Protection of the rule of law in the European Union in the light of the proposed regulation on the protection of the Union's budget

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The rule of law is considered an essential condition for the protection of all the fundamental values on which the European Union is founded, such as freedom, democracy, equality and respect for human rights. The European Union has noted the link between the rule of law in a Member State and the sound financial management it receives from EU funds. Sound financial management can only be ensured by Member States if public authorities act in accordance with the law, violations are effectively prosecuted by investigation services and decisions by public authorities are subject to effective judicial review by independent courts and the Court of Justice of the European Union.

The inefficiency of mechanisms for protecting the rule of law has forced the European Union to work on new solutions. In 2018 The European Commission proposed a new law that would make it possible to punish countries that do not respect the rule of law.

In case of generalised deficiencies in the rule of law in the Member States, measures can be taken that may lead to the withholding of funds provided for a given Member State in the EU budget. These are to be applied when problems with the rule of law of a Member State may jeopardize sound financial management and the financial interests of the Union. It is the protection of the Union's budget that is indicated as the ratio legis of the proposed measures, but it is hard not to notice that they actually aim to control the rule of law in the member states, including the possibility – for the first time in the history of European integration – of swift application of severe financial sanctions against a state.

The aim of the speech is to characterize the concept of the rule of law contained in the proposed European Union regulation on the protection of the Union budget in case of generalised deficiencies in the rule of law in the Member States.

As it follows from this act, the rule of law refers to the Union value enshrined in Article 2 of the Treaty on European Union which includes the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection by independent courts, including of fundamental rights; separation of powers and equality before the law.

In the regulation, I will consider whether such an approach to the rule of law corresponds to the understanding of the rule of law presented in the case law of the Court of Justice of the European Union.

I believe that such a broad approach to the rule of law leaves a wide margin of discretion to the EU institutions in the interpretation of the concepts used. For this reason, the adoption of the regulation may lead to an increased influence of the European Commission on the legislation of the Member States of the Union.

The regulation also introduces a definition of "a generalised deficiency as regards the rule of law". It means a generalised deficiency as regards the rule of law. The Regulation contains a broad, exemplary catalog of such "shortcomings in the rule of law, including, for example, threats to the independence of the judiciary, limiting the availability and effectiveness of remedies, including
through overly restrictive procedural rules, non-enforcement of judgments or limiting the effective investigation, prosecution and sanctioning of violations.

This definition refers to virtually all activities of national authorities in the context of financial flows from the EU budget, from granting of funding to supervision, prosecution of related crimes to the judiciary and sanctions. This is a broad concept. It implies that the mere threat to the independence of the judiciary must be considered a generalised deficiency in the rule of law. In the light of the CJEU case law, the independence of the judiciary is an integral part of effective judicial protection. The conditions for the application of the sanctioning measures provided for in the Regulation can be met by the Member States even if there is no clear link between the existence of a generalised deficiency in the rule of law and a specific threat or damage to the budget of the European Union.

In my speech, I will draw attention to the advantages of adopting a legally binding definition of the rule of law and establishing a mechanism for its protection, as well as to the associated risks.

The position and role of the European Commission in the new procedure for the protection of the rule of law will also be examined. I will indicate the major qualitative changes brought about by the rule of law regulation. These include giving the European Commission a dominant role, equipped with investigative and de facto decision-making powers, while at the same time marginalizing other EU institutions.

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