

CASE LAW

**Establishing a Link between Solidarity and  
Responsibility – The Court’s Judgement on the  
Conditionality Regulation**

NIELS KIRST AND BEATRICE MONCIUNSKAITE\*

**Introduction**

‘Financial conditionality establishes a link between solidarity and  
responsibility.’<sup>1</sup>

– Advocate General Campos Sánchez-Bordona

The principle of solidarity is a fundamental principle in the European Union’s legal order. It is based on the idea that Member States share both the advantages of EU membership e.g., prosperity, but also the burdens e.g., a sudden migration influx equally and justly among the Member States. The Advocate General (AG) Campos Sánchez-Bordona’s Opinion in C-156/21 (the Hungarian Opinion) and in C-157/21 (the Polish Opinion) added a new link between solidarity and responsibility. According to the AG’s Opinion, the new Regulation 2020/2029 (the Conditionality Regulation) establishes a link between solidarity and responsibility. His view was affirmed by the CJEU on the 16th of February, when the Court dismissed both Poland and Hungary’s legal arguments against the Conditionality Regulation. When Member States pay their share into the European budget (the Multiannual Financial Framework, or MFF) they can expect a responsible spending of those funds by the other, potentially less advantaged, Member States. In the spirit of Conditionality Regulation, that

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\* Both Dublin City University.

<sup>1</sup> Case C-156/21 *Hungary v European Parliament Council of the European Union* [2021] ECLI:EU:C:2021:974, Opinion of AG Campos Sánchez-Bordona, para. 110.

1 means solidarity among the Member States transforms into responsibility  
2 for each Member State to spend EU money in accordance with the  
3 fundamental values of the Union, the rule of law.

4 The following case-note analyses the two judgements of the Court of  
5 Justice of the European Union (CJEU, the Court), delivered on the 16  
6 February 2022, in C-156/21 (the Hungarian case) and in C-157/21 (the  
7 Polish case). The actions for annulment of Regulation 2020/2092 were  
8 brought at the same time by Hungary and Poland but differed slightly,  
9 therefore, the two cases were not joined and remained two separate  
10 proceedings, despite the similar substance of the two cases. However, the  
11 hearing of the two cases took place together and was exceptionally heard  
12 by a full court, given the case's importance for the EU legal order.<sup>2</sup>

13 This case-note is structured as follows: first, it will discuss the  
14 background to the proceedings, the motivation by Hungary and Poland for  
15 bringing the case and give a quick recap of the oral hearing at the Court of  
16 Justice of the European Union. Second, the case-note will analyse the  
17 Court's reasoning, highlighting the four main legal arguments brought  
18 forward, i.e., the legal basis of Regulation 2020/2092, its compatibility  
19 with Article 7 TEU, Art 4 (2) TEU, and the principle of legal certainty and  
20 proportionality. Third, the case-note will broach on the implications and  
21 the effect of the judgements and on the conditionality mechanisms  
22 potential application and benefit in the future. Fourth, and finally, the case-  
23 note will conclude with a discussion of the case's significance for the EU's  
24 legal order.

## 25 **Background to the Polish & Hungarian Challenge of the** 26 **Conditionality Regulation**

27 The background to the case is the rule of law crisis in the European Union.  
28 Developments in the Member States of the EU starting in 2010 have led to  
29 a rule of law backsliding in those Member States.<sup>3</sup> Particularly, in Hungary  
30 and Poland, while developments in Romania and Malta also seem  
31 concerning. As a response, the European Commission (the Commission)  
32 has slowly started to act. First, in the form of a structured dialogue with

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<sup>2</sup> See Article 16 of the Statute of the Court of Justice

<sup>3</sup> L. Pech and K.L. Scheppele, 'Illiberalism Within: Rule of Law Backsliding in the EU'  
[2017] 19 Cambridge Yearbook of European Legal Studies 3.

1 those Member States to improve the rule of law situation.<sup>4</sup> Later in the form  
2 of infringement proceedings before the CJEU.<sup>5</sup> This has been met with  
3 backlash by the concerned Member States as they saw the actions by the  
4 Commission as EU overreach which is not backed by the Union's  
5 competencies.

