



## **Weekly Briefing**

**Poland social briefing:  
Court of Justice of the EU:  
the "money for the rule of law" mechanism is legal  
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## **Court of Justice of the EU: the "money for the rule of law" mechanism is legal**

### **Summary**

*In mid-February, the Court of Justice of the European Union (CJEU) rejected Poland's and Hungary's complaint against the EU's so-called conditionality mechanism, which allows for the cutting of EU funding to countries that fail to meet rule of law standards. The Court ruled that the mechanism complies with the EU treaties and can be used. The decision, while expected, prolongs Poland's conflict with the European Commission over the disbursement of €57 billion this year in funds from the EU Reconstruction Fund. The Commission is making the disbursement conditional on reversing certain elements of Poland's judicial reform. According to the Commission and the EU Court, the reform increases the Polish government's control over the judiciary and limits its independence. The Tribunal's ruling has caused tensions in Poland's ruling camp and criticism of Prime Minister Mateusz Morawiecki by conservative Justice Minister Zbigniew Ziobro, who criticized the head of government for being too submissive to Brussels.*

### **Introduction**

The Court of Justice of the EU has dismissed an appeal brought by Hungary and Poland concerning the so-called conditionality mechanism, which makes the use of funding from the EU budget conditional on member states' respect for the rule of law. The mechanism is compatible with EU law, the Court said. All EU countries (including Poland) agreed to the "money for the rule of law" mechanism, introduced in December 2020. It allows a country to withhold EU funds if there are serious concerns that the rule of law is threatened in that country. The verdict is in effect on approx. 170 billion euro of EU funds, envisaged for Poland for the years 2021-2027, are at stake.

### **Polish government: EU structures are being centralized**

Prime Minister Mateusz Morawiecki commented on the Court's decision. - The CJEU verdict did not surprise us. Otherwise, the EU and the Court would contradict their line, with which we do not agree - said Prime Minister Mateusz Morawiecki. He added that "Poland indicates that the centralization of EU structures is a dangerous process." - This line (the line of the EU and the Court) means that these institutions themselves set the limits of their

competences. This should not be the case, these limits are strictly defined in the treaties, which are also binding for us - he said

- We gave some competences to the EU, but only some. The process of their expansion is very dangerous. We are standing in a different place of the ideological dispute in the EU - he added. - We are for every zloty from the budget to be spent fairly. We have nothing to reproach ourselves for," stressed the Polish Prime Minister.

Prime Minister Morawiecki also pointed out that, in accordance with the CJEU judgment, the provisions of the regulation on the conditionality mechanism can only be used if the quality of budget execution is compromised. He also pointed out that the EU institution OLAF, which verifies the quality of spending, has found that Poland has almost four times fewer irregularities in spending EU funds than the EU average.

The head of the Polish government referred to the CJEU ruling in more detail on his Facebook profile, writing, among others, that he "has defended and will always defend Poland's right to self-determination and the primacy of the Polish Constitution over EU law in areas not delegated to the EU. The unjust verdict of the EU Court of Justice, in our opinion, does not change anything in this matter. However, I cannot agree to the use of this judgment for political populism and misrepresentation of the situation". He emphasized that "it would be a fundamental mistake to reject more than 170 billion euro, the largest funds ever negotiated for Poland. It would be contrary to the interest of millions of Polish families, contrary to the interest of Poland".

### **Criticism of the Prime Minister by Conservative coalition partners**

The leader of the coalition party Solidarna Polska and Minister of Justice Zbigniew Ziobro, commenting negatively on the Court's verdict, criticized Prime Minister Mateusz Morawiecki himself. In his opinion, the Polish government's acceptance of the conditionality mechanism in 2020 is "proof of a very serious, political, historical mistake by Prime Minister Mateusz Morawiecki, who gave his approval at the Brussels summit in 2020 for the introduction of this type of regulation, which today is already used to exert pressure through economic blackmail on Poland".

