

6. *Sixth plea in law: annulment of Article 5(2) of the regulation*

In accordance with Article 5(2) of the contested regulation, in the event that measures are adopted in respect of a Member State, namely, that it is deprived of funds from the Union Budget, that does not exempt the government of the Member State from its obligation to continue financing the end users of previously agreed programmes. That article, first, is contrary to the legal basis of the regulation, since it imposes an obligation which has an impact on the budgets of the Member States, and, secondly, infringes the provisions of EU law concerning budget deficits and infringes the principle of equality of the Member States.

7. *Seventh plea in law: annulment of the third sentence of Article 5(3) of the regulation*

In accordance with the third sentence of Article 5(3) of the contested regulation, the measures which are to be adopted are to take into account the nature, duration, gravity and scope of the breaches of the principles of the rule of law, which calls into question the relationship between the breaches of the principles of the rule of law that are held to exist and the actual impact on the Union budget or on the financial interests of the Union and, therefore, is incompatible with the legal basis of the regulation and with Article 7 TEU. Similarly, the fact that the measures are not defined with the necessary accuracy infringes the principle of legal certainty.

8. *Eighth plea in law: annulment of the final sentence of Article 5(3) of the regulation*

In accordance with the final sentence of Article 5(3) of the contested regulation, the measures which are to be taken are, *in so far as possible*, to target the Union actions affected by the breaches of the principles of the rule of law, which does not guarantee the existence of a direct relationship between the breaches of the principles of the rule of law which are in fact found to exist and the measures which are to be adopted and, therefore, infringes both the principle of proportionality and, on account of an inadequate determination of the link between the breaches of the principles of the rule of law which are in fact found to exist and the measures which are to be adopted, of the principle of legal certainty.

9. *Ninth plea in law: annulment of Article 6(3) and (8) of the regulation*

In accordance with Article 6(3) and (8) of the contested regulation, in the assessment to be conducted, the Commission is to take into account relevant information from available sources, including decisions, conclusions and recommendations of Union institutions, other relevant international organisations and other recognised institutions, and, when assessing the proportionality of the measures to be imposed, the Commission is to take into account that information and guidance, which does not provide a sufficiently accurate definition of the information to be used. The fact that the references and the sources used by the Commission are not adequately defined infringes the principle of legal certainty.

(<sup>1</sup>) OJ 2020 L 433I, p. 1.

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**Action brought on 11 March 2021 — Republic of Poland v European Parliament and Council of the European Union**

**(Case C-157/21)**

(2021/C 138/32)

*Language of the case: Polish*

**Parties**

*Applicant:* Republic of Poland (represented by: B. Majczyna, acting as Agent)

*Defendants:* European Parliament and Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

— annul Regulation (EU, 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 (<sup>1</sup>) in its entirety;

— order the European Parliament and the Council of the European Union to pay the costs.

### **Pleas in law and main arguments**

#### 1. Plea alleging that Regulation 2020/2092 lacks a valid legal basis

Poland submits that a regulation issued under Article 322(1)(a) TFEU cannot establish the conditions under which infringement of the constituent principles of the concept of ‘the rule of law’ is indicated; nor can it authorise the Commission and the Council to declare that those principles have been infringed by Member States and, consequently, to adopt, in implementing acts, measures for the protection of the Union budget. Additionally, Poland indicates that the mechanism thus created does not meet the requirements that ought to be met by a conditionality mechanism and is, therefore, a mechanism for imposing penalties on the Member States for failure to fulfil their obligations under the Treaties.

