World Bank and
- that these coefficients also diverge from the OECD classification framework and
- don't account for the negative impacts of investments,
- EU expenditure for ITER should not be counted as a contribution to the overall climate target of 30%.

Draft joint declaration by the European Parliament, Council and Commission on the reinforcement of specific programmes and adaptation of basic acts

Without prejudice to the powers of the legislative and budgetary authority, the European Parliament, the Council and the Commission agree to increase by 2,5 billion Euros in 2018 prices the financial envelopes in the basic acts or the financial programming, as appropriate, of those programmes that are identified by the European Parliament. This will be achieved through a corresponding reduction of the margins available under the MFF ceilings, without prejudice to the possible use of the Flexibility instrument in 2021.

Without prejudice to the legislative powers of the institutions, the European Parliament, the Council and the Commission agree to insert in the basic acts of programmes listed in Annex II of the MFF Regulation a provision on the increase of the financial envelopes by the amounts specified therein. For programmes establishing budgetary guarantees, the additional amount will be reflected in the additional level of the guarantees provided.

Draft joint declaration by the European Parliament, Council and Commission on the use of reflows from the ACP Investment Facility to the benefit of the Neighbourhood, Development and International Cooperation Instrument

The Council agrees that an amount of up to EUR 1 billion (in 2018 prices) stemming from the reflows under the ACP Investment Facility for operations under the 9th, 10th, and 11th European Development Funds will be used for the benefit of the Neighbourhood, Development and International Cooperation Instrument in the period of 2021-2027. The three Institutions agree that the Neighbourhood, Development and International Cooperation Instrument should allow for the reception of those funds.

Draft joint declaration by the European Parliament, the Council and the Commission on the re-use of decommitted funds in relation to the research programme

Without prejudice to their institutional prerogatives, the European Parliament, the Council and the Commission agree to make available again to the benefit of the research programme commitment appropriations, corresponding to the amount up to EUR 0.5 billion (in 2018 prices) in the period 2021-2027 of decommitments, which results from total or partial non-implementation of projects belonging to that programme or its predecessor as provided for in Article 15(3) of the Financial Regulation.

**Draft joint declaration by the European Parliament, Council and Commission on the
treatment of NGEU interest costs and repayments in the 2021-2027 MFF**

The three Institutions agree that expenditures covering the financing costs of Next Generation EU shall aim at not reducing EU programmes and funds.

The three Institutions agree that the treatment of NGEU interest costs and repayments in the 2021-2027 MFF, currently forecast at EUR 12.9 billion for the seven years, is without prejudice to how this matter will be addressed in future MFFs from 2028 onwards.

The three Institutions agree to work towards introducing sufficient new own resources with a view to covering an amount corresponding to the expected expenditure related to repayment and interest costs.

Draft Joint declaration of the European Parliament, the Council and the Commission on budgetary scrutiny of new proposals based on Article 122 TFEU with potential appreciable implications for the Union budget

Whereas:

- (1) The European Parliament, the Council and the Commission (“the three Institutions”) acknowledge that Article 122 TFEU constitutes a legal basis for adopting measures to address specific crisis situations that may entail potential budgetary implications, which are capable of impacting the development of Union expenditure within the limits of its own resources.
- (2) In the light of their budgetary powers under the Treaties, it is appropriate that the two branches of the budgetary authority deliberate on the budgetary implications of such envisaged acts where those implications are likely to be appreciable. To this effect, the Commission should provide all relevant information necessary to assist the European Parliament and the Council in their deliberations.

HAVE AGREED AS FOLLOWS:

1. This declaration sets out arrangements for a procedure of budgetary scrutiny (hereafter “the procedure”) between the European Parliament and the Council with the active assistance of the Commission.
2. This procedure may be followed in respect of a Commission proposal for a Council act based on Article 122 TFEU with potential appreciable implications for the Union budget.
3. The Commission will accompany any such proposal by an assessment of the budgetary implications of the proposed legal act and will indicate whether the act in question may, in its view, have appreciable implications for the Union budget. On that basis, the European Parliament and the Council may request that the procedure be initiated.
4. The procedure will take place in a Joint Committee consisting of representatives of the European Parliament and of the Council at the appropriate level. The Commission will participate in the work of the Joint Committee.
5. Without prejudice to the powers of the Council under Article 122 TFEU, the European Parliament and the Council will engage in a constructive dialogue with a view to seeking a joint understanding of the budgetary implications of the envisaged legal act having due regard to the urgency of the matter.
6. The procedure should take place during a period not exceeding two months, unless the act in question has to be adopted before a specific date or, if the urgency of the matter so requires, within a shorter time limit fixed by the Council.

**Draft Joint declaration of the European Parliament, the Council and the Commission on
reassessing the external assigned revenue and borrowing and lending provisions in the
Financial Regulation**

Against the background of the NGEU, the European Parliament, the Council and the Commission agree that in the framework of the next revision of the Financial Regulation, the following issues will be assessed and as appropriate revised:

- the provisions on the external assigned revenue , in particular as referred to in Article 21(5) of the Financial Regulation;
- the provisions on reporting on borrowing and lending operations.