6 The latest episode in this constitutional crisis of the European Union,  
7 has been an effort by the EU legislature, driven by the Commission and the  
8 German Council Presidency, to enact a rule of law conditionality  
9 regulation.<sup>6</sup> The aim of this regulation is to introduce financial penalties  
10 for Member States that yield rule of law deficiencies. This comes as a last  
11 resort, as all previous attempts to discipline Member States regarding the  
12 rule of law have failed. Notably, the Article 7 procedure, which was  
13 originally designed to ensure that the Union's values, such as the rule of  
14 law, are protected, failed to yield any results due to its unanimity  
15 requirements in the Council.

16 The new formula that the Union tries to employ at this point of the  
17 heightened rule of law crisis is conditionality. Scholars have argued that it  
18 could mean a turning point in the EU's rule of law crisis as the respective  
19 Member States rely on the EU financially.<sup>7</sup> The aim of the Regulation is to  
20 protect the Union's budget and ensure that all EU money is spent in  
21 accordance with the rule of law. Or, as the AG has described it, '[t]he  
22 European Union transfers funds from its budget to Member States provided  
23 that the money is spent responsibly, which means spending it in accordance  
24 with EU values, such as the rule of law.'<sup>8</sup>

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<sup>4</sup> L. Pech and D. Kochenov, 'Better Late than Never? On the Commission's Rule of Law Framework and its First Activation' No. 08/16 University of Groningen Faculty of Law Research Paper Series, <<https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12401>> accessed 18 November 2022.

<sup>5</sup> L. Pech and S. Platon, 'Rule of Law backsliding in the EU: The Court of Justice to the rescue? Some thoughts on the ECJ ruling in Associação Sindical dos Juizes Portugueses' EU Law Analysis Blog, <<http://eulawanalysis.blogspot.com/2018/03/rule-of-law-backsliding-in-eu-court-of.html>> accessed 18 November 2022.

<sup>6</sup> N. Kirst, 'Rule of Law Conditionality: The Long-Awaited Step Towards A Solution of the Rule of Law Crisis in the European Union' Vol. 6 European Papers Insight pp. 101

<sup>7</sup> T. Nguyen, 'The EU's New Rule of Law Mechanism: How it Works and Why the 'Deal' Did Not Weaken it (Policy Brief)' Policy Brief, <<https://www.delorscentre.eu/en/publications/detail/publication/the-eus-new-rule-of-law-mechanism>> accessed 18 November 2022.

<sup>8</sup> *Supra* n.1.

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2 The Regulation entered into force on 1 January 2021. As a novelty and  
3 a unique occurrence in EU law, the Regulation, for the first time, put flesh  
4 on the bones of the concept of the rule of law of Article 2 TEU. It did so  
5 in Article 2 (a) of the Regulation, which for the first times defines a  
6 European rule of law.

7 It includes the principles of legality implying a transparent,  
8 accountable, democratic and pluralistic law-making process;  
9 legal certainty; prohibition of arbitrariness of the executive  
10 powers; effective judicial protection, including access to justice,  
11 by independent and impartial courts, also as regards fundamental  
12 rights; separation of powers; and non-discrimination and equality  
13 before the law.<sup>9</sup>

14 On 27 April 2022, the Commission triggered the process of applying  
15 the Regulation for the first time against the Member State of Hungary.<sup>10</sup>  
16 The reason for this late application are the controversial Council  
17 Conclusions of December 2020, which ask the Commission to refrain from  
18 applying the Regulation until the CJEU has given its verdict on it.<sup>11</sup>  
19 Therefore, the challenge by Hungary and Poland was somehow expected  
20 and the positive outcome of the case will set a series of anticipated events  
21 in motion. The first application of the Rule of Law Conditionality and a  
22 silver lining for a solution to the rule of law crisis. Thus, this case was of  
23 immense significance for the EU legal order and the future of the rule of  
24 law in the EU.

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<sup>9</sup> 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, Article 2 (a), OJ L 433I , 22.12.2020, p. 1–10.

<sup>10</sup> ‘EU triggers rule of law procedure against Hungary (27.04.2022)’ *Deutsche Welle* (Bonn, Germany) <<https://www.dw.com/en/eu-triggers-rule-of-law-procedure-against-hungary/a-61607618>> accessed 1 May 2022.

