

In-depth literature review

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The protection of the EU's financial interests against violations of the rule of law in the Member States

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Abstract:

Serious violations of the rule of law occurring in Hungary from 2010 to the present, as well as in Poland from 2015 to December 2023, have become a threat to the financial interests of the European Union (EU). The ongoing process of limiting the independence of the justice system in these countries has reduced the possibilities of national supervision over the correctness of spending of EU funds. The article aims to analyze and assess the effectiveness of regulations and the actions of the EU institutions undertaken since 2016 to defend the rule of law in the Member States, in particular in regarding Poland and Hungary. Main attention is paid to the financial tools used to protect the rule of law, including the mechanism resulting from the Regulation 2020/2092 of December 2020 on a general regime of conditionality for the protection of the EU budget.

Keywords: Conditionality Regulation, EU, EU funds, Hungary, Poland, rule of law crisis

JEL Classification: F15, F36, G38

1 Introduction

The European Union's (EU's) multiannual financial framework (MFF) for 2021–2027 and the Mechanism for Recovery and Resilience Facility (RRF), dedicated to supporting reconstruction after the COVID-19 pandemic, provide financial resources of more than EUR 2 trillion. It will only be possible for the Union to achieve the ambitious objectives of these instruments if its financial interests are properly protected, which means that the use of funds under these instruments will respect the principles of sound financial management and will be subject to appropriate scrutiny at the EU and national levels. This signifies a need for effective cooperation between EU institutions and national authorities. This, in turn, implies that the Member States must respect the rule of law.

When defining the research problem undertaken in this article, it should be noted that serious violations of the rule of law taking place in Hungary from 2010 to the present, as well as in Poland from 2015 to December 2023, have become a threat not only to the survival of democracy in these countries but also for the financial interests of the EU. The ongoing process of limiting the independence of the justice system, including the courts, by the ruling majority in these countries has reduced the possibilities of national supervision over the correctness of spending of EU funds by these Member States, including those from

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its general budget. As a result, it created a convenient field for the government and people associated with them, institutions and companies for mass embezzlement and waste of EU money, as well as national public funds. Therefore, the research question in this article is whether the EU regulations and actions undertaken so far by the EU institutions have been sufficient to defend the rule of law in Poland and Hungary and, as a result, also to protect the financial interests of the Union.

The rule of law is one of the fundamental values of the EU, enshrined in Article 2 of the Treaty on European Union (TEU), which states that “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”.

This means that a member state questioning these values in effect questions its participation in the Union. This may result in a progressive weakening of its position in making key decisions for the Union. This, in turn, may limit its ability to effectively pursue its own interests, also due to the lower chances of gaining allies from other countries and their ostracism toward a country that does not respect the principles of the rule of law. It is also important that negative public moods built by rulers toward the EU may ultimately lead to the withdrawal of a given country from the EU, as happened in the case of Great Britain, where such moods have been created for decades [Oręziak, 2020, pp. 131–138].

The article aims to analyze and assess the effectiveness of regulations, including Article 7 of the TEU, and the actions of the EU institutions, including the European Commission, the Council of the EU, and the Court of Justice of the European Union (CJEU), undertaken since 2016 to defend the rule of law in the Member States, in particular in Poland and Hungary. Applying the top-down approach in the article, the essence and importance of protecting the rule of law in the Member States from the point of view of the harmonious functioning of the Union as a whole were characterized first. The analysis begins with a description of the importance of compliance by the Member states with the rule of law, in particular from the point of view of the single internal market and the protection of the Union’s financial interests. Then, the significance of the legislative initiative launched by the European Commission in 2018 in order to create the legal framework necessary to link expenditure from the EU funds to compliance with the rule of law by the Member States is discussed. The key part of the article addresses the conditionality mechanism, set out in the Regulation 2020/2092 of December 2020 on a general regime of conditionality for the protection of the Union budget (Rule of Law Conditionality Regulation). The article ends with some conclusions concerning the effectiveness of the actions taken so far by the EU institutions to protect the rule of law in Poland and Hungary.