- These are fundamental issues for Poland, creating a real threat to our independence," said Minister Zbigniew Ziobro in Polsat News TV, commenting on the CJEU judgment. - If this process continues, Poland may lose its independence. Such are the current trends in the European Union - added the justice minister. In his opinion, this concerns not only issues of

political sovereignty, but also "the power over the courts, which they want to take away from us, the sphere of family values, which they want to prohibit us from nurturing. - The first EU blackmail did not concern the courts, but the resolutions of local governments that stood up for the family and children against homosexual education in schools," he said. In his opinion, the verdict of the tribunal is an expression of German politics supporting the construction of a federal Europe.

Zbigniew Ziobro is the leader of the eurosceptic and national-conservative Solidarna Polska party, which is a minor coalition partner of the ruling Law and Justice party, but in view of the current coalition's fragile parliamentary majority, the party's role has grown disproportionately, and the government majority depends on its votes, among others.

### **European Commission determined**

Head of the European Commission Ursula von der Leyen, commenting on the Court's judgment, wrote that it confirms that the European Commission has taken the right path. The head of the European Commission stressed that the next steps will be an in-depth analysis of the justification of the judgment to put the guidelines it contains into practice. "In the coming weeks we will implement the guidance contained in the explanatory memorandum and clarify the rules under which the mechanism will operate". - she assured. Ms Von der Leyen said that the mechanism will safeguard the EU budget so that EU money is spent in accordance with EU values and for the benefit of EU citizens. She also stressed that in case of violation of the rule of law the EC will act with full determination.

In turn, the Hungarian Minister of Justice Judit Varga believes that Hungary (which together with Poland has filed a complaint to the CJEU) will not lose EU funds after the judgment of the Court. - I do not see such a danger. As long as the conservative government is in power, there will be money," the Hungarian minister told the Polish Press Agency. In her opinion the CJEU made a political decision, caused by the Hungarian act on the protection of children (it prohibits education promoting gender ideology and homosexual values in schools).

### **Polish disputes with the EU Court**

The Polish government has been in a dispute with the EU Court of Justice since last year, refusing to recognize two judgments of the CJEU issued last year. One is related to the Polish judiciary (ordering the liquidation of the so-called Disciplinary Chamber of the Supreme Court and reinstatement of suspended judges) and the other is related to the ordering of the closure of

the coal-fired power plant in Turów as a result of a dispute with the Czech Republic (an agreement ending the dispute has already been signed with the Czech Republic). In both of these cases, Poland is required to pay penalties for failure to comply with the judgments, which are calculated on a daily basis. The Polish authorities have announced that they do not intend to pay the penalties (which total more than EUR 175 million today) because they do not recognize the Court's jurisdiction over the Polish judiciary. In the Turów power plant case, the Polish government pointed to the economic and financial losses that would be associated with the closure of the plant. The European Commission has announced that the fines will be deducted from EU funds allocated to Poland.

Experts point out that after the recent Court ruling, there will be no way to avoid withholding structural funds from Poland under the conditionality mechanism if the Polish government fails to implement Brussels' recommendations on the rule of law. The Polish government, in turn, mentions the possibility of vetoing at the EU forum EU projects that require unanimity, particularly on climate policy. Talks between the Polish government and the European Commission on the rule of law and EU funds will therefore continue.

In mid-February President Andrzej Duda submitted his draft amendment to the Supreme Court Act, which concerns the disciplinary responsibility of judges. It assumes, among others, liquidation of the Disciplinary Chamber (which is a partial fulfillment of the expectations of the European Commission). Zbigniew Ziobro's ministry of justice has also prepared a draft of changes in the Polish judiciary. However, this project goes in the opposite direction to the Commission's expectations. Political discussions on the future of both projects are ongoing.

## **Conclusion**

The dispute between the Polish government and the European Commission is a dispute about the scope of authority of European Union institutions over EU member states - about the scope of states' sovereignty. It is also a dispute about the evaluation of the reform of the Polish judiciary, which is widely criticized also in Poland - by the legal circles and the opposition, who point to the politicization of the Polish judiciary. In the background of the dispute about sovereignty and the evaluation of the reform are, however, huge funds for Poland from the EU Reconstruction Fund. The lack of this support may be strongly felt by the Polish economy and GDP growth.