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The Rule of Law Crisis and the Conditionality Mechanism for Protecting the EU Budget: Research Assumptions Derived from the Provisions of Regulation (EU, Euratom) 2020/2092 of the European Parliament and the Council

Kryzys praworządności a system warunkowości służący ochronie budżetu Unii Europejskiej. Założenia badawcze wywiedzione z przepisów Rozporządzenia Parlamentu Europejskiego i Rady (UE, Euratom) 2020/209

Abstract
The research objective of the scientific considerations presented in this article is a multifactor analysis of the legal and political crisis within the European Union in connection with the adoption process of the EU Multiannual Financial Framework for 2021–2027 and financial instruments under the Next Generation EU initiative. The key reference point for this article is Regulation (EU, Euratom) 2020/2092 of the European Parliament and the Council of December 16, 2020, on a general conditionality mechanism for the protection of the EU budget. Based on the formal and substantive assumptions outlined in this regulation, five research assumptions have been formulated for the purposes of this study.

Keywords: crisis, EU Multiannual Financial Framework, *Next Generation EU*, regulation, conditionality system, protection of the EU budget

Abstrakt
Celem badawczym zawartych w artykule rozważań naukowych jest wieloczynnikowa analiza kryzysowej sytuacji prawnej i politycznej w Unii Europejskiej, w związku z procesem przyjmowania Wieloletnich Ram Finansowych UE na lata 2021-2027 oraz instrumentów finansowych w ramach Next Generation EU. Kluczowe znaczenie dla przygotowanego artykułu ma treść Rozporządzenia Parlamentu Europejskiego i Rady (UE, Euratom) 2020/209 z dnia 16 grudnia 2020 r. w sprawie ogólnego systemu warunkowości służącego ochronie budżetu Unii. Z odwołaniem do zawartych w nim założeń formalnych i merytorycznych na użytek artykułu sformułowano 5 założeń badawczych uzupełnionych o uwarunkowania prawne i scenariusze na przyszłość, zawarte w podsumowaniu.

Słowa kluczowe: kryzys, wieloletnie ramy finansowe UE, Next Generation EU, rozporządzenie, system warunkowości, ochrona budżetu Unii

Introduction

The primary objective of this study is to conduct a thorough and multifactor analysis of the legal and political crisis within the European Union in the context of the adoption process of the EU Multiannual Financial Framework for 2021–2027 and financial instruments under the Next Generation EU initiative. These funds are primarily intended for the recovery of the EU following the COVID-19 pandemic and the implementation of the European Green Deal.[1]

In this scientific study, certain elements of the systemic method and institutional analysis within the framework of historical institutionalism have proven useful, as they are based on a comprehensive approach to the EU decision-making process. This analytical perspective has enabled the exposition of specific proposals as well as political and legal solutions.

From a methodological perspective, the author relied on a detailed extraction and exposition of all key statements and formulations found in the analyzed material. The study also employed methods of citation and comparison, as well as commentary and confrontation of various elements of documents (including legal acts) and statements. The entire work is divided into several sections, highlighting five research assumptions along with legal conditions and future scenarios presented in the conclusion.

The analysis is contextually embedded in the post-crisis period following the COVID-19 pandemic and other internal and external disruptions within the EU after 2020. The threat posed by the coronavirus shook Europe and the world, testing the resilience of healthcare and social systems, societies, economies, and the ways of living and working across Europe and beyond. In response to these challenges, the European Commission proposed a comprehensive recovery plan for the European Union, aiming for a sustainable, equitable, solidarity-driven, and fair implementation across all member states. The new instrument proposed by the Commission and adopted by the European Council, known as Next Generation EU, was incorporated into an effective, modern, and long-term program for systemic change.[2]

The key reference point for this article is Regulation (EU, Euratom) 2020/2092 of the European Parliament and the Council of December 16, 2020, on a general conditionality mechanism for the protection of the EU budget.[3] With reference

[1] See: Z. Czachór, *Sytuacja prawna i polityczna Polski w Unii Europejskiej w obliczu nowego podziału budżetu, w oparciu o stan praworządności w państwach członkowskich, Analiza przygotowana na zlecenie Biura Senatora Marcina Bosackiego*, Poznań 20.11.2020.

