

Study Backs EP Position: Rule of Law Conditionality Regulation Must Be Triggered Immediately



News

Thomas Wahl

On 7 July 2021, three legal experts (Prof. *Kim Scheppele*, Princeton University; Prof. *Daniel Kelemen*, Rutgers University; and Prof. *John Morijn*, University of Groningen) call on the Commission to trigger the new Rule of Law Conditionality Regulation (EU, Euratom) 2020/2092 with respect to Hungary. Their study on the case of Hungary was solicited by the Greens/EFA group in the European Parliament and backs the EP's position that said Regulation (→ [eucrim 3/2020, 174-176](#)) has been immediately applicable since its entry into force on 1 January 2021. Applicability does neither require guidelines nor a CJEU decision on the action for annulment of the Regulation initiated by Hungary and Poland (→ [eucrim 1/2021, 19](#)).

The study states that the glaring rule-of-law deficits in Hungary (analysed in detail in the paper) fulfil the legal requirements to trigger the rule-of-law mechanism. In order to initiate sanction proceedings, the Commission must prove that a Member State has at least one of the eight rule-of-law deficits listed in Regulation 2020/2092 with an impact on the EU budget. According to the legal opinion, Hungary has six of the eight deficits. These relate to the following three areas:

- Lack of transparent management of EU funds;
- Lack of an effective national prosecution service to investigate and prosecute fraud;
- Lack of guarantee of independent courts to ensure that EU law is reliably enforced.

The legal experts also draft a written notification by means of which the Commission can initiate the suspension of EU funds pursuant to Art. 6 of Regulation 2020/2092.

Lastly, they provide a detailed analysis of Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget and its legal context which shows that the Commission should not see any hindrances to go ahead.

AUTHOR

Thomas Wahl

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

ISSN: 1862-6947

<https://eucrim.eu>



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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