Annals of the University of Oradea, Fascicle: Ecotoxicology, Animal Husbandry and Food Science and Technology, Vol. XIX/A 2020
Analele Universitatii din Oradea, Fascicula: Ecotoxicologie, Zootehnie si Tehnologii de Industrie Alimentara, Vol.XIX/A 2020

POLITICAL AND LEGAL CONDITIONALITIES FOR THE COHESION POLICY AND CAP POST-2020. BETWEEN REAL ISSUES AND UNJUSTIFIED FEARS.

Chereji Aurelia-Ioana *, Chiurciu Irina Adriana **, Maerescu Cristina Maria *, Țuțui Daniela *, Chereji Ioan Jr. ***

*University of Oradea, Faculty of Environmental Protection, 26 Gen. Magheru St., 410048, Oradea, Romania, e-mail: aureelia_brinaru@yahoo.com
**University of Agronomic Sciences and Veterinary Medicine Bucharest, Faculty of Management and Rural Development, 59 Marasti Blvd, 011464, District 1, Bucharest, Romania, e-mails: irina.chiurciu@yahoo.ro
***The Bucharest University of Economic Studies, 6 Piața Romană, 010374, Bucharest, Romania, e-mail: daniela.tutui@cig.ase

Abstract

The negotiating process for the new Multiannual Financial Framework of the European Union post-2020 has been so far a complicated process where the technical issues have become entangled with the political aspects related to a new series of conditionalities. This has open a 'Pandora's box' at the level of the Member States as regards their relationships between the New and Old Europe and Member States and the European Union institutions.

Key words: political conditionalities; CAP; cohesion policy

INTRODUCTION

Agricultural performance as well as the larger objective of the European Union convergence can only be achieved when the financing from the European Union level matches the level of ambition and the challenges that lay ahead of the Member States and interested parties. In these authors opinion the starting point of any discussion concerning future conditionalities should start from the basic documents that represent the foundation of our Union.

As the European Union is based on the rule of law any action taken at the community level needs to have its fundament in the Treaties and must not be imposed on a compulsory and not democratically basis to the member countries.

For that purposes any analysis of the cohesion policy and of CAP should have as a guiding red line the fact that the European Union "shall promote economic, social and territorial cohesion, and solidarity among Member States", "shall combat social exclusion and discrimination" and last but not least "shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment" (Consolidated version of the Treaty on European Union)

MATERIAL AND METHOD

The methods used for the elaboration of the paper were based mostly on the desk research approach and literature review. Given the vastity of the topic and the technical limitations of this article the authors have proceeded to the analysis of the information concerning the topic as it results from the official documents and analysis of the European and national institutionsThis particular attention is of relevance as the topic analysed is a fluid one, with changes that happens due to the rather political than technical aspect of conditionalities that are being discussed.

Another important topic that the authors provided attention was providing the necessary terminological clarifications that such an endeavour require. We strongly believe that providing those methodological and terminological clarifications would further strengthen the debate and provide the necessary common ground for any comparative analysis.

RESULTS AND DISCUSSION

As mentioned above in the section about Materials and methods the first thing that this papers intends to do is to clarify the key concepts at stake in this process. So, first and above all what is the Multiannual Financial Framework (MFF) and what role it plays?

"The MFF (Multiannual Financial Framework) is the **EU's long-term budget** and usually covers a seven-year-period.
It is primarily an **investment budget**, pools resources to implement policies and brings an added value to the benefit of all EU citizens by delivering on common challenges such as fighting climate change and environment protection, digital challenges, defence and border security, social rights and jobs." (European Parliament, 2020).

A concise reading about the importance of the MFF is provided in an analysis dedicated to the MFF and the position of Romania post-2020 were the authors synthetised for the national audience the purpose and relevance of the MFF in order to have a clear meaning.

Thus everyone would have a definite vision on what is and why does it matter both at the European level but mostly at the national level, as the role and purpose of the MFF if properly understood would represent the bedrock of any future negotiation and of any future debate on why do we need to get involved and what we can expect and what can we demand from the other partners as shown in Table 1 below (Dăianu et al. 2018).