The three institutions acknowledge that the existing rules on audits and discharge procedure apply to assigned revenue.

Annex 3: information and statements on question 4

Explanation by Hungary of its vote

The European Council conclusions of 10-11 December 2020 and the related statements by the Commission and the Council addressed the political and some of the legal concerns of Hungary as regards the interpretation and application of the draft Regulation on a general regime of conditionality for the protection of the Union budget. Nevertheless, serious legal concerns remain as to the conformity of the draft Regulation with EU law that compel Hungary to vote against the Council's position in first reading on the draft Regulation. Hungary reserves its right under Article 263 TFEU.

Statement by Hungary

The full implementation in good faith of the European Council conclusions and the related statements by the Commission on the interpretation and application of the regulation on a general regime of conditionality for the protection of the Union budget pertains to Hungary's vital national interests and is a precondition of Hungary's consent to any legislative act related to the multiannual financial framework for the years 2021 to 2027, including Next Generation EU.

Statement by the Commission

The Commission takes note of the European Council's conclusions of 10-11 December 2020 with regard to the draft Regulation on a general regime of conditionality for the protection of the Union budget. It confirms the European Council's understanding that the Commission, in the application of the Regulation, is committed to the elements referred to in paragraph 2 of the conclusions of 10-11 December 2020 to the extent that they fall within the remit of its responsibilities, in accordance with the Treaties.

Draft Joint Statement by the Council, the European Parliament and the Commission

Without prejudice to the Commission's right of initiative, the European Parliament, the Council and Commission agree to consider including the content of this Regulation into Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (the "Financial Regulation") upon its next revision.

Statement by the Commission

The Commission agrees to consider accompanying the report to the European Parliament and the Council on the application of this Regulation by appropriate proposals where necessary.

Statement by the Netherlands

The Netherlands considers the negotiations on the Multiannual Financial Framework, the Own Resources Decision, the Regulation on a general regime of conditionality for the protection of the Union budget and the Regulation establishing a Recovery and Resilience Facility (RRF) as a package. It is of utmost importance to respect the delicate balance of the European Council conclusions of 17-21 July 2020 and to ensure that the legislative texts are in conformity with these conclusions. At the moment, the RRF regulation is still in the trilogue phase so the final outcome is not known.

The Netherlands welcomes the agreement on the new Council Decision (EU, Euratom) on the system of own resources of the European Union (ORD). In the spirit of the principle of sincere cooperation and to allow for a swift introduction of the funds aimed at addressing the consequences of the Covid-19 pandemic, the Netherlands will vote in favour of the Council Decision, so that Member States may start their national procedures, in accordance with their respective constitutional requirements, required for the entry into force of the Council Decision.

Given the need to assess the complete package indicated above, including as a requirement to be able to receive parliamentary approval for the ORD, the Dutch government will only send the ORD to parliament after the trilogues on the proposed RRF regulation have led to a satisfactory outcome in full conformity with the European Council conclusions of 17-21 July. In the meantime, the Dutch government is finalising the necessary preparatory work that will allow for the start of the national parliamentary approval procedure, required by the Dutch Constitution.

Statement by Estonia, Latvia, Lithuania

Estonia, Latvia and Lithuania note that the trilogues on the Connecting Europe Facility (CEF) Regulation¹ are still ongoing. The co-legislators have not been able to agree on several political issues, which were explicitly addressed in the Conclusions of the European Council special meeting in July 2020 and remain a top priority for the Baltic States. These include, inter alia, the earmarking of EUR 1 384 million from the general envelope of the CEF transport part for the completion of missing major cross-border railway links between cohesion countries to support the functioning of the Single Market. According to the agreement, the co-financing rules of the transfer from the Cohesion Fund to CEF shall apply.

Estonia, Latvia and Lithuania emphasise that the compromise on Connecting Europe Facility forms an integral part of the MFF package. The full respect of the European Council conclusions on the MFF 2021-2027 from July 2020 in relation to the Connecting Europe Facility is instrumental for the success of the ratification and approval processes of the Own Resources Decision in the national parliaments of the Baltic States.

Rail Baltica is a greenfield EU flagship project, which creates a new rail corridor across the three Member States, connecting them to the European-gauge network and bridging the infrastructure gap. As the Baltic States currently lack any high-speed railway connections with other EU Member States or between themselves, Rail Baltica would provide a remarkable economic boost for the whole region and improve transport connectivity between cohesion countries. The project is essential for achieving the EU's increased climate ambition by encouraging modal shift from roads to an electrified railway, thus helping to significantly reduce transport emissions. The earmarked budget is fundamental for the timely completion of Rail Baltica, currently in active development with the aim to start operations by 2026.

The European Council has acknowledged the importance of completing major, missing cross-border railway connections, such as Rail Baltica, as they foster economic, social and territorial cohesion and combat climate change. Estonia, Latvia and Lithuania invite the European Parliament to share this position and support the earmarking provision as agreed by the European Council.

¹ Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014; 2018/0228 (COD)