

Bijlage bij toezegging over richtsnoeren MFK-rechtsstaatverordening

Reply of DENMARK, SWEDEN, FINLAND, BELGIUM, LUXEMBOURG, FRANCE, and THE NETHERLANDS to the consultation on the draft guidelines on the MFF/RoL conditionality Regulation

Denmark, Sweden, Finland, Belgium, Luxembourg, France, and The Netherlands wish to thank the European Commission for the draft guidelines and for the possibility offered to Member States and the European Parliament to send feedback and comments. These guidelines follow from the European Council conclusions of 10 and 11 December 2020, and aim to bring clarity and predictability to the application of the MFF/RoL conditionality Regulation. Guidelines are not legally binding and do not alter the rights and obligations stemming from the MFF/RoL conditionality Regulation.

With the European Commission and the European Parliament, Denmark, Sweden, Finland, Belgium, Luxembourg, France, and The Netherlands believe it is of paramount importance to protect the Union budget, including Next Generation EU (NGEU), its sound financial management and the Union's financial interests against breaches of the principles of the rule of law, and against any kind of fraud, corruption, and conflict of interest. Throughout the MFF negotiations, we advocated for a strong and effective rule of law conditionality. The rule of law is the foundation the European Union is built on.

Even though the MFF/RoL conditionality Regulation itself contains several thresholds and procedural safeguards for the European Commission to propose measures in case of breaches of the principles of rule of law, and even though these draft guidelines do not alter or expand these thresholds and procedural safeguards, the European Commission could in our view send a stronger signal with these guidelines, by demonstrating that the European Commission will do everything within its power to make the MFF/RoL conditionality Regulation an effective instrument.

We have identified four possible elements of the guidelines where the European Commission could send a stronger signal:

1. The draft guidelines refer frequently to fraud and corruption. They only shortly mention that article 3 of the MFF/RoL conditionality Regulation provides a list of situations that may be indicative of rule of law breaches, but then extensively, in numerous paragraphs, address situations related to fraud. Examples mentioned in article 3 of the Regulation are currently missing in paragraph 2.1. and only listed, without much further detail in Annex 1. **We propose adding examples of the list of indicative breaches of the principles of the rule of law in the guidelines, in order to have a more balanced overview of situations in which the MFF/RoL conditionality Regulation can be applied.**
2. The draft guidelines introduce a preliminary assessment, "*an open dialogue with the Member state concerned, with a view to [...] possibly addressing concerns at an early stage*", providing the European Commission with the possibility to request additional information for its assessment before sending the written notification and starting the procedure written down in article 6 of the Regulation. Article 6(4) of the MFF/RoL conditionality Regulation does allow the European Commission to request supplementary information before sending a written notification, but the MFF/RoL conditionality Regulation does not prescribe such a preliminary assessment. Introducing one (without precise timelines) holds the risk that it will take longer before the European Commission will start the procedure pursuant to Article 6 and propose measures. Although we do value informal contacts and discussions, caution is required not to introduce/add an additional stage to the procedure that could undermine the effectiveness of the MFF/RoL conditionality Regulation. **We would like to request the European Commission to reconsider the preliminary assessment, and consider the introduction of precise timelines during the preliminary assessment.**
3. We acknowledge that article 6, first paragraph, of the MFF/RoL conditionality Regulation states that the European Commission shall start the procedure to adopt appropriate measures for the protection of the Union budget, unless it considers that other procedures set out in the Union financial legislation would allow it to protect the Union budget more effectively. However, the extensive way in which this element is elaborated by the European Commission does not seem to do proper justice to the evident added value of the MFF/RoL conditionality Regulation. **We propose that the guidelines put more focus on the added**

value and the effectiveness of the protection provided by the MFF/RoL conditionality Regulation compared to the existing instruments.

4. The draft guidelines state that the Commission may use several sources of information in the identification and the assessment of potential breaches of the principles of the rule of law. We consider that **individual complaints** constitute a valuable source in this regard, in particular if other procedures or processes meant to protect the financial interests of the Union are not available. Accordingly, **we call upon the Commission to give due attention to this source of information, while at the same time managing the additional administrative tasks in an appropriate way.**

Denmark, Sweden, Finland, Belgium, Luxembourg, France, and The Netherlands ask the European Commission to take account of these comments when finalizing these guidelines on the MFF/RoL conditionality Regulation.