<sup>11</sup> K.L. Scheppele, L. Pech, and S. Platon, ‘Compromising the Rule of Law while Compromising on the Rule of Law’ (Verfassungsblog.de 2020), <<https://verfassungsblog.de/compromising-the-rule-of-law-while-compromising-on-the-rule-of-law/>> addressed 18 November 2022 , and A. Alemanno and M. Chamon, ‘To Save the Rule of Law you Must Apparently Break It’ (Verfassungsblog 2020), <<https://verfassungsblog.de/to-save-the-rule-of-law-you-must-apparently-break-it/>> accessed 18 November 2022.

## 1 **Analysis of AG’s Opinions and the Judgements**

### 2 *Challenging the Legal Basis of the Regulation: Article 322(1) TFEU*

3 The first challenge against the Regulation brought forward by Hungary and  
4 Poland targeted the legal basis of the Regulation – Article 322 (1). This  
5 article is found in Title II Financial Provisions, Chapter V Common  
6 Provision of the Treaty and mainly used for legislative instruments  
7 concerning the EU budget. Both Member States argued that the EU  
8 legislature lacks the legal basis for adopting Regulation 2020/2029, or, in  
9 the alternative, as the Polish side added, that an incorrect legal basis was  
10 used.

11 The Court rejected those arguments and instead followed the  
12 argumentation by the Council, in so far as it regarded the criteria of a  
13 *sufficiently direct link* to the budget as adequate to distinguishing the  
14 Regulation as a budgetary instrument. Thus, the Regulation is not to  
15 ‘penalize breaches of the rule of law as such’ but rather to ensure that the  
16 budget is implemented accordingly to the value of the rule of law.<sup>12</sup>

17 Further, the Court highlighted that the Union must be able to defend the  
18 values on which it is based. Most importantly, the Court stressed that  
19 ‘compliance with those values cannot be reduced to an obligation which a  
20 candidate State must meet in order to accede to the European Union and  
21 which it may disregard after accession.’<sup>13</sup> The Court, therefore, affirmed  
22 that the Union may take action – in the present case in the form of financial  
23 conditionality – to safeguard compliance with the Copenhagen criteria  
24 even after a Member State has acceded to the EU.

25 Finally, the Court highlighted that the Union budget is one of the main  
26 instruments giving effect to the principle of solidarity in the EU. The  
27 implementation of that principle, through the Union’s budget, would be  
28 seriously undermined if breaches of the rule of law are committed in a  
29 Member States when utilizing EU funds. Therefore, and to uphold the  
30 objectives pursued by the Union, a horizontal Conditionality Regulation  
31 ‘is capable of falling within the power conferred by the Treaties on the

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<sup>12</sup> Case C-156/21 *Hungary v European Parliament and Council of the European Union* [2022] ECLI:EU:C:2022:97, para. 119.

<sup>13</sup> Case C-157/21 *Republic of Poland v European Parliament and Council of the European Union* [2021] ECLI:EU:C:2022:98, para. 144.

1 European Union to establish “financial rules” relating to the  
2 implementation of the Union budget.’<sup>14</sup>

3 *Compatibility with Article 7 TEU and Non-Applicability of Article 269*  
4 *TFEU*

5 Another major point of contention by Hungary and Poland in their  
6 challenge of the Conditionality Regulation was the incompatibility of the  
7 Regulation with Article 7 TEU. Their argument was two-fold. First, that  
8 Article 7 TEU is intended as exclusive mechanism for the protection of the  
9 rule of law in the EU. Second, that the Conditionality Regulation resembles  
10 Article 7 TEU, and therefore establishes a dual mechanism for the same  
11 aims.

12 The complaint by Hungary & Poland aimed towards a showing that the  
13 Union acted outside its competence and created a parallel mechanism to  
14 Article 7 TEU. However, the Court rejected that argument and highlighted  
15 that both procedures have different aims, functions and themes. While  
16 Article 7 TEU is to penalise breaches of the values of the EU, Regulation  
17 2020/2092 aims to protect the Union budget. Finally, the Court stressed  
18 that the supervision function of the Union via this instrument extends only  
19 situations in which the Member State implements EU budget. Therefore,  
20 the Regulation does ‘not go beyond the limits of the powers conferred on  
21 the European Union.’<sup>15</sup>

22 Additionally, and according to Hungary, the Conditionality Regulation  
23 altered the institutional balance to the detriment of the Member State  
24 concerned, as it introduced a much faster and simpler procedure than  
25 Article 7 TEU foresees. Finally, Hungary argued that the Conditionality  
26 Regulation circumvented judicial review under Article 269 TFEU and,  
27 therefore, gave the Court much wider powers of judicial scrutiny. The  
28 Court rejected this view and stressed, first, ‘that the contested regulation  
29 cannot be regarded as establishing a parallel procedure which circumvents  
30 that provision’<sup>16</sup> and therefore does not alter the institutional balance.  
31 Second, the Court held that ‘the [...] regulation does not fall within the

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<sup>14</sup> *Ibid*, para. 146.