[2] *Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis,* OJ EU L 433I, 22.12.2020.

[3] *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 EU, L.2020.433I.1, 22.12.2020.

to its formal and substantive assumptions, the following statements have been formulated for the purposes of this article, derived from official documents and the practice of the European Commission:[4]

- When a candidate country becomes a member state, it joins a legal
- framework based on the fundamental assumption that EU members and their institutional representatives share a set of common values on which the Union is founded, particularly those specified in Article 2 of the Treaty on European Union (TEU).[5]
- Commitment to the rule of law is inextricably linked to the respect
- for democracy and fundamental rights.
- Proper management of EU finances can only be ensured by
- member states when their public authorities act in accordance with the law and when cases of financial misconduct, including tax fraud, tax evasion, corruption, conflicts of interest, and other legal violations, are effectively prosecuted by investigative and prosecutorial authorities. Additionally, arbitrary or unlawful decisions made by public bodies, including law enforcement agencies, must be subject to effective judicial review by independent courts and the Court of Justice of the European Union.
- The independence and impartiality of the judiciary must always
- be guaranteed, and investigative and prosecutorial authorities should be able to properly fulfill their duties. Final court rulings must be effectively enforced.
- Article 19 TEU, which concretizes the rule of law value set out in
- Article 2 TEU, requires member states to ensure effective judicial protection in areas covered by EU law, including those related to the implementation of the EU budget.

Violations of the rule of law principles, particularly those affecting the proper functioning of public authorities and the effectiveness of judicial oversight, can seriously harm the financial interests of the European Union. For the purposes of this study, the author adopts the view that the concept of the "rule of law" includes: the principle of legality, meaning a transparent, accountable, democratic, and pluralistic law-making process; the principle of legal certainty; the prohibition of arbitrariness in the actions of the executive authorities; the principle of effective judicial protection, including access to justice provided by independent and

[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/C123/02*, C(2022) 1382, OJ EU C 123, final Brussels, 2.3.2022.

[5] *Consolidated version of the Treaty on European Union*, OJ C 326/13, 26.10.2012.

impartial courts, also in relation to fundamental rights; the principle of separation of powers; non-discrimination and equality before the law.[6]

In accordance with applicable EU law, the following should be considered violations of the aforementioned principles and rules: threats to judicial independence; failure to prevent, correct, or sanction arbitrary or unlawful decisions by public authorities, including law enforcement agencies; failure to allocate sufficient financial and human resources to ensure their proper functioning; or failure to prevent conflicts of interest; restricting the availability and effectiveness of legal remedies, including through overly restrictive procedural rules, failure to enforce court rulings, or limiting the effective conduct of investigations into legal violations, the prosecution of such violations, or the imposition of penalties related to them.[7]

1. First Research Assumption: The rule of law is the foundation of the European Union's system of values, as derived from the Treaty on European Union (TEU), and must be strictly upheld by all member states

The preamble to the Treaty on European Union (TEU) states: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law."[8]

Another provision explicitly states that the founding states of the EU reaffirm "their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law."[9]

Article 2 of the Treaty on European Union (TEU) states: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."[10]

Through the Accession Treaty, which entered into force on May 1, 2004, Poland became legally bound by this international legal commitment. In the Polish translation of the Treaty on European Union (TEU), the term "praworządność" (rule of law) does not appear literally. Instead, the phrase "państwo prawne" is

[6] See: R. Potorski, M. Witkowska*, Can You Count on Luck Without Buying a Lottery Ticket? Predictions on Obtaining Funds from the National Recovery Plan in Light of the Debate on the Rule of Law in Poland*, "Studia Europejskie – Studies in European Affairs" 2024, no. 4, pp. ?.

[7] Ibidem.

[8] *Consolidated version of the Treaty on European Union*..., op. cit.

[9] Ibidem.

[10] Ibidem.

used. To refer to other language versions of the TEU, the English version uses "the rule of law", whilethe German version uses "Rechtsstaatlichkeit".