2 The rule of law in the EU integration – Literature review

The definitions and components of the rule of law are discussed by many authors [e.g., Møller and Skaaning, 2014; Janse, 2019; Waldron, 2020; Beqiraj and Moxham, 2022; Pech, 2022]. Their analysis suggests the observance of the rule of law plays a key role in the harmonious functioning of states and the protection of citizens’ rights. The recognition of the rule of law by the Member States of the EU, in turn, is of fundamental importance for the functioning of the Union as a whole and the possibilities of its further development. Gora and de Wilde [2022] provide a comprehensive analysis of the essence of democratic backsliding within the EU by analyzing changes between 1990 and 2019 on some key indicators of democracy. They conclude that the democratic backsliding and the divergence in the quality of democracy in its member states have significant implications for the functioning of the EU as a political system and put its core values at risk.

Compliance with the rule of law by the EU Member States is of key importance because the European legal order gives an important role to national judges. They are expected to observe EU law rules and apply them to domestic legal disputes where appropriate. The European law is a vehicle for spreading common practices throughout Europe. National courts are, among other national regulatory agencies, responsible for applying the EU law to the specific circumstances of a given case. In fact, the EU law itself has given national judges the role of decentralized Union judges [Nowak and Glavina, 2021].

The statements included in the European Commission's communication of 17 July 2019, showing the importance of the rule of law, are worth quoting: "The European project relies on permanent respect of the rule of law in all Member States. It is a prerequisite for the effective application of EU law and mutual trust between Member States. It is also central to making the EU work well as an area of freedom, security and justice and an internal market, where laws apply effectively and uniformly and budgets are spent in accordance with the applicable rules. Threats to the rule of law therefore challenge the legal, political and economic basis of how the EU works" [European Commission, 2019].

Compliance with the rule of law is essential for the overall functioning of the EU, including in relation to the single internal market. The market integration between economies at different levels of development is based primarily on regulatory standardization. The single market works because entrepreneurs from all the Member States can count on the same rules, regardless of where in the EU they sell goods or make investments. These agreed-upon rules are enforced not only by the EU court and other institutions but also by national courts in the Member States [Bruszt and Campos, 2017].

Violations of the rule of law by the Member States are not only serious threats to the functioning of the EU single market but also to the financial interests of the Union.

As pointed out by von Bogdandy and Łacny [2020], respect for EU values must be ensured in all EU policies, including the EU budget, and compliance with the rule of law should be treated as a condition for receiving EU funds. The suspension of the funds should be an important motivator for the Member States to restore the rule of law, as well as a clear message that the EU does not subsidize countries that violate it.

The EU's cohesion policy operates within a decentralized execution system. This means that it is not the European Commission that manages the use of the funds, but the national bodies set up specifically for this purpose. The EU legislation provides the Member States with sufficient flexibility to set up institutional systems. The EU regulations only stipulate that the Member States set up bodies to manage and monitor funds. In practice, during the actual use of EU cohesion funds in all the EU Member States, some unlawful acts, omissions and acts contrary to funding contracts are usually taken. There are several forms of and reasons for breaching a funding rule, which can be committed not only by a beneficiary but also by other entities. Such breaches and omissions are called irregularities, and their examination and legal consequences are specified partly in the EU law, partly in national laws [Torma and Szabo, 2021].

Under the EU's cohesion policy, post-communist Member States from CEE are amongst the largest recipients of European Structural and Investment Funds [European Commission, 2019c]. As Batory [2021] argues, the citizens of these countries often perceive the implementation of the cohesion policy as intertwined with great corruption. While the national political elites are considered the main culprits, the EU institutions are also seen as failing in their responsibilities. The perceived inaction of the EU against high corruption undermines the notion of European solidarity, the credibility and legitimacy of the EU.

The violations of the rule of law are fostered by the development of oligarchic structures in individual countries. On March 24, 2022, the European Parliament adopted a resolution presenting the threats to the EU budget resulting from the functioning of such structures and called on the European Commission to intensify actions aimed at reducing these threats. Political elites operating in oligarchic structures misuse public funds from the EU or national budgets to serve their private interests. These groups often rely on entrepreneurs acting on their behalf within structures where real beneficiaries are usually unknown. The Parliament's resolution emphasizes that, for their own protection, the oligarchic groups seek to gain control over the media and the judiciary in order to avoid publicity in the media and the prosecution of possible criminal activities. As a result, the actions of these groups not only seriously harm the financial interests of the Union, but also pose a threat to democracy, fundamental rights, and the rule of law [European Parliament, 2022a].