<sup>15</sup> *Supra* n.12, para. 184.

<sup>16</sup> *Ibid*, para. 181.

1 scope of Article 269 TFEU and is therefore not subject to the specific rules  
2 laid down by that article.’<sup>17</sup>

3 *Compatibility with Article 4(2) TEU, the Principle of Equality between*  
4 *Member States*

5 Both Hungary and Poland made claims that the Conditionality Mechanism  
6 violates the equality of Member States under Article 4(2) TEU. Most  
7 notably, Poland argued that the Mechanism would infringe on the principle  
8 of equal treatment of Member States, as smaller and medium-sized  
9 Member States would be disadvantaged compared with larger States  
10 during the voting process.<sup>18</sup> They claim that such an inequity arises as the  
11 measures under the Mechanism must be passed by a qualified majority of  
12 the Council, i.e. at least 15 Member States representing at least 65% of the  
13 population of the European Union. Poland’s claim that majority voting  
14 would lead to discrimination of small and medium-sized Member States  
15 was dismissed by the CJEU. The Court drew a distinction between the  
16 legitimacy of qualified majority voting for the adoption of normative acts  
17 which affect all Member States and penalising measures affecting a single  
18 Member State.<sup>19</sup> Qualified majority voting is permissible in the latter  
19 scenario, according to the Court.<sup>20</sup> In line with the AG’s reasoning, the  
20 Court also noted that Article 16 TEU, which establishes qualified majority  
21 voting as the standard in Council proceedings, ‘is in no way specific to the  
22 procedure established by the contested regulation and is fully compatible  
23 with the choices made by the authors of the Treaties’.<sup>21</sup>

24 *Objections to the Principle of Legal Certainty and Proportionality*

25 Both applicant states raised a number of concerns regarding the  
26 Regulation's compliance with the principle of legal certainty. The most  
27 interesting of which was raised by the Polish Government, which disputed  
28 the Mechanism’s proposed definition of the rule of law in Article 2(a) of  
29 the Regulation. They argued that as a matter of principle, it is inappropriate

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<sup>17</sup> *Ibid*, para. 193.

<sup>18</sup> *Supra* n.13, para. 277.

<sup>19</sup> *Ibid*, para. 277.

<sup>20</sup> *Ibid*, para. 277.

<sup>21</sup> *Ibid*, para. 309.

1 for the Mechanism to bind Member States to a universal definition of the  
2 rule of law as the precise definition of this concept can differ from state to  
3 state.<sup>22</sup> Furthermore, The Polish Government argues that Article 2(a) of the  
4 Regulation ‘unduly extends the scope of that concept as a value of the  
5 European Union, which is but one of the values contained in Article 2  
6 TEU, among the other values set out in that provision.’<sup>23</sup> Here, the Polish  
7 Government seems to be insisting on a shallow definition of the rule of law  
8 and are eager to prevent a thicker formulation of this EU value from  
9 emerging. However, to this point the Court reassures the Polish  
10 Government that Article 2(a) of the Regulation is not intended to  
11 define that concept exhaustively, but is limited to setting out, for  
12 the sole purposes of that regulation, a number of the  
13 principles...which are... the most relevant in the light of the  
14 purpose of that regulation, which is to ensure the protection of  
15 the Union budget.<sup>24</sup>

16 In addition, the Court states that the principles listed in Article 2(a) of the  
17 Regulation do not exceed the limits of the concept of ‘the rule of law’ as  
18 these principles are axiomatic to the very concept of the rule of law. The  
19 Court explains that ‘[...] it is clear that a Member State whose society is  
20 characterised by discrimination cannot be regarded as ensuring respect for  
21 the rule of law, within the meaning of that common value’, undoubtably  
22 implying that the recent discriminatory policies adopted by both Poland  
23 and Hungary are undeniably contrary to the rule of law value.<sup>25</sup>

24 The Regulation was also challenged on the grounds of proportionality.  
25 For example, the lawyers for the Hungarian Government claimed that the  
26 fourth sentence of Article 5(3) of the Conditionality Regulation breaches  
27 the principles of proportionality and legal certainty as it uses the expression  
28 ‘insofar as possible’, to target actions and programmes which do not have  
29 a connection with an established breach of a principle of the rule of law.  
30 This proved to be a rather weak argument, as the Court noted that simply  
31 the use of the phrase ‘insofar as possible’ does not mean the scope of the  
32 Mechanism is broadened.<sup>26</sup> Furthermore, the Court reminded the

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<sup>22</sup> *Ibid*, para. 312.

