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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on a general regime of conditionality for the protection of the
Union budget

- Statement of the Council's reasons
- Adopted by the Council on 14 December 2020

I. INTRODUCTION

1. On 2 May 2018, the Commission adopted a package of proposals on the Multiannual Financial Framework for the years 2021 to 2027 (MFF). The legislative package contained a proposal for a new Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in Member States with Article 322(1)(a) of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community as a legal basis.
2. On 12 July 2018, the European Court of Auditors adopted an opinion on the proposal.¹
3. The European Parliament adopted its first reading position on 4 April 2019.
4. The Council and the European Parliament entered into negotiations in October 2020 with a view to reaching an early second reading agreement. The negotiations were successfully concluded on 5 November 2020 with the European Parliament and Council reaching a provisional agreement on a compromise text.
5. On 12 November 2020 the Chairs of the European Parliament's Committees on Budgets (BUDG) and on Budgetary Control (CONT) addressed a letter to the Chair of the Permanent Representatives Committee stating that, should the Council transmit formally to the European Parliament its position as agreed, subject to legal-linguistic verification, they would recommend to the Plenary that the Council's position be accepted without amendments at Parliament's second reading.
6. On 16 November 2020 the Permanent Representatives Committee confirmed the compromise text of the Regulation, as it had been agreed by the two institutions.

¹ Doc. ST 11707/18 - OJ C 291, 17.8.2018, p. 1

II. OBJECTIVE

7. It derives from the outcome of the negotiations that the Regulation aims at establishing a general regime of conditionality for the protection of the Union budget when 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.
8. This mechanism would ensure that any measures taken would be proportionate, and provide tools to strengthen the protection of the final recipients or beneficiaries.
9. The procedure for adopting and lifting the measures would also respect the principles of objectivity, non discrimination and equal treatment of Member States and should be conducted on a non partisan and evidence based approach. In particular, any Member State concerned by the procedure leading to the possible adoption of measures would have the opportunity to provide its observations on the findings, to propose remedial measures, and to submit observations on the proportionality of the envisaged measures.
10. Implementing powers for the adoption and lifting of measures would be conferred on the Council which should act on the basis of a Commission proposal.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

11. Following the vote in plenary, the European Parliament and the Council conducted negotiations with the aim of concluding a second-reading agreement on the basis of a Council first-reading position that the Parliament could approve as such. The text of the Council's first-reading position fully reflects the compromise reached between the co-legislators.

B. Key issues

12. The main elements of the compromise reached with the European Parliament are outlined below:
 - the nature of this mechanism in relationship to the protection of the Union budget has been clarified and reinforced;
 - the conditions for the adoption of the measures have been better specified;
 - the protection of the final recipients and beneficiaries has been increased;
 - a specific role for the European Parliament has been defined;
 - the scope of the measures has been extended to ensure that the conditionality mechanism would apply to resources allocated through Next Generation EU and when the Union budget is implemented through loans and other instruments guaranteed by the Union budget;

- the efficiency of the procedures for adopting or lifting measures has been improved;
- the adoption and lifting of measures by means of implementing decision of the Council acting at qualified majority on the basis of a Commission proposal has been established;
- a new reporting clause after three years has been introduced.

IV. CONCLUSION

13. The Council's position fully reflects the compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission. This compromise is confirmed by the letter that the Chairs of the BUDG and CONT Committees addressed to the Chairman of the Permanent Representatives Committee on 12 November 2020.
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