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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on 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**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 2 May 2018.
(document COM(2018) 324 final – 2018/0136 COD):

Date of the opinion of the European Economic and Social Committee: 18 September 2018.

Date of the position of the European Parliament, first reading: 4 April 2019.

Date of transmission of the amended proposal: N/A

Date of adoption of the position of the Council: 14 December 2020.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The aim of this proposal is to establish the rules necessary for the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

The European Union should have the possibility to adopt appropriate measures in such cases, in full respect of the principles of transparency and proportionality.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted at first reading fully reflects the political agreement reached between the European Parliament and the Council on 5 November 2020. The Commission supports this agreement. The main points of this agreement are the following:

- Change in terminology from “generalised deficiencies as regards the rule of law in the Member States” to “breaches of the principles of the rule of law”: Language has been added clarifying that the mechanism may also be used to address systemic breaches (that are widespread or due to recurrent practices or omissions by public authorities, or to general measures). In addition, the complementarity with the applicable sector-specific and financial rules is emphasised.

- Preventive dimension for the mechanism: it is clarified that measures could also be taken in case of breaches that “seriously risk affecting” the sound financial management or the financial interests of the Union. The qualification “seriously” was not in the Commission proposal, but it is acceptable as the preventive dimension of the mechanism is preserved.
- Reinforcement of the protection of final beneficiaries through obligations for the Commission to provide information and guidance. The Commission will do its utmost to ensure that amounts due are effectively paid by the Member State concerned (using existing mechanisms). This strengthens the protection of final beneficiaries and recipients, in line with the proposal.
- Procedure to adopt and to lift measures and change of the applicable majority in the Council: The procedure was streamlined to ensure an effective and speedy mechanism while preserving the right of the Member States concerned to be heard. The Council will decide by qualified majority voting (the Commission proposed reverse qualified majority). A recital and an article recall that the Commission can make use of its institutional prerogatives with a view to ensuring that the Council complies with its obligation to take a decision. The modifications maintain the overall effectiveness of the mechanism and preserve the institutional autonomy of the Commission.
- “Emergency brake”: A recital explains that exceptionally the Member State concerned may request the President of the European Council to refer the matter to the European Council. In the event this political step is triggered, in principle no decision would be taken by the Council until the European Council has discussed the matter. This discussion should take place within a maximum of three months. The Commission accepts this compromise as it provides for a political discussion that does not entail a formal step in the procedure or an involvement of the European Council in budget implementation, and should not render the mechanism ineffective, as the decision-making power of the Council and the Commission’s role are not affected.
- Addition of a ‘structured dialogue’: The possibility for the Parliament to invite the Commission to a structured dialogue on its findings is acceptable.

4. CONCLUSION

The Commission supports the results of the inter-institutional negotiations and can therefore accept the Council's position at first reading.

5. DECLARATIONS FROM THE COMMISSION

The Commission has made one unilateral declaration and one joint declaration, which can be found in the appendix.

APPENDIX

Declarations from the Commission

Commission declaration on the report to the European Parliament and the Council on the application of the Regulation:

"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."

Joint declaration on the potential inclusion of the content of this Regulation into the Financial Regulation:

"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."