

The President

Ms Ursula von der Leyen
President
European Commission
Rue de la Loi 200
1049 Brussels

D 303117 23.06.2021

Ursula von der Leyen

Dear President,

Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget was adopted on 16 December 2020.¹ In accordance with Article 10 of the Regulation, it applies from 1 January 2021.

Point 2(c) of the Conclusions of the European Council meeting of 10/11 December 2020² stated as follows:

"2.c). With a view to ensuring that these principles will be respected, the Commission intends to develop and adopt guidelines on the way it will apply the Regulation, including a methodology for carrying out its assessment. Such guidelines will be developed in close consultation with the Member States. Should an action for annulment be introduced with regard to the Regulation, the guidelines will be finalised after the judgment of the Court of Justice so as to incorporate any relevant elements stemming from such judgment. The Commission President will fully inform the European Council. Until such guidelines are finalised, the Commission will not propose measures under the Regulation."

At point 3 of the same Conclusions, the European Council "welcomes the Commission's intention to adopt a Declaration, to be entered in the minutes of the Council when deciding on the Regulation, expressing its commitment to apply the elements referred to in paragraph 2 above which fall within the remit of its responsibilities in the application of the Regulation."

The Commission entered the following Statement in the minutes of the meeting of the General Affairs Council of 14 December 2020³, that is before the Regulation had been adopted:

"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

¹ OJ L 433I, 22.12.2020, p. 1.

² EUCO 22/20 of 11 December 2020.

³ Council Document 14018/20 of 14 December 2020.

10-11 December 2020 to the extent that they fall within the remit of its responsibilities, in accordance with the Treaties.”

On 17 December 2020, the European Parliament adopted a resolution on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulation.⁴ That resolution stated that the content of the European Council Conclusions of 10/11 December 2020 concerning the Regulation is “superfluous”. It also recalled “that the applicability, purpose and scope of the Rule of Law Regulation is clearly defined in the legal text of the said Regulation.”⁵

The resolution recalled “that in accordance with Article 17(1) TEU, the Commission shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them”.⁶ The resolution further recalled “that the applicability of this Regulation cannot be subject to adoption of any guidelines” and stated that Parliament “expects the Commission, as guardian of the Treaties, to ensure that the Regulation is fully applicable from the date agreed by the co-legislators”.⁷ Parliament also recalled “Article 265 TFEU and states its readiness to make use of it.”⁸

On 11 March 2021, Hungary and Poland lodged proceedings at the Court of Justice challenging the validity of the Regulation.⁹ The European Parliament requested the application of the expedited procedure under Article 133 of the Court’s Rules of Procedure. This request was granted and oral hearings are scheduled for 11/12 October 2021.

During a debate in Parliament’s plenary on 11 March 2021, the Commissioner for Budgets explained that “the guidelines will take into account the Court’s judgment insofar as relevant. Taking into account the European Council conclusions of December 2020 and its own declaration, the Commission does not expect to propose measures under the regulation before adopting these guidelines.”¹⁰

In its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule of law conditionality mechanism¹¹, Parliament reiterated its positions as laid down in its resolution of 17 December 2020.¹² The resolution noted “with disappointment the absence of any written notification to Member States since the entry into force of the Regulation, despite many concerns about the breaches of the rule of law identified in the Commission’s

⁴ P9_TA(2020)0360.

⁵ Paragraph 4 of the resolution.

⁶ Paragraph 6 of the resolution.

⁷ Paragraph 9 of the resolution.

⁸ Ibid.

⁹ Case C-126/21 *Hungary v EP & Council*, OJ C 138, 19.4.2021, p. 24; Case C-127/21 *Republic of Poland v EP & Council*, OJ C 138, 19.4.2021, p. 26.

¹⁰ Record of the debate of 11 March 2021 on the Application of Regulation (EU, Euratom) 2020/2092, the rule of law conditionality mechanism: https://www.europarl.europa.eu/doceo/document/CRE-9-2021-03-11-ITM-005_EN.html

¹¹ P9_TA(2021)0103.

¹² Paragraph 1 of the resolution.