For Poland, a formal understanding of the rule of law within the EU was significantly shaped by the accession criteria established by the European Council at the Copenhagen Summit in 1993 and further reinforced at the Madrid Summit in 1995.[11]

2. Second Research Assumption: The principle of the rule of law also derives from the general principles of EU law, which complement the treaty-based regulatory system

The general principles of EU law are inseparably linked to any developed legal system. They can also be derived from the legal systems of the Member States and are common to them. Some of these principles arise from the very nature of the European Union and its objectives.

Additionally, they include fundamental rights of individuals, provided these rights hold community-wide significance. A significant portion of these principles is also embedded in the precedent-setting interpretations of EU law, as outlined in the judgments of the Court of Justice of the European Union (CJEU).

In recent years, the European Commission has developed the European Rule of Law Mechanism, based on the principles of EU law. This mechanism consists of an annual dialogue on the rule of law involving the Commission, the Council, and the European Parliament, as well as Member States, national parliaments, civil society, and other stakeholders.

The core element of this new procedure is the Rule of Law Report, which serves as a basis for discussions within the EU and aims to prevent the emergence or escalation of rule of law issues. The main objective of the mechanism is to stimulate inter-institutional cooperation and encourage all EU institutions to contribute in line with their institutional roles.[12]

The rapid identification of problems, with mutual support from the Commission, other Member States, and relevant stakeholders, including the Council of Europe and the Venice Commission, can help Member States find solutions to ensure and safeguard the rule of law.

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[11] *Communication from the Commission to the European Parliament and the Council. A new EU Framework to strengthen the Rule of Law*, Brussels, 11.3.2014, COM(2014) 158 final; *Communication from the Commission to the European Parliament, the European Council and the Council. Further strengthening the Rule of Law within the Union. State of play and possible next steps*, Brussels, 3.4.2019, COM/2019/163 final.

[12] *Annual Rule of Law Cycle*, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle_en [date of access: 31.12.2024].

3. The third research assumption: The Treaty on the European Union, to which Poland is a party, provides for the possibility of crisis sanctions for violations of EU principles (including the rule of law) in a member state, which may even result in the suspension of that state's membership rights

The text of Article 7 of the Treaty on European Union reads as follows: "On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union."[13]

So far, the procedure under Article 7 has been initiated against Poland by the European Commission and against Hungary by the European Parliament. In both cases, no formal vote was held in the EU Council. A qualified majority needed to

[13] *Consolidated version of the Treaty on European Union*, op. cit.

support both motions was not reached. The governments of Poland and Hungary managed to (informally) establish a blocking minority.

It is worth emphasizing that on May 29, 2024, the European Commission decided to conclude the procedure under Article 7 of the Treaty on the EU against Poland. The Commission determined that there was no longer a clear violation of the rule of law in Poland, with particular reference to the judiciary. The basis for this decision was the strategy (the so-called Action Plan) proposed by Minister of Justice A. Bodnar. Poland's Action Plan for restoring the rule of law includes, among other things, reforms of the National Council of the Judiciary, the Supreme Court, and the Constitutional Tribunal, as well as the separation of the roles of Minister of Justice and Prosecutor General.[14]

4. The fourth research assumption: The Multiannual Financial Framework 2021-2027 and the Next Generation EU recovery instrument have been equipped with systemic and crisis-response mechanisms to prevent and sanction violations of the rule of law

The Multiannual Financial Framework of the EU (MFF), covering the seven-year period between 2021 and 2027 and distributed across seven annual budgets, was designed to enable Member States to respond to current and future challenges and implement modernization priorities.[15] The same arguments applied to the Next Generation EU instrument, which became a key tool for implementing the aid package in response to the socio-economic impacts of the COVID-19 pandemic.

Since 2016, EU institutions have been warning selected Member States (mainly Hungary and Poland) about violations of EU values. In Poland's case, both the European Commission and the Court of Justice of the EU have repeatedly confirmed that the judicial law undermines judicial independence and is incompatible with the principle of the primacy of EU law. This law prevents Polish courts from directly applying certain EU legal provisions protecting judicial independence and from referring such matters to the Court of Justice of the European Union for a preliminary ruling.