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid*, para. 323.

<sup>25</sup> *Ibid*, para. 324.

<sup>26</sup> *Supra* n.12, para. 341.



1 applicants that it is a well-established principle of EU law that acts of the  
2 EU institutions must ‘be appropriate for attaining the legitimate objectives  
3 pursued by the legislation at issue and do not go beyond what is necessary  
4 in order to achieve those objectives’.<sup>27</sup>

## 5 **Implications of the Court’s Judgement**

6 The arguments and interpretation of Regulation 2020/2092 proposed by  
7 the AG and the Court have some significant implications for the usefulness  
8 of the Conditionality Mechanism in the broader battle to preserve the rule  
9 of law in the European Union. However, the very nature of this measure as  
10 a financial one means that its utility could be derived from its existence, as  
11 it serves as a deterrent for potential rule of law backsliders.

### 12 *Narrow use of Regulation 2020/2092 and Usefulness against Systemic* 13 *Rule of Law Threats*

14 The AG’s Opinions and the Court’s judgements go into significant detail  
15 regarding the limitations of use of Regulation 2020/2092. Measures  
16 considered under the Regulation must have a clear link to the protection of  
17 the EU budget, which conveys that the primary concern of the Regulation  
18 is the protection of the Union budget while the protection of the rule of law  
19 is an ancillary benefit. The implications of this approach mean that the  
20 overall usefulness of the Regulation in fighting the Union’s rule of law  
21 crisis are reduced. To borrow the analogy used by Gremminger, the  
22 Regulation ‘does not function as a multitool Swiss army knife of the Union  
23 to sanction all breaches of the rule of law, but rather as a scalpel for  
24 targeting specific breaches that have a direct impact on the Union’s  
25 budget’.<sup>28</sup> This approach risks missing the most insidious and most  
26 effective tactic of rule of law backsliding utilised in both Poland and  
27 Hungary today – its incremental and legalistic nature.<sup>29</sup> The narrow

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<sup>27</sup> *Ibid*, para. 340.

<sup>28</sup> Benedikt Gremminger, ‘The New Rule of Law Conditionality Mechanism clears its first hurdle – Analysis of AG Campos Sánchez-Bordona Opinions in Hungary v Parliament and Council (C-156/21) and Poland v Parliament and Council (C-157/21)’ (European Law Blog, 14 December 2021) <<https://europeanlawblog.eu/2021/12/14/8043/>> accessed 26 January 2022.

<sup>29</sup> Aziz Huq, Tom Ginsburg, ‘How to Lose a Constitutional Democracy’ (2018) 65 *UCLA Law Review*, 78, 95-97.

1 application of the Regulation may lead to its failure to recognise the  
2 systemic nature of rule of law backsliding.<sup>30</sup> Individual rule of law issues  
3 such as non-compliance with judicial decisions, tampering with judicial  
4 nominations or procedural breaches may not in and of themselves create a  
5 direct threat to the Union budget, but understood together, they certainly  
6 create a systemic rule of law crisis which inevitably impacts on EU  
7 financial interests.<sup>31</sup>

8 *Deterrent Effects of Regulation 2020/2092*

9 Despite the narrow understanding of Regulation 2020/2092 proposed by  
10 the Court, this new mechanism still stands as an asset for the EU in the  
11 broader fight against rule of law backsliding. Beyond the Regulation's  
12 potential sanctioning powers in specific cases where the Union budget is  
13 compromised by rule of law deficiencies, it also has a deterrent value. The  
14 Regulation does not exist in a vacuum; it is just one tool of many, including  
15 the Article 7 TEU procedure, EU Justice Scoreboard, the Rule of Law  
16 Framework and the new Annual Rule of Law Reports. In particular, the  
17 new Rule of Law Reports, which form the basis of the Rule of Law  
18 Mechanism, are produced on an annual basis aiming to identify and  
19 highlight rule of law concerns in each Member State. As argued by  
20 Monciunskaitė,<sup>32</sup> the EU Commission has already endorsed the use of  
21 these annual reports as evidence to support and justify the withholding of  
22 the EU Recovery Fund in Poland and Hungary's case for their rule of law  
23 deficiencies.<sup>33</sup> This sends a clear message to other Member States that they  
24 could also be subjected to similar financial sanctioning if the annual Rule  
25 of Law Reports reflect significant risks for EU money if discharged to a

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<sup>30</sup> *Supra* n.28.

