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**«EU Institutions' responsibilities in the implementation of the Rule of law
budgetary mechanism»**

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Issues on the Rule of law budgetary mechanism raised in the conclusions of the European Council of December 11, 2020 are clearly ultra vires. They are purely political and not binding in the legal sense. Application of the Rule of Law Regulation cannot be postponed by the conclusion of the European Council. It is a legal act adopted through co-decision and any postponement of its entry into force would require the action by both co-legislators, the Council and the European Parliament.

Also the suspension of the application of the Regulation pending the ECJ ruling depends on the decision of the ECJ itself regarding intermediary measures.

We see also in the conclusions clear and straightforward instruction imposing certain action on the European Commission. The Commission is independent, it is legally impossible for it to take instruction from third parties. Individual commissioners can even lose their job as a result of such a situation. Of course the Commission can establish its own internal procedures, including guidance aiming at increasing the effectiveness of institutional actions.

Some of the actions envisaged in the conclusions can be done without political directives coming from the European Council. They express purely political wish or commitment without legal value. In this context the opinion of the Council legal service is in reality a simple confirmation of political weight not of legal weight or correctness of the content.

What is important from the point of the interest of Polish and Hungarian governments is that there is no compromise on the rule of law mechanism. The Regulation remains intact and enters into effect on January 1, 2021.

The two partners fighting for the right to not respect the law were aiming at not having the Regulation at all in the budgetary package or at least having it seriously watered down. They did not get it. They seemed to forget that European Council does not have legal power to reopen a legislative act.

Instead of an awaited compromise a kind of settlement has been offered to both governments. In case either Poland or Hungary take the Regulation to the ECJ and the Court decides on intermediate measures, suspending the application of mechanism till the final ruling is announced, the Commission will use available time span to examine the situation in member states. It is rather unlikely that detecting irregularities as those mentioned in the Regulation the Commission could refrain from undertaking immediately adequate measures. The Commission will be also working most likely from the beginning of the year on preparing the second rule of law annual report on the situation in all member states to be published during summer. It is also hard to imagine that when checking on the situation in member states in 2021 the Commission would apply to funds from 2014-2020 MFF different standards than those belonging to 2021-2027 MFF. In this context, political expectations of Hungarian Prime Minister who is facing general elections in 2022 that the law would not apply to current spending have a very thin foundation. It would be illegal for the Commission not to act in defense of any European budgetary means.

Of course it goes without saying that member states do not need the conclusions of the European Council to take any European law to the ECJ. It is also hard to imagine that it would take ECJ two years to issue its ruling taking into account the situation of urgency and the history of the issue.

Of course, other member states or, indeed, European Parliament can go to the ECJ as well. The Parliament will use its prerogatives as budgetary authority scrutinizing as well the action by the Commission related to the implementation of the Regulation on the rule of law mechanism.

What seems also worth mentioning in addition to the fact that the conclusions are not equivalent to law and that they cannot change law which will enter into effect in January, is also the direct application of the Regulation. Nothing can be done through national law to amend it.

And it goes without saying that the Commission is the guardian of the Treaties and of the entire body of the European law. And the Treaty is absolutely clear and explicit that the European Council does not have legal function. Most of what is in the conclusion repeats what already legally exists or has no legal value. It is a political wish and nothing more. The Commission cannot not start the implementation of the legal act as of January. That makes the question what was the veto for a legitimate one. Two big net beneficiaries block the budget. Political forces raise a political fight. Its outcome does not benefit them. Instead, it undermines their political position in the European Union.