The confrontation between Hungary and Poland and the EU and its institutions over respect for EU values, particularly the rule of law, did not lead to a compromise. As a result, the European Commission proposed an early warning mechanism that enables dialogue between the Commission and a Member State

[14] *Zakończenie procedury z art. 7 Traktatu o UE wobec Polski*, https://www.gov.pl/web/sprawiedliwosc/zakonczenie-procedury-z-art-7-traktatu-o-ue-wobec-polski [date of access: 1.01.2025].

[15] *Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027*, OJ EU L 433I, 22.12.2020, pp. 11–22.

on budgetary matters, preventing the emergence of a systemic threat to the rule of law. This dialogue served as an alternative to the procedure under Article 7 of the TEU and is referred to as an additional pre-preventive procedure.[16]

On October 12, 2017, the EU Council adopted a regulation implementing enhanced cooperation in establishing the European Public Prosecutor's Office (EPPO), which became the authority responsible for investigating, prosecuting, and bringing to trial cases related to crimes affecting the financial interests of the EU.[17] Less than a year later, on May 5, 2018, the European Commission presented a proposal for a regulation of the European Parliament and the Council on the protection of the EU budget (COM(2018) 324 final) in cases of generalized deficiencies in the rule of law in Member States. The content of this regulation introduced the rule of law conditionality mechanism, aimed at protecting the budget (Multiannual Financial Framework) and EU funds from the *Next Generation EU* instrument.[18] The European Commission was supported in this matter by the European Parliament, which adopted an extraordinary legislative resolution on April 4, 2019.[19]

In July 2020, during a meeting, the European Council agreed to introduce a conditionality mechanism to protect the budget and the *Next Generation EU* instrument, referring to the EU values enshrined in Article 2 of the TEU. Poland supported this solution.

The text of the European Council Conclusions from July 17-21, 2020, which were supported by all EU Member States, reads as follows: "The financial interests of the Union shall be protected in accordance with the general principles enshrined in the Union Treaties, in particular in line with the values set out in Article 2 TEU. The European Council emphasizes the importance of protecting the financial interests of the Union. The European Council stresses the importance of respecting the rule of law. On this basis, a conditionality mechanism will be introduced to protect the budget and the Next Generation EU instrument. In this context, the Commission will

[16] *Mechanizmy na rzecz przestrzegania praworządności w Unii Europejskiej*, https://oide.sejm.gov.pl/oide/en/images/files/pigulki/Rule_of_law.pdf [date of access: 2.01.2025].

[17] *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'),* OJ EU L 283, 31.10.2017. pp. 1-71.

[18] *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*, COM/2018/324 final – 2018/0136 (COD).

[19] *Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States. European Parliament legislative resolution of 4 April 2019 on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)0324 – C8-0178/2018 – 2018/0136(COD)) P8_TC1-COD(2018)0136 Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Regulation (EU) of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*, OJ EU C 116, 31.3.2021, pp. 150-161.

propose measures in cases of violations, to be adopted by the Council by qualified majority. The European Council will swiftly return to this matter."[20]

The European Council, with its decision, weakened the European Commission's 2018 proposal, as it determined that the qualified majority procedure in the EU Council would apply when adopting the Commission's proposal on rule of law violations. This effectively ruled out the "reverse qualified majority voting" procedure in the EU Council, which would have required a qualified majority to reject the Commission's proposal regarding a Member State's potential rule of law violations and the subsequent freezing or withdrawal of its financial resources.

According to the European Council Conclusions from July 2020, which Poland also agreed to**,** the European Commission, the EU Council, and the European Parliament were authorized to establish a legal procedure for applying the conditionality principle in relation to the EU funds disbursement system for Member States.[21] These institutions effectively took action in this regard, leading to the adoption of a new EU regulation that sanctions the rule of law violations by Member States.

The 2020 regulation introduced a new conditionality mechanism, allowing the European Commission to suspend or withdraw EU funds from Member States where generalized deficiencies in the rule of law are detected. The regulation explicitly states that its provisions aim to protect the EU's financial interests. Generalized deficiencies in the rule of law in a Member State affect or may affect (pose a serious risk to) EU funds, particularly when they undermine: the proper functioning of national authorities responsible for executing the EU budget, especially in the context of public procurement, monitoring, and control; the effective operation of investigative and law enforcement authorities in prosecuting financial fraud, corruption, or other violations of EU law related to budget execution; judicial oversight of actions or omissions affecting EU funds; rules preventing and penalizing financial fraud, corruption, and other breaches of EU law, including ensuring effective and dissuasive sanctions imposed by national courts and administrative bodies; the recovery system for unduly paid funds; the efficiency and timeliness of cooperation – based on relevant legal acts and the principle of sincere cooperation – with the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) in the course of their investigations, preliminary proceedings, or prosecutions.[22]

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[20] *Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020). Conclusions*, General Secretariat of the Council, EUCO 10/20, European Council, Brussels, 21 July 2020.

