



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-156/21 and Case C-157/21  
Hungary v Parliament and Council; Poland v Parliament and Council

## **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**

*That regime was adopted on an appropriate legal basis, is compatible with Article 7 TEU and respects the principle of legal certainty*

On 16 December 2020, the EU legislature adopted a Regulation<sup>1</sup> which established a general regime of conditionality for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States. In order to achieve that objective, the Regulation provides inter alia that, at the request of the European Commission, the Council may adopt measures such as the suspension of payments from the Union budget or the suspension of the approval of one or more programmes financed by that budget.

Hungary and Poland brought actions before the Court of Justice of the European Union, seeking the annulment of the Regulation. Those actions are based, inter alia, on the alleged absence or inadequacy of the legal basis chosen for the Regulation, the alleged incompatibility of the Regulation with Article 7 TEU<sup>2</sup> and the alleged breach of the principle of legal certainty.

In his Opinion delivered today, Advocate General Manuel Campos Sánchez-Bordona notes, in the first place, that the purpose of the Regulation is to create **a specific mechanism to ensure proper management of the Union budget** where a Member State commits breaches of the rule of law which jeopardise the sound management of the European Union's funds or its financial interests. In that context, he emphasises that **the Regulation is not intended to protect the rule of law by means of a sanction mechanism similar to Article 7 TEU, but rather to establish a financial conditionality instrument to safeguard that value of the European Union**. In his view, the discretion of the EU institutions covers that legislative choice, which cannot be regarded as manifestly incorrect, since compliance with the principles of the rule of law may be vitally important for the sound operation of public finances and the proper implementation of the Union budget.

In addition, he emphasises that the Regulation requires **a sufficiently direct link** between the breach of the rule of law and the **implementation of the budget**, with the result that **it does not apply to all breaches of the rule of law, but only those that are directly linked to the implementation of the Union budget**. Furthermore, the protection of final beneficiaries of spending programmes financed from the Union budget is a typical and logical measure in the shared management of those funds, such that the financial corrective action adopted by the EU institutions must be borne by the offending Member State and not passed on to beneficiaries of the funding, who are not party to the breach. The Advocate General considers that both the purpose and the content of the **Regulation** demonstrate that it **constitutes a financial rule within the meaning of Article 322(1)(a) TFEU** and, consequently, **that article is an appropriate legal basis for the adoption of that regulation**.

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

<sup>2</sup> That article provides for the possibility of initiating a procedure against a Member State in the event of a serious breach of the values of the European Union or a clear risk of such a breach.

In the second place, the Advocate General takes the view that Article 7 TEU would not authorise the EU legislature to introduce another similar mechanism, albeit with less extensive substantive and procedural requirements, which had the same objective of protecting the rule of law and which applied similar sanctions. Nevertheless, **Article 7 TEU does not preclude the use of instruments other than those in that article to provide such protection**, provided that their essential characteristics differ from those of the protection guaranteed by Article 7 TEU. The Advocate General notes that, in its case-law concerning the European Arrest Warrant and the independence of national courts, the Court of Justice has already drawn the consequences of breaches of values of the European Union, even though, in those cases, Article 7 TEU was not used.

The Advocate General considers that rules introduced by EU institutions that seek, **in specific areas**, to respond to certain breaches of that value which affect budgetary management are **compatible with the Treaties**. Whereas, under Article 7 TEU, the adoption of measures is conditional on the existence of a serious and persistent breach by a Member State of the values of the European Union, the Regulation **refers only to breaches** of the principles of the rule of law by a Member State **that affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union** in a direct way.

According to the Advocate General, **the mechanism in the Regulation resembles other financial conditionality and budgetary implementation instruments that exist in various areas of EU law**, rather than the mechanism in Article 7 TEU. Moreover, unlike the Regulation, Article 7 TEU requires the existence of a serious and persistent breach **of any of the values of the European Union**, not just that of the rule of law. For that reason, the limitation of the Court's jurisdiction under 269 TFEU in relation to Article 7 TEU is not applicable to the Regulation, which remains subject to the full review of legality provided for in Article 263 TFEU. Likewise, the decision-making procedure established by Article 6 of the Regulation differs from that established in Article 7 TEU and does not infringe the principle of institutional balance, since the conferral of implementing powers to the Council is covered by the concept of implementation of the Budget in the broad sense of Article 322 TFEU (1)(a) and does not infringe Article 317 TFEU, which confers on the Commission responsibility for implementation of the budget in a narrow sense. Accordingly, the Advocate General takes the view that **the Regulation is compatible with Article 7 TEU**.

In the third place, the Advocate General considers that, although the concept of the rule of law as a value of the European Union is a broad concept, **there is nothing to prevent the EU legislature from defining it more precisely** in a specific area of application, such as implementation of the budget, for the purposes of establishing a financial conditionality mechanism. In that respect, he notes that the Regulation includes **seven legal principles**,<sup>3</sup> which must be interpreted having regard to the other EU values and principles enshrined in Article 2 TEU. Moreover, Article 3 of the Regulation sets out an indicative list of breaches of the principles of the rule of law and Article 4(2) contains an indicative list of areas where breaches of the principles of the rule of law may arise. The breaches of the principles of the rule of law that may give rise to the adoption of the conditionality measures in the Regulation are thereby limited to cases directly linked to implementation of the Union budget. Those two lists demonstrate the legislature's efforts to foster the application of the principles of the rule of law and to increase legal certainty.

According to the Advocate General, the characterisation of the rule of law by reference to the principles set out above **satisfies the minimum requirements for clarity, precision and foreseeability required by the principle of legal certainty**. Member States are sufficiently aware of the obligations deriving from those principles, particularly when one considers that, for the most part, they have been developed by the case-law of the Court of Justice.

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<sup>3</sup> Legality, which implies a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law.

In those circumstances, the Advocate General proposes that **the Court should dismiss the actions for annulment brought by Hungary and by Poland.**

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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

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*Unofficial document for media use, not binding on the Court of Justice.*

*The full text of the Opinions ([C-156/21](#) & [C-157/21](#)) is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.*