



Council of the  
European Union

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**Interinstitutional File:**  
**2022/0295(NLE)**

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**LIMITE**

**FIN 1328**  
**RESPR 47**  
**CADREFIN 209**  
**POLGEN 167**

**NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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No. Cion doc.: 12551/22 + ADD 1 (COM(2022) 485 final + ANNEX)

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

- *Approval*
- *Decision to use the written procedure for the adoption*

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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”)<sup>1</sup>. 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.

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<sup>1</sup> Doc. 12551/22.

2. 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*”.
3. On 13 October 2022, the Council decided to extend the deadline for the Council to act, which expired on 19 October 2022, by two additional months, until 19 December 2022 in order to have sufficient time for both the Council and the Commission to properly analyse the adoption and the effective implementation of the remedial measures proposed by the Hungarian authorities, which go beyond the one-month deadline originally foreseen.
4. As stated in the Opinion of the Council Legal Service on the handling of and procedural remarks on the Proposal<sup>2</sup>, the final decision by the Council “*should rely on the facts and circumstances as assessed and substantiated by the Commission*”. In order to allow the Council preparatory bodies to evaluate in an appropriate manner the final assessment by the Commission on whether the remedial measures are fully satisfactory to protect the sound financial management of the EU budget and the financial interests of the EU, and notably in order to have enough time for a sound and well-informed decision, a letter was sent to the Commission on 26 October 2022 regarding the timing and modalities of the Commission’s final assessment.

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<sup>2</sup> Doc. 12904/22.

5. The Commission's assessment<sup>3</sup> was received on 30 November 2022 and stressed the following:
- the remedial measures notified by Hungary, considered as a whole and as adopted are not sufficient to put an end to the identified breaches of the rule of law;
  - the risks for the sound financial management of the Union's budget and for the Union's financial interests still remain, as well as the conditions for the application of the Conditionality Regulation;
  - the proposed percentage for the suspension of budgetary commitments (at 65%) or the alternative to suspend the approval of the concerned programmes are kept unchanged by the Commission, maintaining its proposal.
6. On 6 December 2022, following discussions in the margins of the Economic and Financial Affairs Council, the Presidency of the Council sent a letter requesting the Commission, in line with article 241 TFEU, to present an updated assessment of the remedial measures taken by Hungary in the context of the conditionality mechanism by 9 December 2022 (cob). Such Commission's updated assessment of the implementation of remedial measures submitted by Hungary<sup>4</sup>, accompanied by a Letter from Commissioner Hahn, was received on 9 December and stated that the weaknesses and risks as set out in the assessment of 30 November, including those of a structural and horizontal nature, are confirmed, and the overall risk for the Union's budget remains unchanged with regard to the Proposal and does not change in the light of the latest legislative changes adopted in Hungary.

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<sup>3</sup> Doc. 15192/22.

<sup>4</sup> Doc. 15890/22.

7. The Budget Committee has examined the Proposal on several occasions since September 2022, as well as the Commission's assessments, including the Letter from Commissioner Hahn of 9 December. After the last examination at the Budget Committee on 12 December, the Presidency decided that, due to the political nature and complexity of the file, the matter is to be referred to the Permanent Representatives Committee with a view to prepare the final adoption of the Council Implementing Decision.
8. In order to facilitate the discussion and reach a conclusive result, and based on previous technical work, the Presidency proposes to the Permanent Representatives Committee to examine and agree on one of the two following options:
- **Option 1** (doc. 15850/22 ADD 1): This option is in line with the Commission's original proposal, keeping a suspension of 65% of the budgetary commitments of the three programmes concerned; or
  - **Option 2** (doc. 15850/22 ADD 2): This option introduces a variation of the level of the measures initially proposed in view of the efforts made so far by Hungary to address several of the remedial measures, modulating the suspension of budgetary commitments of the three programmes concerned to a lower percentage [X] still to be decided. If this option is to be chosen, the final percentage is also to be agreed upon.

Only paragraph (60) and Article 2(1) are different between the two options/documents.

The changes included in documents 15850/22 ADD 1 and ADD 2 are indicated in bold for additions and strikethrough for deletions as compared to the latest Presidency compromise proposal set out in document WK 17064/2022.

9. In view of the above, the Permanent Representatives Committee is invited:

- to confirm its agreement on either **Option 1** (doc. 15850/22 ADD 1) or **Option 2** (doc. 15850/22 ADD 2);
- to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure, that, in view of the urgency of the matter, the Council uses the written procedure for the adoption of the agreed text, after its revision and finalisation by the legal/linguistic experts.

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