[21] In the framework of the co-decision procedure based on qualified majority voting (QMV) in the Council of the EU.

[22] *Regulation (EU, Euratom) 2020/2092...,* op. cit., pp. 1-10.

5. Fifth research assumption: EU institutions, led by the European Commission, the European Parliament, and the Court of Justice of the EU, have developed a new crisis-response system for monitoring and sanctioning rule of law violations in Member States

Respect for the rule of law is one of the fundamental conditions for EU membership, but it must also align with the principle of sound financial management, as stipulated in Article 317 of the Treaty on the Functioning of the European Union (TFEU).[23]

Financial management can only be ensured by Member States when public authorities act in accordance with the law and when cases of financial misconduct – including tax fraud, tax evasion, corruption, conflicts of interest, and other legal violations – are effectively prosecuted by investigative and prosecutorial authorities. Additionally, arbitrary or unlawful decisions made by public authorities, including law enforcement agencies, must be subject to effective judicial oversight by independent courts and the Court of Justice of the European Union.[24]

The new system for monitoring and sanctioning rule of law violations in Member States, as outlined in the analyzed regulation, establishes that judicial independence and impartiality must always be guaranteed, and that investigative and prosecutorial authorities must be able to properly fulfill their duties. The judiciary, investigative services, and prosecution authorities must have sufficient financial and human resources as well as adequate procedures to operate effectively while ensuring full respect for the right to an impartial trial, including the right to defense. Additionally, final court rulings must be effectively enforced. These conditions serve as minimum safeguards against unlawful and arbitrary decisions by public authorities that could harm the EU's financial interests.[25]

"Judicial independence requires, in particular, that a given judicial body is able to perform its functions fully autonomously – both under the applicable legal provisions and in practice without being subject to a hierarchical structure, without subordination to any entity, and free from instructions or directives from any source. In this way, it remains protected from external interference or pressure that could jeopardize the independence of its members' judgment and influence their decisions.

Guarantees of independence and impartiality require the existence of rules – especially concerning the composition of the judicial body, the appointment of its

[23] *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Consolidated version of the Treaty on European Union Consolidated version of the Treaty on the Functioning of the European Union Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Tables of equivalences*, OJ EU C 202, 7.6.2016, pp. 1-388.

[24] *Regulation (EU, Euratom) 2020/2092...,* op. cit., p. 2.

[25] Ibidem.

members, the duration of their terms of office, and the grounds for their exclusion or removal. These rules must eliminate, in the eyes of the parties to proceedings, any reasonable doubt about the judicial body's independence from external factors and its neutrality concerning the competing interests before it."[26]

Determining violations of the rule of law requires the Commission to conduct a thorough qualitative assessment. This assessment must be objective, impartial, and fair, taking into account relevant information from available sources and recognized institutions. These sources include judgments of the Court of Justice of the European Union**,** reports from the European Court of Auditors**,** the Commission's annual rule of law reports, and the EU Justice Scoreboard. Additionally, the assessment should consider reports from the European Anti-Fraud Office (OLAF), and where applicable, the European Public Prosecutor's Office (EPPO), as well as findings and recommendations from relevant international organizations and networks. This includes Council of Europe bodies, such as the Group of States against Corruption (GRECO) and the Venice Commission, particularly its Rule of Law Checklist. The European Network of Supreme Courts and the European Network of Councils for the Judiciary should also be consulted. If necessary, the Commission could seek further consultation with the EU Agency for Fundamental Rights and the Venice Commission to ensure a comprehensive qualitative assessment.[27]

The measures provided in this regulation are necessary, particularly in cases where other procedures established in Union law would not provide more effective protection of the EU budget. EU financial legislation, along with applicable sectoral and financial rules, includes various mechanisms to protect the budget, such as suspension, withholding, or financial corrections in response to irregularities or serious deficiencies in management and control systems. It is essential to define both the measures to be taken in cases of violations of the rule of law and the procedure for adopting such measures. These measures should include:s-Suspension of payments and commitments; – sSuspension of disbursement of installments or early repayment of loans; – rReduction of funding under existing commitments, and prohibition on incurring new obligations for beneficiaries or entering into new loan agreements or other instruments guaranteed by the EU budget.

