

No rule of law – no money (from EU), ramifications of CJEU's judgment of 16th February for Poland

Today the Court of Justice of the European Union (the CJEU) announced its long-awaited judgment on the so-called “money for the rule of law” (Cases C-156/21 and C-157/21). It concerns a mechanism which makes the payment of EU funds conditional on upholding the rule of law in a Member State (the “conditionality mechanism”).

It was introduced by Regulation 2020/2092 of the European Parliament and of the Council in December 2020 following concerns about the correctness of the spending of the post-Covid reconstruction budget in the EU. The concerns stemmed largely from doubts about the independence of the judiciary in Poland. Although Poland agreed to the mechanism, in March 2021, together with Hungary, it applied to the CJEU to annul the regulation in its entirety as incompatible with the EU Treaties.

In the judgment, given by the whole court, the CJEU agreed with the opinion of the Advocate General of December 2021 and dismissed both actions. The CJEU found that the conditionality mechanism was adopted on the correct legal basis and is compatible with the EU Treaties. The CJEU considered adherence to the rule of law, including the independence of the judiciary, to be fundamental to the protection of the Union's budget.

Plainly speaking, the CJEU considers it acceptable to withhold EU funds if the Member State to which they are to be transferred breaches the rule of law in a way which directly and seriously jeopardises the proper implementation of the Union budget.

Given that the problems with the rule of law in Poland have already been confirmed by dozens of rulings of the ECHR and the CJEU, Wednesday's ruling could spell disaster for the Polish budget and, more specifically, for the EU funds that were expected for the years 2021-2027.

Although there is no automatism here, even as much as PLN 770 billion may be at stake. We are talking not only about money from the post-Covid Reconstruction Fund (around EUR 58 billion), but also money allocated to the Member States from the EU's Multi-Annual Fund (for Poland it is almost EUR 113 billion).

The risk would probably be eliminated by depoliticising the National Council of the Judiciary, verifying the judges appointed with its participation and abolishing the Supreme Court's Disciplinary Chamber. The question is whether the prospect of losing such huge sums of money will be enough of an impulse for Poland to withdraw from the “reform of the judiciary”, or rather we will repeat (this time not forced by any powerful neighbour) the historical mistake of refusing to participate in the Marshall Plan.

Link to CJEU's press release below.

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-02/cp220028en.pdf>

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