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NOTE

From: Presidency

To: Permanent Representatives Committee

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Subject: Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary

– *Extension of the one-month period*

1. On 18 September 2022, the Commission submitted to the Council its proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (the “Proposal”). The Proposal has been submitted pursuant to Article 6(9) of Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (the “Conditionality Regulation”). It proposes measures for the protection of the budget of the Union against breaches of the principles of the rule of law in Hungary that the Proposal itself identifies.

2. At the same time, the Proposal, as further clarified by the Commission at meetings of Coreper II and of the Budget Committee, acknowledges the constructive dialogue with Hungary and the progress made by the Hungarian authorities. The Proposal refers to a set of 17 remedial measures submitted to the Commission which concern both the legal framework of Hungary as well as to a large extent practice. The Commission notes that key steps for the implementation of many of the proposed remedial measures need to be taken by Hungary until 19 November 2022¹. The Commission considers “(...) *that the proposed remedial measures, taken together, if correctly specified in the enacting laws and implementing rules, and implemented accordingly, could in principle, depending on the details of the measures, be capable of addressing the issues described in the notification*”².
3. Under Article 6(10) of the Conditionality Regulation, the Council shall adopt the implementing decision on measures for the protection of the Union budget within one month of receiving the Commission’s proposal. Article 6(10) of the Conditionality Regulation foresees also that the period for the adoption of the implementing decision may be extended by a maximum of two months “*if exceptional circumstances arise*”.
4. As the Proposal was received by the Council on 18 September 2022, the latest day for the Council to adopt the Proposal is 19 October 2022.
5. Bearing in mind that, as explained by the Proposal, enacting legislation and implementing rules concerning the additional remedial measures need to be adopted by Hungary by 19 November 2022 and that this date goes beyond the period for the Council to act (which ends by 19 October 2022), Hungary requested at the meeting of Coreper II of 21 September 2022 that the Council considers a two-month extension of that period.

¹ See paragraphs (83) and (84) of the Explanatory Memorandum (doc. 12551/22, p. 23) and the key implementation steps of the remedial measures contained in table 1 of the Annex to the Explanatory Memorandum (doc. 12551/22 ADD 1, p. 1-3).

² See paragraph (121) of the Explanatory Memorandum (doc. 12551/22, p. 34).

6. At its meetings of 22 and 28 September 2022, the Budget Committee examined the Commission's proposal and the Hungarian request for extension. When discussing such a possible extension of the period by two additional months, the Budget Committee considered the elements below.
7. The extension is in line with the objective of the Conditionality Regulation to protect the budget of the Union while permitting at every stage of the procedure the adoption by the Member State concerned of adequate measures to remedy for good the identified breaches of the principle of the rule of law which affect or seriously risk affecting the Union budget.
8. It is in light of this preventive rationale of the Conditionality Regulation that some of the circumstances how the procedure concerning Hungary has unfolded can be considered as exceptional. Those circumstances include the fact that Hungary has committed to take remedial measures to address the situation in accordance with a detailed calendar; the fact that the Commission considers that the proposed remedial measures, taken together, adopted in accordance with the said calendar, if correctly specified in the enacting laws and implementing rules, and implemented accordingly, could in principle, depending on the details of the measures, be capable of addressing the issues; the need for the Commission and the Council to dispose of sufficient time to assess the adoption and effective implementation of the remedial measures, bearing in mind their large number and technical complexity.
9. On that basis, after an exchange of views, the Permanent Representatives Committee is invited to express itself whether it would agree to propose to the Council to extend the deadline for the Council to act, which expires on 19 October 2022, by two additional months, until 19 December 2022.