Table 1

The purpose of the MFF

align EU spending with its political priorities	translates the political priorities of the European Commission (EC) into the financial terms and into the programs and projects to be implemented for a minimum of five to seven years; the MFF plans how much the EU can spend, so there must be no confusion made between the MFF and the EU's annual budget;
ensure EU budgetary discipline	sets maximum annual ceilings for EU total expenditure and expenditure categories/priorities (limits) to ensure that there is adequate funding for the whole financial programming cycle
make adoption of the annual EU budget easier	ensures discipline in distributing funds according to medium and short-term priorities
add predictability to EU finances	provides a degree of predictability for European funds beneficiaries with regard to project funding

Source: Daianu et al, 2018

What about the conditionalities? Each time the financial allocations for cohesion policy and CAP came with a series of so-called "conditionalities" meant to guarantee the proper use of the EU funds. Thus "conditionality is an established EU governance tool. It represents in essence a requirement that all EU spending comply with a set of Union policy standards subject to withdrawal of funds in case of failure to do so." (Viță, 2018, p 15).

The idea to condition access to external funding is to facilitate the realisation of several objectives such as:

- **Induce a desired behaviour** (e.g. take more environmentally friendly options to reach objectives of the CAP)
- **Reduce moral hazard** (to ensure that funds are deployed where they are needed and not elsewhere)
- **Provide a framework to deliver on mutually desired objectives** (in order to ensure a level of collaboration and communication between multiple actors involved)
- **Protect the donor from political shifts on the recipient's side** (Ferrer et al, 2018, p. 6)

The conditionality has an intrinsic policy objective that differs from the immediate objective of the EU spending. For instance a conditionality that would require that all the new farms respect the EU environmental standards would see that the primary objective of the CAP policy (creation of new farms) differs from the conditionality (environment standards and protection) (Viță, 2018).

The practice of conditionality applied to political and economic relationships is not something new on the international arena. It has been practiced mostly on economic affairs, by institutions such as the World Bank or the International Monetary Fund.

"Policy-based conditionality—or simply conditionality—linking the release of funds to the implementation of a desired action or policy is a central element in the aid relationship between international financial institutions (IFIs) and recipient countries."(World Bank, 2005)

Many of these conditionalities where policy-based and where meant to promote a pro-market agenda, often with debatable results, as shown in Table 2 below.

Table 2

Policy-related conditionalities of the IMF, World Bank and USAID

WASHINGTON CONSENSUS	• Policy-based conditionality carried out by the IMF, World Bank and US Treasury in developing countries in the 1980s and 1990s • Funds linked to pro-growth reforms, trade openness, liberalisation and fiscal discipline • Very modest results plus side effects: destabilisation, the Argentinian crisis, anti-Americanism • Since 2000, a new approach considering **ownership** to be crucial for compliance, implementation and long-term stability
MILLENNIUM CHALLENGE CORPORATION	• Innovative agency for bilateral development assistance created by US Congress in 2004 • Limited funds awarded through a competitive selection based on 17 politics free indicators • Eligibility criteria are based on the rule of law, rights protection, ease of doing business, regulatory quality and anticorruption measures • Country-led solutions and projects but independent monitoring and evaluation

Source: Ferrer et al, 2018, p. 9

The main idea behind the conditionality is to provide to the citizens the necessary guarantees that their life would be improved by the national governments who receive the money.