<sup>31</sup> Kim Lane Scheppele, R. Daniel Kelemen, John Morijn, 'The EU Commission has to Cut Funding to Hungary: The Legal Case' (Greens/EFA group in the European Parliament, 2021) 45-46 accessed 26 January 2022, <<https://www.greens-efa.eu/en/article/document/the-eu-commission-has-to-cut-funding-to-hungary-the-legal-case>> accessed 18 November 2022.

<sup>32</sup> Beatrice Monciunskaitė, 'To Live and to Learn: The EU Commission's Failure to Recognise Rule of Law Deficiencies in Lithuania' (2022) 14(1) *The Hague Journal on the Rule of Law* 49.

<sup>33</sup> Jan Strupczewski, 'EU lists rule of law concerns for Hungary, Poland, pivotal in releasing COVID funds' (Reuters, 20 July 2021) <<https://www.reuters.com/world/europe/eu-lists-rule-of-law-concerns-hungary-poland-could-withhold-funds-2021-07-20/>> accessed 6 January 2022.

1 particular Member State. This would have the effect of deterring Member  
2 States, especially those that receive significant amounts of funding from  
3 the EU, from engaging in risky political tactics that weaken the rule of law  
4 domestically.

5 *A View into the Future: Where Could Regulation 2020/2092 go from here?*

6 Thinking about the future of Regulation 2020/2092, the following  
7 paragraphs will spell out how the impact and awareness of the Regulation  
8 could be further enhanced, how the Regulation could be expanded, and  
9 how its application could be eased. Regarding the awareness of Regulation  
10 2020/2092, it could be crucial to either educate the judges and the judiciary  
11 in rule of law backsliding Member States about the Regulation, i.e., make  
12 them aware that it exists and that it is directly applicable in the Member  
13 States. Or, secondly, animate private litigants (i.e., NGOs and other civil  
14 society actors) to rely on the Regulation in their pleading before a national  
15 court. In this case, the national court would have to consider the Regulation  
16 or forward any questions about it to the CJEU via the preliminary ruling  
17 procedure of Article 267 TFEU.

18 While the Regulation has not been applied yet, it is interesting to think  
19 about the future expansion of it. A Conditionality Regulation recast so to  
20 say. Notably, the Regulation foresees a validation in January 2024 (Article  
21 9 of the Regulation). In case the current form of the Regulation would not  
22 bear fruit in halting the rule of law backsliding, a recast version of the  
23 Regulation could be the way to go. A natural route for expanding the scope  
24 of the Regulation would be to expand the list of offences under Article 4  
25 (2) of the Regulation. The idea for the EU co-legislator would be to see if  
26 some violations by rule of law backsliding Member States are missing or  
27 escaping the scope of the Regulation. In this case, the co-legislators could  
28 add those violations to the list under Article 4 (2) of the Regulation.  
29 However, it will be crucial to wait until the first cases under the Regulation  
30 have been brought to see what is potentially missing.

31 Finally, there is also the case for easing the procedure under the  
32 Regulation. For example, under the current Regulation each burden of  
33 proof to demonstrate rule of law deficiencies relies on the Commission,  
34 who has to draft the implementing act for the Council and include  
35 appropriate evidence regarding each EU spending program that might be

1 affected. However, one could also argue that in the case of systemic rule  
2 of law deficiencies in the Member States, every EU program in that  
3 Member State is affected, and thus also the EU budget. The Commission  
4 could thus stop all payments to the Member State and would not have to  
5 prove rule of law deficiencies at each EU program. Hence, the burden is  
6 reversed — i.e., the Member State affected would need to prove rule of  
7 law compliance to receive money for each EU program. However, the  
8 finding of 'systemic deficiencies' would still need to be proven by the  
9 Commission. w