When determining the measures to be adopted, the principle of proportionality should apply. This means taking into account: the severity of the crisis situation ; the time elapsed since the initiation of the relevant action; the duration

[26] **Court of Justice of the European Union.** Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas* (Case C-64/16). ECLI:EU:C:2018:117, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0064 [date of access: 31.12.2024].

[27] *Regulation (EU, Euratom) 2020/2092...,* op. cit., p. 2.

and recurrence of the violation; the intent and level of cooperation of the Member State in addressing the breaches of the rule of law; the impact of these violations on the proper management of EU budget finances or on the EU's financial interests.[28]

This provides empirical evidence of the effectiveness of the new rule-of-law control and sanctioning system introduced by Regulation (EU, Euratom) 2020/2092. One key example is the European Commission's continued refusal to lift the blockade on payments to Hungary, imposed in 2022 under the conditionality mechanism analyzed in this article.

The €6 billion payout to Hungary remains frozen due to violations of the regulation in areas such as: public procurement; prosecutorial actions; conflicts of interest; anti-corruption efforts. Additionally, concerns were raised over the so-called trusts, which manage EU funds but are not subject to EU public procurement law.[29]

Secondly, both Hungary and Poland filed a complaint with the Court of Justice of the European Union (CJEU), seeking the annulment of Regulation (EU, Euratom) 2020/2092. In their complaints, they argued that: the EU Treaties do not provide a proper legal basis for adopting the regulation; the EU exceeded its competences in establishing the rule-of-law conditionality mechanism; the regulation violates the principle of legal certainty.[30]

The Court of Justice of the European Union (CJEU) ruled that sound financial management of the EU budget and the financial interests of the Union could be seriously threatened by violations of the rule of law in a member state. As a result, the "horizontal conditionality mechanism", established by the regulation which ties access to EU funds to compliance with rule-of-law principles, falls within the EU's competence to establish "financial rules" for the implementation of the budget. The CJEU also confirmed that this procedure does not circumvent the process established under Article 7 TEU and does not exceed the competences conferred upon the EU. Therefore, the Court dismissed the complaints filed by Hungary and Poland in their entirety.[31]

In response to the crisis situation in Hungary and Poland, the European Parliament adopted an extraordinary resolution in 2022. The resolution referenced

[28] Ibidem.

[29] *Komisja Europejska zadecydowała. Blokada pieniędzy dla Węgier*, 16.12.2024, https://www.money.pl/pieniadze/blokada-pieniedzy-dla-wegier-jest-decyzja-komisji-europejskiej-7103976839564032a.pdf.

[30] *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,* Court of Justice of the European Union, Press Release, No 28/22, Luxembourg, 16 February 2022.

[31] See: *AG Campos Sánchez-Bordona: the actions brought by Hungary and Poland against the regime of conditionality for the protection of the Union budget in the event of breaches of the principles of the rule of law should be dismissed. Advocate General's Opinion in Case C-156/21 and Case C-157/21 Hungary v Parliament and Council; Poland v Parliament and Council*, Court of Justice of the European Union, Press Release No 217/21, Luxembourg, 2 December 2021.