In a report on the rule of law in EU countries, published in July 2022, the European Commission [2022a] raised many fundamental concerns regarding the state of the rule of law in Poland and Hungary, in particular concerning restrictions on the independence of the judiciary and the media. The Democracy Report 2022 by the Varieties of Democracy (V-Dem) Institute, the leading organization rating regime types, also pointed out the ongoing destruction of democracy in both countries. According to this report, Poland

and Hungary were in the group of the most rapidly autocratizing countries in the world between 2011 and 2021 [Boese et al., 2022].

Currently, EU governance is based on persuasion and rational discourse, but the only way for a civilized Europe to work is to apply political conditionality, as James [2020] argues. Therefore, the defense of European values requires punishing systemic violations, both by suspending the voting rights of miscreants in the EU decision-making process and withholding EU payments. The author stresses that there can be no EU if all its members do not adhere to the same standards.

The respect for the rule of law by the EU Member States is therefore of fundamental importance not only for their functioning but also for the very existence of the Union. In this situation, making the use of EU funds conditional on compliance with the rule of law is perceived as the key way of preventing this threat.

3 Conditionality concerning the use of EU funds

The general budget is the main source of financing for the activities of the EU. According to the MFF for 2021–2027, this budget in this period amounts to over EUR 1,200 billion (in current prices). An important additional source of temporary financing is the Mechanism for RRF, adopted under the Regulation of the European Parliament and of the Council (EU) 2021/241 of February 12, 2021. This instrument, also referred to as NextGenerationEU and often as the European Reconstruction Fund, aims to support the Member States with grants and loans totaling over EUR 800 billion to overcome the negative economic and social impacts caused by the COVID-19 pandemic and to better adapt their economies to meet current and upcoming challenges.

To ensure that the EU funds are properly spent, the European Commission cooperates with national authorities and the data communicated by these authorities is important for assessing the correct use of the funds. This is mainly because around 80% of the EU expenditure is managed at the national level under a shared management of EU programs [European Commission, 2022b].

In 2014–2020, most of the fraudulent irregularities reported by the EU and national authorities concerned agricultural expenditure, as well as cohesion and regional policies [European Commission, 2021]. When the MFF for the years 2021–2027 was prepared, the European Commission took a significant initiative to link the payment of EU funds to the Member States with their respect for the rule of law. The Commission, presenting in May 2018 a set of draft legal acts concerning the MFF, also advanced proposals to link expenditure from the EU budget to the assessment of the rule of law in the Member States [European Commission, 2018].

The abovementioned proposals became the basis for starting a discussion on possible solutions to this matter and, more broadly, on the need for a systematic assessment of changes in governance and institutional quality in the EU, including the rule of law. The need for such an assessment was also highlighted by, *inter alia*, Demertzis and Goncalves Raposo [2018], recognizing that an urgent system reform is necessary in this area.

Also, Heinemann [2018] considered that it would be justified to link expenditure from the EU budget to compliance with the rule of law by the Member States, even if only a very narrow perspective is taken into account including the implementation of the objectives of the cohesion policy. According to Blauburger and van Hüllen [2021], it was clear that the mechanism proposed by the Commission was intended to counter the tendencies of democratic backsliding and autocratization, a phenomenon manifested in some EU Member States, mainly in Hungary and Poland.

The need to ensure the effective protection of the Union's financial interests also stems from the fact that the establishment of the RRF mechanism in 2021 provides huge amounts of money to be used by companies and other entities from the Member States. It also means an enormous financial burden, incumbent for many years (until at least 2058) for the Union as a whole, and therefore for all its Member States, mainly due to loans taken out by the Commission to finance grants and loans from the RRF [Begg et al., 2022].