2020 Rule of Law Report, which have an impact on the sound financial management of the Union budget and remain unresolved by Member States.”¹³

The resolution further recalled “that actions brought before the CJEU do not have any suspensory effect according to Article 278 TFEU”.¹⁴ Parliament stressed “that the application of the Rule of Law Conditionality Regulation cannot be subject to the adoption of guidelines” and urged “the Commission to avoid any further delay in its application”.¹⁵ The resolution requested that “if the Commission deems such guidelines necessary, they are adopted as soon as possible, and not later than 1 June 2021”.¹⁶

The resolution concluded that in “case the Commission does not fulfil its obligations under this Regulation” by 1 June 2021, “Parliament will consider this to constitute a failure to act and subsequently shall take action under Article 265 of the TFEU against the Commission.”¹⁷

On 10 June 2021, Parliament adopted a further resolution on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092.¹⁸ In the resolution, Parliament “[r]eiterates its position on the Rule of Law Conditionality Regulation which entered into force on 1 January 2021 and is directly applicable in its entirety in the European Union and all its Member States for all funds of the EU budget, including resources allocated through the EU Recovery Instrument since then.”¹⁹ It also recalled that “the Commission ‘shall be completely independent’ and its members ‘shall neither seek nor take instructions from any Government or other institution, body, office or entity’ (Article 17(3) TEU, Article 245 TFEU) and furthermore ‘shall be responsible to the European Parliament’ (Article 17(8) TEU) and ‘shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them’ (Article 17(3) TEU)”.²⁰ It repeated that “actions brought before the CJEU do not have suspensory effect according to Article 278 TFEU”.²¹

According to the resolution, Parliament “believes that the situation as regards respect for the principles of the rule of law in some Member States warrants immediate use of the Rule of Law Conditionality Regulation”.²² It “urges the Commission to react swiftly to the ongoing severe violations of the principles of the rule of law in some Member States, which are causing a serious danger in relation to the fair, legal and impartial distribution of EU funds, especially under shared management”.²³ It “[s]tresses its concern at the increasingly clear indications and the growing risk of misuse of the Union’s budget as a means to deteriorate the rule of law in some Member States”²⁴ and underlines “that despite numerous European Parliament

¹³ Paragraph 9 of the resolution.

¹⁴ Paragraph 12 of the resolution.

¹⁵ Paragraph 13 of the resolution.

¹⁶ Ibid.

¹⁷ Paragraph 14 of the resolution.

¹⁸ P9_TA(2021)0287.

¹⁹ Paragraph 1 of the resolution.

²⁰ Recital H of the resolution.

²¹ Recital I of the resolution.

²² Paragraph 3 of the resolution.

²³ Paragraph 4 of the resolution.

²⁴ Paragraph 5 of the resolution.

resolutions and reports, and several infringement procedures and decisions of the CJEU, the rule of law situation in the European Union is continuing to deteriorate.”²⁵

Parliament went on to regret “the fact that the Commission has not sent written notifications to Member States since the entry into force of the regulation, despite many concerns about the breaches of the rule of law identified in the Commission’s 2020 Rule of Law Report, as well as the existence of two ongoing Article 7 procedures, which have an impact on the sound financial management of the Union budget and remain unresolved by Member States” and noted “that the absence of actions under Article 5(1) and Article 6 of the regulation constitutes a refusal by the Commission to fulfil its obligations under it.”²⁶

Parliament further recalled “that in its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism, a concrete deadline was given to the Commission by Parliament, and notes with disappointment that the Commission did not meet its obligations within this deadline”.²⁷ It regretted “the Commission’s failure to respond to Parliament’s requests by 1 June 2021 and to activate the procedure laid down in the Rule of Law Conditionality Regulation in the most obvious cases of breaches of the rule of law in the EU”.²⁸ The resolution then instructs Parliament’s President to call on the Commission, on the basis of Article 265 TFEU, to fulfil its obligations under the Regulation.²⁹

In light of the foregoing, I call upon the Commission, on behalf of the European Parliament and on the basis of Article 265 TFEU, to fulfil its obligations as Guardian of the Treaties and to ensure the full and immediate application of the Regulation, as indicated in the plenary resolution of 10 June 2021, which is annexed to this letter. In particular, the Commission is called upon to lift the constraints with regard to the application of the Regulation that it has committed itself to respect pending the Court’s judgments in the actions for annulment, which result in a de facto suspension of the full application of the Regulation.

Yours sincerely,



David Maria SASSOLI

Annex: European Parliament resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092

²⁵ Paragraph 6 of the resolution.

²⁶ Paragraph 10 of the resolution.

²⁷ Paragraph 11 of the resolution.

²⁸ Paragraph 12 of the resolution.

²⁹ Ibid.