

# Demanding rule of law through financial sanctions

CJEU allows conditionality rule to stop Poland's violations of the rule of law

Tim Striebeck, DAV, Brussels

Poland's disregard for the rule of law has been a burden for the relations with the EU since 2015, the year in which the Polish ruling party PiS won the parliamentary election.

Since then, there have been rule-of-law dialogues, recommendations by the EU Commission, treaty infringement proceedings, EU Parliament resolutions and numerous CJEU rulings.

CJEU. Despite this partially complicated mix, recently one development in particular can be observed: the EU – and above all the EU Commission – is attempting to persuade Poland to give in by imposing financial sanctions.

The first tools the EU is using are treaty infringement proceedings. First and foremost, these can only be used to establish infringements of the treaty by a member state. Member states can, by way of provisional orders of the CJEU be obliged to take concrete measures. If the member state in question does not terminate the identified infringement or does not comply with interim injunctions of the CJEU, a daily penalty may be imposed in the next step, as has been done against Poland in two cases. Since Poland has not yet complied with the payment orders, the EU Commission has announced that it will withhold payments from EU funds.

The second dimension can be observed when looking at the EU's Covid-19 recovery fund. Till now, the EU Commission has refused to pay out money to Poland. The EU Commission reasons that with the concerns about the rule of law, which make it uncertain to determine whether Poland fulfils the conditions for the granting of support from the fund.

The most recent development concerns the so-called conditionality regime for the protection of the EU budget, which was recently confirmed by the CJEU. By employing this regime, the granting of EU funds – beyond the Covid-19 recovery fund – can be made dependent on the compliance with the rule of law standards. The mechanism is triggered by a qualified majority decision of the Council. Prerequisite for this is a finding by the EU Commission, that a member state has violated the fundamental values of the EU. The EU Commission has announced that it will draft application guidelines before initiating proceedings. However, the publication of the guidelines can be expected soon, so that the EU will have another financial sanction instrument at its disposal shortly. To what extent the EU will actually persuade Poland with the outlined instruments to move towards more rule of law is, of course, unclear. Polish President Andrzej Duda recently announced that the Disciplinary Chamber of the Polish Supreme Court will be dissolved. The Chamber is one of the main points of disagreement in the conflict over the rule of law.