The European Parliament [2022b], in its resolution of 23 June 2022 on the Reconstruction and Resilience Facility, indicates that when it comes to protecting the EU's finances and values, a robust mechanism for

auditing and monitoring expenditure, implementation and data management under the Facility should be provided to prevent misuse or overlapping with other EU funding programs. The resolution also emphasizes that compliance with the rule of law and Article 2 of the Treaty on the Functioning of the European Union (TFEU) is a prerequisite for accessing funds under the Facility, with the EU rule of law being fully applicable as well.

4 The Rule of Law Regulation as part of the EU Rule of Law framework

The ability of EU bodies to enforce the law on which the Union is based is fundamental to both the EU itself and its Member States, in particular to those that do not wish to respect its principles. The EU law entails “structural obligations” for the Member States to uphold the rule of law within their legal systems. As indicated by Pohjankoski [2021], to the extent respecting such structural obligations is indispensable to observing specific EU law rules, their breach can be the target of infringement proceedings.

It is unacceptable to use EU taxpayers’ money to support projects implemented by entities that have no qualms in undermining the democratic institutions that form the basis of the EU, as Verhofstadt [2018] considers. Therefore, it is crucial that the disbursement of EU funds can be implemented only on condition that the rule of law is respected and enforced by the beneficiary Member States. To this end, the EU should have put an objective compliance monitoring procedure and freeze funds if necessary.

When the first troubling violations of the rule of law and democratic procedures in Hungary emerged in 2010–2012, the European Commission, which, pursuant to Article 17 Section 1 of the TEU, must ensure the application of EU law, had only two treaty instruments: the preventive and sanction mechanisms established under Article 7 TEU and the ordinary infringement procedure established under Article 258 of the TFEU, as noted by Pech [2020]. In order to counteract violations of the law, the European Commission, pursuant to Article 258 of the TFEU, may submit to the CJEU complaints against Member States failing to fulfill their obligations. The Court’s response to these complaints are decisions and judgments. If they are not respected, the CJEU may decide to impose financial penalties (Article 260 of the TFEU). The procedure specified in Article 7 of the TEU can be applied toward a Member State that fails to respect the fundamental values referred to in Article 2 of the TEU, including the rule of law, which may result, *inter alia*, in depriving this state of its voting rights in the EU institutions [European Commission, 2022c]. For this to happen, however, a unanimous decision of other Member States is needed. However, the practice has shown that making such a decision is unrealistic, which means that this procedure is in fact ineffective.

On 13 January 2016, the European Commission activated its Rule of Law framework for the very first time with respect to Poland [Kochenov and Pech, 2016]. It was a reaction to the changes introduced by the new ruling majority to the judicial system, in particular, the Constitutional Tribunal [European Commission, 2016]. Poland has become the first ever EU Member State to be subject to the EU’s exceptional Article 7(1) of the TEU procedure [European Commission, 2017]. The use of Article 7 of the TEU against Poland and next against Hungary has been generally welcomed with relief, proving that, at last, the EU is ready to defend Article 2 of the TEU values when the Member States openly violate them [Peirone, 2019].

Analyzing the implementation in practice of the procedures triggered against Poland and Hungary pursuant to Article 7 due to the violations of the EU’s fundamental values, Priebus [2022a] concludes that these procedures stalled as the Council was able to dilute them and apply its own ‘offender-friendly’ rules. This allowed the Council to control and delay the processes of influencing countries breaking the rule of law.

The few steps undertaken by the EU institutions, however, did not prevent Poland’s abrupt descent into authoritarianism, as Pech et al. [2021] argue. The authors emphasize that the Commission has systematically acted in a too little too late fashion while the Council has regularly failed to act meaningfully, with the inaction of these two EU institutions amounting, at times, to a dereliction of duties. By contrast, the Court of Justice has forcefully defended judicial independence whenever an infringement case was lodged with it by the Commission.

From January 2021, the possibilities to protect the EU financial interests have been strengthened thanks to the entry into force of Regulation No. 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general conditionality system designed to protect the Union's budget, also known as the "Rule of Law Conditionality Regulation" or the "Conditionality Regulation". The COVID-19 crisis became an important factor contributing to the reaching of an agreement at the European Council summit in December 2020 on the introduction of a comprehensive mechanism making the allocation of EU funds to the Member States conditional on compliance with the rule of law. Bos and Kurze [2021] believe that it turned out to be possible to make this far-reaching decision in this situation despite the persistently divergent interests of the Member States.