#### 2. In the alternative, in the event that the Court of Justice recognises the competence of the EU legislature to adopt Regulation 2020/2092, plea alleging that that regulation has an incorrect legal basis

#### 3. In the alternative, in the event that the Court of Justice recognises the competence of the EU legislature to adopt Regulation 2020/2092, plea alleging breach of Protocol (No 2) on the application of the principles of subsidiarity and proportionality

#### 4. Plea alleging infringement of the second paragraph of Article 296 TFEU on the basis that the reasoning in the proposal for a regulation made in respect of Regulation 2020/2092 was insufficient

#### 5. Plea alleging infringement of Article 7 TEU

Poland indicates that Regulation 2020/2092 establishes a new control mechanism in relation to Member States’ observance of the principles of the rule of law which is not provided for in the Treaties and therefore produces effects that are equivalent to amendment of the Treaties. Additionally, because the purpose of the mechanism established by Regulation 2020/2092 overlaps with the purpose of the procedure established by Article 7 TEU, Regulation 2020/2092 leads to the bypassing of the procedure established by Article 7 TEU, thus challenging the validity of its continued application, and even rendering it futile.

#### 6. Plea alleging infringement of the first paragraph of Article 269 TFEU through the definition of the value of ‘the rule of law’, as a primary law concept set out in Article 2 TEU, by way of an act of secondary legislation, that is to say, by way of Regulation 2020/2092

#### 7. Plea alleging infringement of Article 4(1), the second sentence of Article 4(2), and Article 5(2) TEU

This plea elaborates on the reasoning set out under the first plea in law. Poland submits that, by establishing the control mechanism provided for in Regulation 2020/2092 in relation to Member States’ observance of the principles of the rule of law, the EU legislature infringed the principle of conferral laid down in Article 4(1) and Article 5(2) TEU. Additionally, Poland indicates that the legislature also failed to fulfil its obligation, under the second sentence of Article 4(2) TEU, to respect essential State functions, including ensuring the territorial integrity of the State, maintaining law and order, and safeguarding national security.

#### 8. Plea alleging infringement of the principle of equal treatment of Member States (first sentence of Article 4(2) TEU)

Poland submits that the provisions of the regulation do not guarantee that a finding that the principles of the rule of law have been infringed will be preceded by a ‘thorough qualitative assessment’ that will be objective, impartial and fair. Additionally, Poland indicates that the procedure for adopting measures for the protection of the Union budget unambiguously and directly discriminates against smaller and medium-sized Member States as compared with larger States.

#### 9. Plea alleging infringement of the principle of legal certainty

Poland submits that the provisions of Regulation 2020/2092, and in particular the conditions listed in Article 3 and Article 4(2) thereof for assessing whether there has been infringement of the principles of the rule of law, do not meet the requirements of clarity and precision.

10. Plea alleging infringement of the principle of proportionality (Article 5(4) TEU)
11. Plea alleging abuse of power by establishing a mechanism, the actual purpose of which is not the protection of the Union budget but the circumvention of both the procedural requirements for triggering the procedure laid down in Article 7 TEU and the substantive requirements for initiating the proceedings referred to in Article 258 TFEU

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(<sup>1</sup>) OJ 2020 L 433I, p. 1.

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**Order of the President of the Fifth Chamber of the Court of Justice of 11 January 2021 — European Commission v Hungary**

**(Case C-761/19) (<sup>1</sup>)**

(2021/C 138/33)

*Language of the case: Hungarian*

The President of the Fifth Chamber has ordered that the case be removed from the register.

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(<sup>1</sup>) OJ C 77, 9.3.2020.

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**Order of the President of the Sixth Chamber of the Court of Justice of 30 November 2020 (request for a preliminary ruling from the Tribunal d'instance de Rennes — France) — Caisse de Crédit Mutuel Le Mans Pontlieue v OG**

**(Case C-865/19) (<sup>1</sup>)**

(2021/C 138/34)

*Language of the case: French*

The President of the Sixth Chamber has ordered that the case be removed from the register.

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(<sup>1</sup>) OJ C 54, 17.2.2020.

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**Order of the President of the Court of Justice of 27 November 2020 (request for a preliminary ruling from the Tribunal Superior de Justicia de Andalucía, Ceuta y Melilla — Spain) — ZP v Delegación del Gobierno en Melilla**

**(Case C-38/20) (<sup>1</sup>)**

(2021/C 138/35)

*Language of the case: Spanish*

The President of the Court has ordered that the case be removed from the register.

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(<sup>1</sup>) OJ C 137, 27.4.2020.