Article 2 TEU, the Charter of Fundamental Rights, the content of the conditionality regulation, and case law from both the CJEU and the European Court of Human Rights (ECHR). The Parliament cited numerous cases indicating a clear risk of serious breaches by these member states of the values on which the EU is founded. The resolution specifically pointed to: the judicial disciplinary system in Poland; attacks on media freedom and journalists; violations of migrants' rights; restrictions on women's rights; discrimination against LGBTIQ persons; threats to freedom of association and assembly. This move by the European Parliament reinforced the legal and political pressure on Hungary and Poland, emphasizing the broad scope of rule-of-law concerns in these countries.[32]

And fourthly, due to violations of the rule of law, the European Commission and the Member States determined that by the end of 2023, three conditions for the disbursement of funds to Poland from the Recovery and Resilience Facility (RRF) (under the Polish National Recovery Plan – KPO) had not been met. Hungary also did not receive these funds.[33]

Conclusions

The Regulation of the European Parliament and the Council (EU, Euratom) 2020/2092 on the general conditionality regime for the protection of the Union budget, subjected to scientific explanation in this article,[34] was, in the author's opinion, an appropriate response to crisis-related violations of the rule of law in member states and, consequently, to violations of the EU's financial interests. This concerned the protection of the EU budget in relation to cohesion policy, the common agricultural policy, and the Recovery and Resilience Facility, which is the main component of the recovery instrument – Next Generation EU. It enabled the European Commission, as well as the European Parliament and the Council of the EU, to monitor the crisis situation in all EU member states, collect relevant data on violations, and take immediate sanctioning and corrective actions.

The research assumptions presented in the article, derived from the provisions of the Regulation of the European Parliament and the Council (EU, Euratom) 2020/2092, lead to several scientific conclusions.

First, the principle of the rule of law has been linked to the principle of conditionality to serve the protection of the European Union's budget and financial

[32] *European Parliament resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling (2022/2535(RSP)),* OJ EU C 347, 9.9.2022, pp. 168-171.

[33] Ibidem.

[34] The process of explaining attitudes, behaviors, phenomena, and relationships among variables that are observed and measured during research.

interests. Second, the rule of law, as a fundamental value of the European Union derived from the Treaty on European Union, must be unconditionally respected by all member states. Third, the rule of law, derived from the general principles of EU law, complements the treaty-based regulatory system. Fourth, the Treaty on European Union, to which Poland is a party, provides for the possibility of sanctioning violations of EU principles (including the rule of law) in a member state, which may even result in the suspension of that state's membership rights. Fifth, the Multiannual Financial Framework 2021-2027 and the Next Generation EU recovery instrument have been equipped with effective systemic mechanisms to prevent and sanction violations of the rule of law. And sixth, EU institutions, led by the European Commission, the European Parliament, and the Court of Justice, have developed a new system for monitoring and enforcing the rule of law in member states. The analyzed Regulation of the European Parliament and the Council (EU, Euratom) 2020/2092 is one of the most important elements of this system.

The system linking the rule of law with the principle of conditionality, adopted in the European Union as of January 1, 2021 (the date when the provisions of the Regulation entered into force), could not function effectively and deterrently without the set of sanctions proposed within it. The catalog of these sanctions includes: suspension of payments or the execution of a legal obligation, or termination of its validity; prohibition on incurring new legal obligations; suspension of the disbursement of installments, in whole or in part, or early repayment of loans guaranteed by the EU budget; suspension or reduction of economic benefits under an instrument guaranteed by the EU budget; prohibition on concluding new loan agreements or other instruments guaranteed by the EU budget; suspension of the approval of a program or programs or modification of such suspension; suspension of commitments; limitation of commitments, including through financial corrections or reallocation of funds to other expenditure programs; reduction of advance payments; suspension of payment deadlines; suspension of payments.

The content of the article clearly demonstrates that the European Commission and its President play a key role in the legal and political order of the European Union today. Many tend to forget that this institution can be referred to as the government of the European Union. Its influence and impact cannot be compared to any other international organization or structure. According to Article 17 of the Treaty on the European Union, the European Commission promotes the general interest of the Union and takes appropriate initiatives to this end, including those related to sanctioning violations of the rule of law.

As the "guardian of the treaties," the European Commission ensures the application of the treaties and all regulations and decisions adopted by EU institutions based on them. Importantly, it oversees the implementation of EU law under the constant supervision of the Court of Justice of the European Union, while also holding supervisory and sanctioning powers in this regard (e.g., through complaints submitted to the Commission). It executes the budget and manages the EU's financial programs. The Commission performs coordinating, executive, and managerial functions within the entire integration system, in relation to member states and other EU institutions and bodies. It represents the Union both externally and internally, although it does not hold a monopoly in this area. Most EU legislative acts are adopted solely on the Commission's initiative. Crucially, the European Commission is entirely independent in carrying out its duties. Its members neither seek nor accept instructions from any government, institution, body, or organizational entity.