The regulation lays down the provisions necessary to protect the Union's budget in the event of breaches of the rule of law in the Member States. As indicated in the introduction to the regulation, the "rule of law" refers to the values of the Union listed in Article 2 of the TEU. The introduction to the regulation also states that whenever Member States implement the Union budget, including resources allocated from the RRF instrument and through loans and other instruments guaranteed by the Union budget, respect for the rule of law is one of the essential conditions for compliance with the principle of sound financial management expressed in Article 317 of the TFEU. Good financial management can be ensured by the Member States only when public authorities act legally and when cases of fraud, including tax fraud, tax evasion, corruption, conflict of interest, and other infringements, are effectively prosecuted by investigative and legal services and when arbitrary or unlawful decisions by public authorities may be subject to effective judicial review by independent courts and the CJEU.

Pursuant to the regulation, appropriate measures are taken when it is established that breaches of the rule of law in a Member State affect or pose a serious risk of impact on – in a sufficiently direct manner – the sound financial management of the Union budget or the protection of the Union's financial interests. In order to protect the Union budget, the regulation empowers the Council to adopt, on foot a proposal from the Commission, measures such as the suspension of payments from the Union budget or the suspension of the approval of a program or programs financed from that budget. The mechanism set out in this regulation complements the solutions already existing in the EU legal order, including those resulting from the procedure provided for in Article 7 of the TEU, by protecting the Union's budget against violations of the rule of law affecting the sound financial management of the Union's budget or the protection of the Union's financial interests.

As noted by Rubio [2020], the mechanism of the rule of law conditionality was hoped to become a powerful tool in combating serious violations of the rule of law, in particular with regard to the independence of the judiciary, the arbitrariness of the executive, equality before the law, and the existence of appropriate administrative and judicial appeal procedures for investigating and punishing for violations of the rule of law.

The rule of law conditionality regulation, as Kirst [2021] believes, has an important deterrent function to fulfill as it should undoubtedly influence the actions of the Member States' governments that are currently violating the rule of law. As far as the potential weaknesses of the mechanism contained in the regulation are concerned, Philoleau [2021] points out, *inter alia*, that proving a "sufficient" direct causal link between a breach of the EU budget and a breach of the rule of law may prove very difficult in practice.

As Baraggia and Bonelli [2022] note, compromises reached during the legislative process weakened this legal instrument of the Rule of Law Conditionality Regulation compared to the original Commission proposal. The authors find this disappointing given the urgent need to find effective responses to violations of the rule of law in Hungary and Poland. While the original purpose of the Regulation was to protect the rule of law in general, the main objectives now are to protect the Union's budget and the EU's financial interests by ensuring the rule of law. However, the authors emphasize that despite its more limited scope, the Regulation remains much easier to use than Article 7 as it does not require unanimity when making decisions.

In assessing the Conditionality Regulation, Morijn [2022] points out that it presupposes that the EU Member States receive EU money only if they ensure compliance with the rule of law. Where there is a risk

that sound financial management is directly affected by problems with the independence of prosecutors or judges, the Commission may launch an investigation. If it concludes that the Member State concerned is not solving the problems convincingly, the Commission may submit a proposal to the Council to suspend EU funding until the problems are resolved. It is now essential that these instruments are implemented and remain effective.

If the Commission wanted to activate such a mechanism and officially propose the freezing of EU funds, it would have to build a justification for an alleged violation of the rule of law in a suspected Member State. The latter can then respond to the allegations and show that they are ineffective. Only if a national government continues to act illegally can a procedure be initiated by the Commission, and its proposal to do so must be approved by a qualified majority (55% of the countries representing at least 65% of the citizens) at a European Council meeting. Once approved by the heads of the Member States, the sanctions provided by the mechanism would include a suspension of EU payments, an anticipated repayment of loans, and a ban on new financial agreements. However, due to lengthy bureaucratic processes and conflicting political interests in the Union, Spinelli [2022] considers it unlikely that the Commission would undertake such a risky operation at the political level [Spinelli, 2022].