Other the economic perspectives other researchers have emphasized the constitutional grounds for conditionality especially in federal systems as conditionality:

•conditionality assists the higher level of government to exercise its right but also its obligation to set appropriate requirements, which ensure that all spending is compliant with **federal standards**;

•conditionality is conductive to harmonious development of **minimum standards** of public goods and service delivery across the federation;

•conditionality leads to closer **federal-state cooperation** and coordination of essential multi-level policies;
•conditionality may support **effective government** and solve collective action;
•conditionality may ensure much needed **uniformity and consistent application** of federal standards in a multi-level government, helping states embrace imminent policy solutions in an ever-closer and deeper Union;
•conditionality is **federation-building** and **solidarity-enhancing** and may ultimately **empower citizenry**. (Vita, 2018, p. 17)

Correlation with good governance

The question of correlating fund efficiency with good economic governance is a recurrent topic at the UE level as many official documents tend to speak about the need to correlate fund efficiency with sound economic governance. The main idea is to review and propose amendments to relevant Operational Programmes / Partnership Agreements at the request of the European Council and to implement the relevant recommendations issued. This adjustment is no longer optional as sanctions are being put in place – such as suspension of all or part of the commitments or payments for the programmes in question (Proposal for a Regulation, 2018, art. 15).

This would be adjusted in a Report of the European Parliament of 2019 related to the above mentioned document, where the European Parliament suggested the deletion of the article related to the correlation between funds and good economic governance. Thus in the Opinion of the Committee on Agricultural and Rural Development the Amendment 8 proposed no more no less than the deletion of the text proposed by the Commission that stipulated "(20) Mechanisms to ensure a link between Union funding policies and the economic governance of the Union should be further refined, allowing the Commission to make a proposal to the Council to suspend all or part of the commitments for one or more of the programmes of the Member State concerned where that Member State fails to take effective action in the context of the economic governance process. […]" (Report of the European Parliament, 2019)

However the European Council of 17-21 July 2020 ignored this opposition and in its Conclusions supported these policy conditionalities, meant to link the founds to sound economic governance: "Mechanisms to ensure a link between Union funding policies and the economic governance of the Union should be maintained, allowing the Commission to request a review or amendments to relevant programmes in order to support implementation of the relevant Council recommendations or maximise growth and competitiveness impact of the Funds; or make a proposal to the Council to suspend all or part of the commitments or payments for one or more of the programmes of the Member State concerned where that Member State fails to take effective action in the context of the economic governance process." (European Council, Conclusions 17 – 21 July 2020).

This can be perceived as another advancement as regards the hot topic of conditionalities, especially those related with the compliance with the principles of the rule of law. This ambiguity lasted for a couple of months as no later than in September 2020 did the Council of the European Union reached an agreement on the mandate for interinstitutional negotiations on the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States, by providing the key definitions, the conditions for the adoption of measures, the content of measures, the procedure to be followed and the and way to lift of measures. (Council of the European Union, 2020)

Following this breakthrough only on 5 November this year the European Parliament reached a provisional agreement with the Council presidency **which would make it possible to stop payments from the EU budget to member states that do not respect the rule of law.**

Long story short the main lines of this provisional agreement stipulate the following:

- **A broader concept of breaches of the rule of law (**by listing examples of cases, such as threatening the independence of the judiciary, failing to correct arbitrary/unlawful decisions, and limiting legal remedies .)
- **Prevention** (it can be triggered when there is a serious risk that it may do so)
- **Functioning of the mechanism** (shortening the time that the EU institutions will have for the adoption of measures against a member state, if risks of breaches of the rule of law are identified, to a maximum of 7-9 months).

CONCLUSIONS

The topic of conditionalities remains on the European and national agenda, often in a contradictory position as there is a risk of politicisation of the conditionalities. As seen above the issue of conditionalities is not something to be treated lightly as it can have a great impact of the beneficiaries. For instance you have a great project, with all the technical aspects clear and have your funding reduce due to national issues above your paygrade or control.

The question of conditionalities needs also not to be interpreted as an “attack” against the farmers but rather as an incentive to perform better and to have a good governance. It needs to generate a more holistic approach as regards the EU funds and the national authorities as the funds do not come as a “gift” but rather they must be seen as an incentive to better performance and management.

