

The Court of Justice affirms the legality of mechanism that restricts access to EU budget for Member States that violate the rule of law (Hungary v Parliament and Council, Poland v Parliament and Council)

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EU Law analysis: These judgments uphold the legality of the rule of law conditionality mechanism laid down in Regulation 2020/2092. Under the relevant rules, the Council may restrict access to the EU budget (for instance by suspending payments) where a Member State violates the rule of law in a manner that affects or seriously risks affecting the sound financial management of the EU budget or the protection of the financial interests of the EU in a sufficiently direct manner. Central to the judgments is the status of the rule of law as one of the founding values of the EU under Article 2 TEU. The judgments are of practical significance given the disputes about judicial independence in Poland (as well as the recent judgment of the Polish Constitutional Tribunal rejecting the primacy of EU law in relation to the organisation of the judiciary) and rule of law and corruption allegations in Hungary. In fact, the European Parliament has already launched an action against the Commission for failure to rely on the Regulation prior to the two judgments. Written by Professor Panos Koutrakos, barrister at Monckton Chambers and Professor of EU Law and Jean Monnet Professor of EU Law at City, University of London.

Hungary v Parliament and Council, Poland v Parliament and Council Cases [C-156/21](#) and [C-157/21](#)

What are the practical implications of this case?

The judgments give teeth to [Article 2](#) TEU that includes the rule of law among the values on which the EU is founded. This provision is not of rhetorical significance. It has specific legal implications both for the powers that the EU treaties confer on the institutions and the duties that Member States assume under EU law to comply with the principles of the rule of law. The Commission and the Council now have an important tool the very exercise of which may exercise pressure on Member States that violate the rule of law.

In practical terms, the judgments strengthen the position of the EU in its ongoing disputes with Poland about judicial independence. The timing of this development is noteworthy, given the open defiance of the principle of primacy of EU law by the Polish Constitutional Tribunal in its judgment of 7 October 2021 (the judgment was in response to an application by the Polish Government about the applicability of EU law to Polish rules on the organisation of the judiciary). In financial terms, what is at stake is far from negligible, as EU aid is 3% of Poland's GDP (and Poland has applied for €36bn in pandemic recovery funds). The European Parliament has already launched an action against the Commission for failure to rely on the Regulation and propose measures against Poland (*European Parliament v European Commission* Case [C-657/21](#)).

The significance of the judgments is not confined to Poland and Hungary, as concerns have been raised about rule of law issues in other Member States (for instance, about corruption in Hungary and Bulgaria). It is also worth pointing out that any decision against a Member State under this mechanism is not automatic—it is taken by the Council following a decision-taking process that involves interactions between the Commission and the Member State concerned that may last for at least five months.

What was the background?

The significance of the judgments is illustrated by the fact that they were handed down by the Full Court and on the basis of the expedited procedure. The actions were brought by Hungary and Poland for the annulment of [Regulation \(EU, Euratom\) 2020/2092](#) on a general regime of conditionality for the protection of the Union budget. This measure establishes a mechanism applicable in cases where violations of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the EU budget or the protection of the financial interests of the Union in a sufficiently direct way. The Council may decide on a proposal by the Commission and by qualified majority vote to restrict access to the EU budget (for instance by suspending payments or approval of programmes to be paid by that budget).

Hungary and Poland argued that the adoption of the above mechanism was illegal—it should not have been adopted under [Article 322\(1\)\(a\)](#) TFEU, it circumvented the rule of law mechanism laid down in [Article 7](#) TEU and the related judicial review procedure under [Article 269](#) TFEU, and violated the principle of legal certainty.

The actions were brought in a heavily politicised context. On the one hand, there is an increasing body of Court of Justice case-law against Poland on the rule of law in general and the independence of the judiciary in particular (for instance, *Commission v Poland* Case [C-791/19](#)), a matter on which the Commission has also triggered the [Article 7](#) TEU procedure. Concerns have also been raised about Hungary. On the other hand, the Polish Constitutional Tribunal held on 7 October 2021 that the EU treaties did not take precedence over the Polish Constitution in so far as they were interpreted by the Court of Justice to apply to the organisation of the judiciary.

What did the court decide?

The judgments held that the rule of law conditionality mechanism laid down in [Regulation \(EU, Euratom\) 2020/2092](#) was lawful. Its purpose, that is the sound financial management of the EU budget and the protection of the financial interests of the EU, is linked to respect for the rule of law that constitutes one of the founding values of the EU under [Article 2](#) TEU. It is also justified by the principle of mutual trust between the Member States as well as that of solidarity (one of the main instruments giving practical effect to the latter being the EU's budget). Therefore, a Member State may not enjoy all the rights deriving from the application of the treaties unless it complies with the values set out in [Article 2](#) TEU.

The scope of the rule of law conditionality mechanism is not all-encompassing. On the one hand, the procedure applies only where there are reasonable grounds for considering not only that there have been violations of the rule of law in a Member State but, in particular, that those violations affect or seriously risk affecting the sound financial management of the EU budget or the protection of the financial interests of the Union in a sufficiently direct manner. On the other hand, the measures that the Council may adopt pursuant to the Regulation relate exclusively to the implementation of the EU budget and are such as to limit the financing from that budget according to the impact on the latter of the rule of law violations.

In exercising these powers, the EU institutions are bound by the principle of proportionality, must comply with strict procedural requirements and may adopt measures only in cases where a genuine link is established between the rule of law violation and an effect or serious risk of effect on the sound management of the EU's budget.

Case details

- Court: Court of Justice (Full Court)
- Judges: K Lenaerts, President, L Bay Larsen, Vice-President, A Arabadjiev (Rapporteur), A Prechal, K Jürimäe, C Lycourgos, E Regan, S Rodin, I Jarukaitis, N Jääskinen, I Ziemele and J Passer, Presidents of Chambers, M Ilešič, J-C Bonichot, M Safjan, F Biltgen, PG Xuereb, N Piçarra, LS Rossi, A Kumin, N Wahl, D Gratsias, ML Arastey Sahún, M Gavalec and Z Csehi
- Date of judgment: 16 February 2022

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