

The conditionality mechanism tested in Hungary

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This brief provides an insight of Regulation 2020/2092, which introduced "the conditionality mechanism" as a tool for protection of the rule of law principle in EU Member States, through Hungary's example.

Respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including minority rights, are the values upon which the European Union (EU) is founded. **These values**¹ have to be respected by the Member States, if they wish to benefit from the rights provided with the membership, such as the access to funds from the EU budget. **The rule of law principle** entails that all public powers act within the boundaries set by the law, in accordance with the values of democracy and respect for fundamental rights.

Aiming to protect EU values, and in particular, to respect the rule of law principle, Regulation 2020/2092² (the Regulation) introduced "the conditionality mechanism".³

The Regulation serves to protect the EU budget, in case of: endangering the independence of the judiciary; arbitrary and unlawful decisions by public authorities and limiting the availability and effectiveness of legal remedies. Where a breach of the rule of law principle is established in a Member State, that could affect or seriously risks affecting the sound financial management of the EU budget or the protection of the financial interests of the EU, then appropriate measures shall be taken. Those measures should be proportionate, they should address the determined problems and protect the budget or the financial interests of the EU, without going beyond what is necessary to achieve their goal. In each particular case, the EC shall take into account the following criteria: the nature, duration, seriousness and scope of the breach of the rule of law principle.⁴

1 Determined in Article 2 of the Treaty on the European Union.

2 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, CELEX 32020R2092, OJ L 4331, 22.12.2020, p. 1-10

3 Access to funds from the EU budget is conditional upon respecting the rule of law principle by Member States.

4 Communication from the Commission - Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget 2022/C 123/02 (C/2022/1382), CELEX 52022XC0318(02), OJ C 123, 18.3.2022, p. 12-37

(Non)application of the conditionality mechanism

Although the Regulation was adopted in December 2020 and its application began on 1 January 2021, **the EC had not activated the conditionality mechanism thus far**. The European Parliament (EP) expressed its disappointment of the fact that the practice of taking steps against the established violations of the rule of law principle in 2020, in its **Resolution⁵ adopted in March 2021**. The EP stressed its concern for the increased misuse of funds from the EU budget in Hungary and Poland in its **Resolution⁶ adopted in June 2021**. Finally, **the EP brought an action⁷ against the EC before the European Court of Justice (ECJ)**, where it claimed that the EC infringed its obligation to apply the Regulation in its entirety until the ECJ decided upon the actions filed by Hungary⁸ and Poland⁹. **Both countries requested the ECJ to annul the Regulation**, based on the following arguments: (i) there is no legal basis for the Regulation, (ii) only Article 7 TEU grants the EU the power to examine and establish violations of the values contained in Article 2 TEU and impose sanctions and (iii) the Regulation breached the principle of legal certainty. The ECJ rejected these arguments and dismissed the actions, thus allowing the EC to activate the conditionality mechanism without any hesitation.

Despite the clear signal sent by other EU institutions, **the EC had decided not to initiate the mechanism nevertheless**, thus not playing a role in the election campaign in Hungary and awaiting the results of the parliamentary elections, held on 3 April 2022. The results were as expected – the coalition FIDESZ-KDNP won a majority of two-thirds and Prime Minister Viktor Orbán secured his fifth mandate.¹⁰ Two days after announcing the election results, EC President Ursula von der Leyen informed the EP that they sent the letter of formal notification to Hungary to start the conditionality mechanism.¹¹

*On the other hand, Orbán delivered the following statement in his winning speech after the latest parliamentary elections: "This victory will also be remembered, perhaps for the rest of our lives, because in our battle we were outnumbered like never before: the Hungarian left and the international left on all sides; **the Brussels bureaucrats**; all the money and every organisation in the Soros empire; the international mainstream media; and, towards the end, even the President of Ukraine."¹²*

So what's next?

According to the Regulation, after sending the written notification (and a request for any additional information), entailing the facts and the grounds for the determined violation of the rule of law principle, the next step would be for the concerned Member State to submit its observations and perhaps give additional information, based on which, the EC shall make an assessment on the proposal of measures against the concerned Member State. Prior to submitting the proposal, the EC shall provide the Member State with the opportunity to submit its observations on the proportionality of the envisaged measures. If the EC decides to propose adequate measures nevertheless, the Council of the EU shall adopt that decision, acting by a qualified majority.

Taking into consideration EC's indolence when applying the Regulation and the numerous subsequent steps that should be taken, it is evident that the process of making funds from the EU budget for Hungary conditional upon the respect of the rule of law principle, shall be a long-lasting one. It only remains to wait and witness – did Orbán actually win the victory of a lifetime, or will *"the Brussels bureaucrats"* diminish his euphoria?

5 European Parliament resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism (2021/2582(RSP)), CELEX 52021IP0103, OJ C 494, 8.12.2021, p. 61–63

6 European Parliament resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092 [2021/2711 (RSP)], CELEX 52021IP0287, OJ C 67, 8.2.2022, p. 86–89.

7 European Parliament v European Commission, C-657/21, 29 October 2021.

8 Hungary v European Parliament, Council of the European Union, C-156/21, ECLI:EU:C:2022:97, 16 February 2022.

9 Poland v European Parliament, Council of the European Union, C-157/21, ECLI:EU:C:2022:98, 16 February 2022.

10 Data accessed on the official website of the National Election Office: <https://vtr.valasztas.hu/ogy2022/>

11 'EU launches process to slash Hungary's funds over rule-of-law breaches', Lili Bayer, 5 April 2022, <https://www.politico.eu/article/eu-commission-to-trigger-rule-of-law-budget-tool-against-hungary/>.

12 'European Commission launches rule-of-law disciplinary procedure against Hungary', Jon Henley, 5 April 2022, <https://www.theguardian.com/world/2022/apr/03/viktor-orban-expected-to-win-big-majority-in-hungarian-general-election>.