



Measures for the protection of the Union budget: the Court of Justice, sitting as a full Court, dismisses the actions brought by Hungary and Poland against the conditionality mechanism which makes the receipt of financing from the Union budget subject to the respect by the Member States for the principles of the rule of law

That mechanism was adopted on an appropriate legal basis, is compatible with the procedure laid down in Article 7 TEU and respects in particular the limits of the powers conferred on the European Union and the principle of legal certainty

On 16 December 2020, the Parliament and the Council adopted a regulation ¹ which establishes a general regime of conditionality for the protection of the Union budget in the case of breaches of the principles of the rule of law in a Member State. In order to attain that objective, the regulation allows the Council, on a proposal from the Commission, to adopt protective measures such as the suspension of payments to be made from the Union budget or the suspension of the approval of one or more programmes to be paid from that budget. ²

Hungary and Poland each brought an action before the Court of Justice for the annulment of that regulation. They base their respective actions inter alia on the absence of an appropriate legal basis in the TEU and TFEU, the circumvention of the procedure laid down in Article 7 TEU, ³ the European Union having exceeded its powers and on a breach of the principle of legal certainty. In support of their arguments, Hungary and Poland referred to a **confidential opinion of the Council Legal Service** concerning the initial proposal which led to the regulation, which **the Court allowed**, despite the Council's objections, on the basis of the **overriding public interest in the transparency of the legislative procedure**.

In both cases, Hungary and Poland supported each other's action, while Belgium, Denmark, Germany, Ireland, Spain, France, Luxembourg, the Netherlands, Finland, Sweden and the Commission intervened in support of the Parliament and the Council. At the Parliament's request, the Court dealt with the cases pursuant to the expedited procedure. Furthermore, the cases were allocated to the full Court in view of the fundamental importance of the issue they raise regarding the options available under the Treaties to enable the European Union to protect its budget and financial interests in the face of breaches of the principles of the rule of law in the Member States.

The Court finds, in the first place, as regards the legal basis for the regulation, that the procedure laid down by the regulation can be initiated only where there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. In addition, the measures that may be adopted under the regulation relate exclusively to the implementation of the Union budget and are all such as to limit the financing from

¹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1).

² The regulation nevertheless safeguards, in such cases, the legitimate interests of final recipients and beneficiaries.

³ Article 7 TEU provides for the possibility of instituting a procedure against a Member State in the event of a serious breach of the Union values or where there is a clear risk of such a breach.

that budget according to the impact on the budget of such an effect or serious risk. Accordingly, **the regulation is intended to protect the Union budget from effects resulting, in a sufficiently direct way, from breaches of the principles of the rule of law and not to penalise those breaches as such.**

In that regard, the Court points out that **compliance by the Member States with the common values on which the European Union is founded – which have been identified and are shared by the Member States and which define the very identity of the European Union as a legal order common to those States – ⁴ such as the rule of law and solidarity, justifies the mutual trust between those States. Since that compliance is a condition for the enjoyment of all the rights deriving from the application of the Treaties to a Member State, the European Union must be able to defend those values, within the limits of its powers.**

On that point, the Court specifies, first, that **compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after accession.** Secondly, the Court states that the **Union budget is one of the principal instruments for giving practical effect, in the European Union's policies and activities, to the fundamental principle of solidarity between Member States and that the implementation of that principle, through the Union budget, is based on the Member States' mutual trust in the responsible use of the common resources included in that budget.**

The sound financial management of the Union budget and the financial interests of the Union may be seriously compromised by breaches of the principles of the rule of law committed in a Member State. Those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure.

Accordingly, a horizontal **“conditionality mechanism”**, such as that established by the regulation, which makes receipt of financing from the Union budget subject to the respect by a Member State for the principles of the rule of law, **is capable of falling within the power conferred by the Treaties on the European Union to establish “financial rules” relating to the implementation of the Union budget.**

In the second place, the Court finds that the procedure established by **the regulation does not circumvent the procedure laid down in Article 7 TEU and respects the limits of the powers conferred on the European Union.**

The purpose of the procedure laid down in Article 7 TEU is to allow the Council to penalise serious and persistent breaches of each of the common values on which the European Union is founded and which define its identity, in particular with a view to compelling the Member State concerned to put an end to those breaches. By contrast, the regulation is intended to protect the Union budget, and applies only in the event of a breach of the principles of the rule of law in a Member State which affects or seriously risks affecting the proper implementation of that budget. Consequently, **the procedure under Article 7 TEU and the procedure established by the regulation pursue different aims and each has a clearly distinct subject matter.**

Furthermore, since the regulation allows the Commission and the Council to examine only situations or conduct attributable to the authorities of a Member State and which appear relevant to the sound financial management of the Union budget, the **powers granted to those institutions by that regulation do not go beyond the limits of the powers conferred on the European Union.**

In the third place, as regards Hungary and Poland's argument alleging a breach of the principle of **legal certainty**, in particular in so far as the regulation does not define the concept of 'the rule of law' or its principles, the Court states that the principles set out in the regulation, as constituent

⁴ The founding values of the European Union, common to the Member States, contained in Article 2 TEU, include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in a society in which, inter alia, non-discrimination, justice, solidarity and equality between women and men prevail.

elements of that concept,⁵ have been developed extensively in its case-law, that those principles have their source in **common values which are also recognised and applied by the Member States** in their own legal systems and that they stem from a **concept of ‘the rule of law’ which the Member States share** and to which they adhere, as a value common to their constitutional traditions. Consequently, the Court finds that **the Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of those principles.**

Furthermore, the Court specifies that the regulation requires, for the adoption of the protective measures which it lays down, that a **genuine link** be established between a breach of a principle of the rule of law and an effect or serious risk of effect on the sound financial management of the Union or the financial interests of the Union and that such a breach must concern a **situation or conduct** that is attributable to an authority of a Member State and **relevant to the proper implementation of the Union budget.** The Court notes that the **concept of ‘serious risk’ is clarified in the EU financial legislation** and states that the **protective measures** that may be adopted must be **strictly proportionate to the impact** of the breach found on the Union budget. In particular, according to the Court, those measures may target actions and programmes other than those affected by such a breach only where that is strictly necessary to achieve the objective of **protecting the Union budget as a whole.** Lastly, the Court finds that the Commission must comply, subject to review by the EU judicature, with **strict procedural requirements** involving inter alia **several consultations with the Member State concerned,** and concludes that **the regulation meets the requirements of the principle of legal certainty.**

In those circumstances, **the Court dismisses the actions brought by Hungary and Poland in their entirety.**

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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⁵ Under the regulation, that concept includes the principle of legality implying a transparent, accountable, democratic and pluralistic law-making process, and the principles of legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights, separation of powers, non-discrimination and equality before the law.