

# Guest Editorial eucrim 4-2023

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## EDITORIAL

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Dear Readers,

Recital 5 of Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget serves as a reminder that the EU's legal structure is based on the fundamental premise that “each Member State shares with all the other Member States, and recognizes that they share with it, a set of common values on which the Union is founded, as stated in Article 2 TEU.” This commitment to complying with the Treaties, including the fundamental principles of the rule of law, justifies mutual trust between the Member States. Each and every Member State shall continue to respect and promote the common values on which the Union is founded. Unfortunately, this is not the reality in every Member State.

After measures were taken in a number of Member States that acted contrary to judicial independence, the EU realized that the existing mechanisms (mainly the infringement procedure) were not sufficiently effective in countering these deviations from the shared EU principles and values. After diplomatic efforts had failed, it became clear that stronger measures needed to be adopted to correct and prevent breaches of rule-of-law principles, namely financial conditionality measures as foreseen in Art. 5 of Regulation 2020/2092: if there is a “sufficient and direct” relationship between a breach of the rule of law and a serious risk to the protection of the Union's budget, protective measures can be adopted, e.g., suspending payments until measures reinstating the judicial independence are adopted.

Abiding by rule-of-law principles is inseparably linked to the sound financial management of public funds: only if all Member States act according to the law and provide for an effective protection and judicial remedy against fraud and corruption, can the EU budget be protected. This was also stated by the European Court of Justice in its judgment of 16 February 2022 in Case C-156/21 (*Hungary v Parliament and Council*, para. 130).

The COVID-2019 pandemic not only further increased fraud risks but also saw threats to the rule of law, because governments often declared dubious state-of-emergency situations that led to the suspension of citizens' most basic rights. Hence, it is not by chance that the measures provided in the 2020 Conditionality Regulation can also be triggered if the proper management by the authorities implementing their Recovery and Resilience Plans is not ensured, as set out in Art. 8 of Regulation (EU) 2021/241.

Even if the EPPO and OLAF are efficiently fighting fraud against the EU's financial interests, the challenges are greater than ever because populism and trends towards autocratic ways of governing seem to be growing. While these risks are inherent to any democracy and can occur at any time – democracy is never to be taken for granted –, several factors indicate that the EU should reinforce oversight mechanisms in the face of massive economic, social, political, and strategic challenges as well as a war being fought in Europe.

We have witnessed how the rule-of-law principles, in particular judicial independence, have come under attack in many Member States, e.g., blocking the appointment of judges or subjecting courts to an excessive and continuous case overload that brings them to the brink of collapse. Other worrying types of attacks are attempts to acknowledge amnesty for politicians involved in the misappropriation of public funds and disregard for the sound decisions of independent and impartial courts. These actions surely undermine the very concept of the rule of law and are consequently also threatening the protection of the taxpayers' money. Ultimately, the whole project of the European Union is being put at risk.

In 1950, the ‘Father of Europe’ *Robert Schuman* rightly said: “Europe is to be built through concrete achievements which first create a de facto solidarity, and if we do not aim such solidarity, Europe's decline is not far.” If the EU is to survive, decisive steps must be taken to continue building and maintaining solidarity – and this must be done by protecting both the Union's budget and the common rule-of-law values that we share.

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