

Disputes over Budget Conditionality Mechanism

Thomas Wahl

News

On 11 March 2021, Poland and Hungary [filed an action](#) with the CJEU seeking legal review of the so-called conditionality mechanism. Under this mechanism, which was agreed in December 2020 in the wake of the agreement on the EU's record budget for the upcoming years, payments to an EU Member State may be cut or frozen if that country breaches principles of the rule of law (→ [eucriM 3/2020, 174-176](#)). To ensure that the mechanism would not completely fail because of the veto of Poland and Hungary, the European Council agreed on a compromise: Hungary and Poland accepted an “interpretative declaration” laid down in the [European Council summit conclusions](#). Among other things, it was agreed that no measures be taken on the basis of the regulation until the Commission has finalised guidelines on the way the conditionality mechanism will be applied. Furthermore, the Member States can first ask the CJEU to clarify whether the regulation is in line with EU law, and the Commission is obliged to incorporate any elements stemming from a potential CJEU judgment.

According to [media reports](#), Poland and Hungary oppose the conditionality mechanism, *inter alia*, on the following grounds:

- Lack of legal basis for the mechanism in the EU Treaties;
- Interference with the competence of the Member States;
- Disbursement of EU funds can only be linked to objective and concrete conditions unequivocally established in a regulation;
- Infringement of the principle of legal certainty.

At the same time, MEPs fiercely criticised the Commission for not having applied the mechanism in order to protect the EU budget against rule of law breaches. In a [plenary debate of 11 March 2020](#) with Budget Commissioner *Johannes Hahn*, MEPs took the view that the regulation on the conditionality mechanism remained untouched and has been legally binding since 1 January 2021. In contrast, the European Council conclusions on this matter do not carry any legal effect. MEPs urged the Commission to immediately act as guardian of the Treaties and to activate the mechanism without delay. *Hahn* countered that the Commission will apply the mechanism only after work on the guidelines has been completed, which will also take into account a possible CJEU ruling.

On 25 March 2021, [MEPs adopted a resolution](#) in which they urge the Commission to immediately start investigations of possible breaches of rule of law principles of a Member State, to apply the [Conditionality Regulation](#) and to take all appropriate measures to protect the EU budget. The resolution reiterates the EP's viewpoint that any action against the validity of the Conditionality Regulation before the CJEU has no suspensory effect.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

Published in
2021, Vol. 16(1) [eucriM p 19](#)
ISSN: 1862-6947
<https://eucriM.eu>



MEPs insist that the existing rules on the rule of law cannot be subject to the adoption of guidelines. If the Commission does deem such guidelines necessary, it must draft them by 1 June 2021 and consult the EP prior to their adoption. If the Commission does not fulfil its obligations, the EP will consider the launch of legal action for failure to act before the CJEU pursuant to Art. 265 TFEU.

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by
the European Union**