Reflecting on the potential effectiveness of the enforcement of the rule of law in some Member States by means of sanctions, Priebe [2022b] points out that the withholding of money alone is not enough, especially as, under conditions of highly centralized governmental power and government media control, their governments are likely to succeed in ‘playing the blame game on Brussels’. Therefore, such financial sanctions should be combined with a stronger financial and organizational support for national democratic forces such as parties, civil society actors, and citizens. Concerns about the effectiveness of financial sanctions in protecting the rule of law are also expressed by Mavrouli [2022], pointing out that monetary sanctions and economic coercion are rarely convincing enough to persuade a Member State to change its overall political course.

Such a conclusion can be drawn taking into account the ineffectiveness of financial sanctions introduced before implementing Regulation 2020/2092, when the CJEU imposed on Poland a fine for failure to comply with interim measures relating to the judiciary ordered by the CJEU on July 14, 2021 (case C – 204/21). In this infringement procedure, the CJEU had imposed penalties amounting initially 1 million EUR per day by an order of 27 October 2021 and lowered, by a subsequent order of 21 April 2023, to 500,000 EUR, which by the time of the final judgment on 5 June 2023 added up to a total penalty of close to EUR 570 million [Pohjankoski, 2023]. Poland has therefore irretrievably lost these gigantic funds, but these penalties did not force the government in power until December 2023 to take any real actions to restore the rule of law.

Despite the lack of progress in restoring the rule of law in Poland, on 1 June 2022, the European Commission decided to give a positive assessment of Poland’s RRP. In essence, the Commission’s thinking was that, given the political situation caused by the war in Ukraine and the vital role being played by Poland (in contrast to Hungary), it was necessary to keep Poland on its side and thus approve their RRP and release EU funds. To remedy the rule of law violations established by the Court of Justice, it was proposed to make payments conditional on satisfying some specific rule of law milestones, under which Poland would have to enact different reforms in its judicial system to meet effective judicial protection standards, notably regarding its disciplinary regime for judges [Shipley, 2022].

The Council of the EU [2022] approved the Polish National Recovery and Resilience Plan on 17 June 2022 and confirmed that, in line with Poland’s country-specific recommendation, several reforms must be completed before any disbursements can be made, including a comprehensive reform necessary to restore the independence of the judiciary.

Hungary was the first country against which the European Commission initiated (in April 2022) proceedings under the Conditionality Regulation. For years, the EU has turned a blind eye while Viktor Orbán built his illiberal state – and the EU’s rule of law mechanism won’t help protect democracy now, as Andor [2022] argues, emphasizing that what was eventually born under the name ‘rule of law mechanism’ is not about protecting the rule of law. Instead, it is about protecting the EU budget, since the rule of law violations that are not closely connected to the absorption of the EU budget cannot be sanctioned. The mechanism barely goes beyond what was already allowed against rogue governments in the EU: interrupting

or suspending transfers to countries where there is serious evidence or risk of abuse. The difference is that before the Regulation, the Commission alone had the right to act. With the new mechanism, the decision goes to the Council (of ministers) and it will inevitably be more politicized and subject to horse-trading. Andor [2022] adds that, at the same time, direct support to pro-democracy groups or media organizations has never been seriously considered by EU actors.

Examining why the European Commission has become reluctant to initiate proceedings against the EU Member States violating EU regulations, Kelemen and Pavone [2021] point out that after 2004 the number of proceedings initiated by the Commission decreased sharply. The authors conclude that the main reason for this was the Commission's concern that its aggressive enforcement would threaten intergovernmental support for its policy proposals. As a result, building on an enforcement dialogue with governments, the Commission has sacrificed its role as a guardian of the treaties to protect its role as an engine of integration.

Kelemen [2022] argues that the EU has had strong tools to defend the rule of law at all times and the development of new tools was mainly used as an excuse to delay action. It was pointless to produce toothless reports on the rule of law in all the Member States. In fact, in his opinion, the EU has become the leading founder of autocratization, putting hundreds of millions of euros of EU funds into the hands of the same governments that were dismantling democracy in Hungary and Poland.