Bibliography

1. *AG Campos Sánchez-Bordona: the actions brought by Hungary and Poland against the regime of conditionality for the protection of the Union budget in the event of breaches of the principles of the rule of law should be dismissed. Advocate General's Opinion in Case C-156/21 and Case C-157/21 Hungary v Parliament and Council; Poland v Parliament and Council*, Court of Justice of the European Union, Press Release No 217/21, Luxembourg, 2 December 2021.
2. *Annual Rule of Law Cycle*, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle_en..
3. *Budżet UE: Komisji publikuje wytyczne dotyczące mechanizmu warunkowości*. Komunikat prasowy, Bruksela 2 marca 2022.
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/C123/02*, C(2022) 1382, OJ EU C 123, final Brussels, 2.3.2022.
5. *Communication from the Commission to the European Parliament and the Council. A new EU Framework to strengthen the Rule of Law*, Brussels, 11.3.2014, COM(2014) 158 final.
6. *Communication from the Commission to the European Parliament, the European Council and the Council. Further strengthening the Rule of Law within the Union. State of play and possible next steps*, Brussels, 3.4.2019, COM/2019/163 final.
7. *Consolidated version of the Treaty on European Union*, OJ C 326/13, 26.10.2012.
8. *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Consolidated version of the Treaty on European Union Consolidated version of the Treaty on the Functioning of the European Union Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Tables of equivalences*, OJ EU C 202, 7.6.2016.
9. *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*, OJ EU L 283, 31.10.2017.
10. *Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027*, OJ EU L 433I, 22.12.2020.

11. *Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis,* OJ EU L 433I, 22.12.2020.
12. Court of Justice of the European Union. *Judgment of 27 February 2018, Associação Sindical dos Juízes Portugueses v Tribunal de Contas (Case C-64/16). ECLI:EU:C:2018:117. Available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0064.*
13. Czachór Z., *Sytuacja prawna i polityczna Polski w Unii Europejskiej w obliczu nowego podziału budżetu, w oparciu o stan praworządności w państwach członkowskich,* Analiza przygotowana na zlecenie Biura Senatora Marcina Bosackiego, Poznań 20.11.2020.
14. *European Parliament resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling (2022/2535(RSP))*, OJ EU C 347, 9.9.2022.
15. *Komisja Europejska zadecydowała. Blokada pieniędzy dla Węgier*, 16.12.2024, https://www.money.pl/pieniadze/blokada-pieniedzy-dla-wegier-jest-decyzja-komisji-europejskiej-7103976839564032a.pdf.
16. *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,* Court of Justice of the European Union, Press Release, No 28/22, Luxembourg, 16 February 2022.
17. *Mechanizmy na rzecz przestrzegania praworządności w Unii Europejskiej*, https://oide.sejm.gov.pl/oide/en/images/files/pigulki/Rule_of_law.pdf.
18. Potorski R., Witkowska M., *Can You Count on Luck Without Buying a Lottery Ticket? Predictions on Obtaining Funds from the National Recovery Plan in Light of the Debate on the Rule of Law in Poland*, "Studia Europejskie – Studies in European Affairs" 2024, no. 4, pages?.
19. *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*, COM/2018/324 final – 2018/0136 (COD).
20. *Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States. European Parliament legislative resolution of 4 April 2019 on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)0324 – C8-0178/2018 – 2018/0136(COD)) P8_TC1-COD(2018)0136 Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Regulation (EU) of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*, OJ EU C 116, 31.3.2021.
21. *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 EU, L.2020.433I.1, 22.12.2020.
22. *Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020). Conclusions*, General Secretariat of the Council, EUCO 10/20, European Council, Brussels, 21 July 2020.
23. *Zakończenie procedury z art. 7 Traktatu o UE wobec Polski*, https://www.gov.pl/web/sprawiedliwosc/zakonczenie-procedury-z-art-7-traktatu-o-ue-wobec-polski.