Also the current debate has seen the rise of the European Parliament in a more prominent role in debate, especially in the case of rule of law conditionality. This is yet not a new thing as some scientist foresaw it in context of the debate for the post-2020 MFF and its related conditionalities. The EP was meant to have this increase role as an increased number of conditionalities would require both its involvement and that of the European Commission. “A stronger involvement of the EP would reduce the criticism that conditionality has no ‘democratic’ basis. Nevertheless, there may also be a danger that conditionality and EU re-distributive policies could become more politicised and, finally, neglect the fundamental elements and treaty objectives of territorial, economic and social Cohesion Policy, however it would contribute to a broader transparency in the decision-making and legitimation of sanctions.” (Kölling, 2017, p. 7)

That must serve as a reminder to the need to have a continuous monitoring of the debate at EU level and also a constant attention addressed toward the authors and experts on this field, as for instance, the above mentioned 2017 research announced this year stronger involvement of the European Parliament and thus further measures could have been taken in order to be an active part of the debate.

This augmented involvement is also need for issues such as the current COVID-19 pandemic which affected the MFF in ways that were not envisaged a half a year ago. Thus been actively involved in the debate might be one of the ways to steer the discussion toward a more favourable outcome for the agricultural sector at the national level.

REFERENCES

1. *** Consolidated version of the Treaty of the European Union, 2012, Available at: https://eur-lex.europa.eu/legal-content/en/txt/?uri=celex%3a12012m%2ftxt Last visited; 06 November 2020.
2. *** Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border

Management and Visa Instrument COM/2018/375 final - 2018/0196 (COD) Avaialable at https://eur-lex.europa.eu/legal-content/en/txt/?uri=com%3a2018%3a375%3afin Last visited: 29 Octomber 2020.

3. Council of the European Union, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a general regime of conditionality for the protection of the Union budget, 30 September 2020, available at https://data.consilium.europa.eu/doc/document/ST-11322-2020-INIT/en/pdf Last visited: 16 Octomber 2020.
4. Dăianu, Daniel (coord.), Amalia Fugaru, Gabriela Mihailovici, Clara-Alexandra Volintiru, Cadrul Financiar Multianual Post-2020: Riscuri și oportunități pentru România, European Institute of Romania, 2018, available at; http://ier.gov.ro/wp-content/uploads/2019/03/cfm_ro-en_volum-sinteze_spos-2018.pdf p. 21, Last visited: 08 November 2020.
5. European Council, Conclusions (17-21 July 2020), available at https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf Last visited: 01 November 2020.
6. European Parliament, Q&A on the EU's long-term budget (Multiannual Financial Framework, MFF), 27.04.2020, Available at; Https://www.europarl.europa.eu/news/en/press-room/20200115ipr70326/q-a-on-the-eu-s-long-term-budget-multiannual-financial-framework-mff Last visited; 10November 2020.
7. European Parliament, REPORT on the proposal for a regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument (COM(2018)0375 – C8-0230/2018 – 2018/0196(COD)), 2019, Available at: https://www.europarl.europa.eu/doceo/document/A-8-2019-0043_EN.html Last visited: 02 November 2020.
8. Ferrer, Jorge Núñez, Roberto Musmeci, David Rinaldi, Oscar Polli, The EU Budget and its Conditionalities: An Assessment of their Contribution to Performance and Reforms, CEPS, Brussels, 2018, available at; https://www.ceps.eu/ceps-publications/the-eu-budget-and-its-conditionalities/ Last visited; 03 November 2020.
9. Kölling, Mario, Policy conditionality – a new instrument in the EU budget post-2020?, SIEPS, Sweden, 2017, available at https://www.sieps.se/globalassets/publikationer/2017/sieps_2017_10epa.pdf Last visited; 10 November 2020.
10. Viță, V. (2018), Research for REGI Committee – Conditionalities in Cohesion Policy, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, Available at https://www.europarl.europa.eu/RegData/etudes/STUD/2018/617498/IPOL_STU(2018)617498_EN.pdf Last visited; 14 November 2020.
11. World Bank, Review of the World Bank Conditionality, 2005, p. 1, available at: http://documents1.worldbank.org/curated/en/228751468134390047/pdf/428690WP0Condi10Box327331B01PUBLIC1.pdf Last visited: 14 November 2020.