As Scheppele and Morijn point out, in 2022, the European Commission and the Council of the EU jointly acted to freeze EU funds totaling more than €28.7 billion for Hungary and more than €110 billion for Poland, citing rule-of-law violations. However, these decisions did not induce the governments of these countries to take any real actions to restore democracy. The authors emphasize that in Hungary, Prime Minister Viktor Orbán has an impregnable parliamentary majority that follows his orders. He also is particularly adept at faking compliance with rule-of-law norms while undermining them [Scheppele and Morijn, 2023].

Fortunately, the process of restoring the rule of law has already begun in Poland, which became possible after the democratic parties took power in December 2023. This great political change occurred after eight years of violating the constitution and destroying the independence of courts and media by the governments in power at that time. These governments, hostile to the EU, proved insensitive to any actions by the EU institutions, including the CJEU, aimed at restoring the independence of the justice system. The financial tools as enormous fines imposed on Poland by the CJEU, freezing money from the RRF, and increasingly difficult access to other EU funds turned out to be ineffective. As a result, the governments in power from 2015 to December 2023 deprived Poland of the opportunity to benefit from huge EU funds. Despite these gigantic losses for Poland, they continued the destruction of the independent justice system to guarantee themselves impunity for violating the constitution and other legal acts and massive embezzlement of public money. Pressure from EU institutions to restore the rule of law turned out to be ineffective. If there had been no change of government as a result of the parliamentary elections on October 15, 2023, the process of Poland's autocratization would probably have continued and could ultimately lead to Poland leaving the EU, which the ruling right wing has repeatedly declared.

This change of power took place because of the extraordinary determination of democratic forces and the mobilization of civil society eager to return to democracy, also for Poland to re-join the process of European integration. The new ruling majority has set itself the goal of Poland meeting the conditions defined as milestones necessary to receive money from the RRF, including those regarding the independence of the judiciary. This will not only allow the European Commission to unblock these funds but will eliminate the risk of Poland losing money from the EU general budget, including money allocated for cohesion policy.

5 Conclusion

Serious violations of the rule of law occurring in Hungary from 2010 to date and in Poland in the period 2015 to December 2023 have placed these EU Member States in the group of the most rapidly autocratizing countries in the world. The ongoing destruction of democracy in these countries has become a serious challenge for the EU institutions because these violations undermine the fundamental values set out in Article 2 of the TEU on which the Union is based. Moreover, the significant limitation of the independence

of the judiciary, including the courts, by the ruling majority in these two countries, drastically reduced the possibilities of national supervision over the correctness of spending EU funds by these Member States. In this way, a convenient field was created for the governments, people, institutions, and companies associated with them to commit mass embezzlement and waste of EU money.

Practice has shown that the existing EU mechanisms to protect the rule of law in the Member States, and, as a result, also to protect the financial interests of the Union, have proven to be ineffective. Their application has not stopped the breaking of democracy in Poland and Hungary. It turned out that the highly hoped-for regulation, namely, Article 7 of the TEU, cannot be effectively applied due to the requirement of unanimity.

The European Commission and the Council of the EU have not been able to timely and adequately respond to the violations of law in these countries. The Rule of Law Conditionality Regulation (Regulation 2020/2092), intended to be the basis for more effective action in this field, does not concern violations of the rule of law in general, but only those which can be demonstrated to have a direct impact on the financial interests of the Union. Considering that the entire procedure may turn out to be lengthy and problematic, it is hard to expect that this regulation will allow the EU institutions to effectively persuade individual states to restore democracy. It is known that governments violating the rule of law prioritize ensuring impunity for breaking the law and stealing public money, while access to EU funds, so important for the entire country, is of secondary importance for them. This was confirmed in practice in Poland and Hungary.

It turned out that freezing access to EU funds under Regulation 2020/2092, as well as other actions, were not able to stop the process of violating the rule of law in these countries. In this situation, suspending Poland and Hungary's access to EU funds, including the RRF, was the main way to protect the EU's financial interests. It turned out that even such radical actions did not force both countries to restore the independence of the judiciary. Fortunately, in Poland, the process of violating the rule of law was stopped by the new government appointed in December 2023, which was only possible thanks to the enormous determination of democratic forces and the extraordinary mobilization of civil society. The new government set itself the goal of restoring the rule of law and, therefore, also regaining access to EU funds.

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