

The Resilience of European Union Law in Times of Crisis

Joint ELPIS Research Conference

“The EU’s extraordinary measures facing the actual economic crisis and the difficulties of the Member States”

Outline.

1. Introduction: Challenges to the EU and EU law in times of crisis.
2. Addressing the crisis: The example of budget law.
3. The EU's long-term budget for 2021-2027 and the Own Resources Decision.
4. Protecting the Rule of Law: The general regime of conditionality for the protection of the Union budget.
5. Conclusion.

1. Introduction: Challenges to the EU and EU law in times of crisis.

- COVID-19 pandemic and modernisation of the European Union
- Climate protection and digital transition
- Recovery and resilience of the EU economy
- Protecting the Union budget
- The principle of conferral and the state of EU primary law

2. Addressing the crisis: The example of budget law.

Financial capacity of the Union:

- Multiannual financial framework for 2021-2027: EUR 1.074 trillion
- EU COVID-19 response
- NextGenerationEU: EUR 750 billion - “temporary recovery instrument” (Recovery and Resilience Facility - RFF)

Conditionality mechanism for the protection of the Union's budget
(Rule of Law conditionality)

3. The EU's long-term budget for 2021-2027 and the Own Resources Decision.

Article 311 TFEU

The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

[...]

3. The EU's long-term budget for 2021-2027 and the Own Resources Decision.

Council Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union

Article 2 Categories of own resources and specific methods for their calculation

1. Revenue from the following shall constitute own resources entered in the Union budget:
 - (a) traditional own resources consisting of levies, premiums, additional or compensatory amounts, additional amounts or factors, Common Customs Tariff duties and other duties [...], as well as contributions and other duties provided for within the framework of the common organisation of the markets in sugar;
 - (b) the application of a uniform call rate of 0,30 % for all Member States to the total amount of VAT receipts collected in respect of all taxable supplies [...]

3. The EU's long-term budget for 2021-2027 and the Own Resources Decision.

- (c) the application of a uniform call rate to the weight of plastic packaging waste generated in each Member State that is not recycled. The uniform call rate shall be EUR 0,80 per kilogram. [...];
- (d) the application of a uniform call rate, to be determined pursuant to the budgetary procedure in the light of the total of all other revenue, to the sum of GNI [gross national income] of all the Member States.
- [...]

3. The EU's long-term budget for 2021-2027 and the Own Resources Decision.

Art. 5 Extraordinary and temporary additional means to address the consequences of the COVID-19 crisis

- (1) For the sole purpose of addressing the consequences of the COVID-19 crisis through the Council Regulation establishing a European Union Recovery Instrument and the sectoral legislation referred to therein:
- (a) the Commission shall be empowered to borrow funds on capital markets on behalf of the Union up to EUR 750 000 million in 2018 prices. The borrowing operations shall be carried out in euro;
- (b) up to EUR 360 000 million in 2018 prices of the funds borrowed may be used for providing loans and, by way of derogation from Article 4, up to EUR 390 000 million in 2018 prices of the funds borrowed may be used for expenditure.

[...]

4. Protecting the Rule of Law: The general regime of conditionality for the protection of the Union budget.

Article 322 TFEU

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall adopt by means of regulations:
 - (a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- [...].

4. Protecting the Rule of Law: The general regime of conditionality for the protection of the Union budget.

Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget

Article 4 Conditions for the adoption of measures

1. Appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.
 2. For the purposes of this Regulation, breaches of the principles of the rule of law shall concern one or more of the following:
 - (a) the proper functioning of the authorities implementing the Union budget, including loans and other instruments guaranteed by the Union budget, in particular in the context of public procurement or grant procedures;
 - (b) the proper functioning of the authorities carrying out financial control, monitoring and audit, and the proper functioning of effective and transparent financial management and accountability systems;
- [...]

4. Protecting the Rule of Law: The general regime of conditionality for the protection of the Union budget.

Article 5 Measures for the protection of the Union budget

1. Provided that the conditions set out in Article 4 of this Regulation are fulfilled, one or more of the following appropriate measures may be adopted in accordance with the procedure set out in Article 6 of this Regulation:
 - (a) where the Commission implements the Union budget in direct or indirect management [...], and where a government entity is the recipient:
 - (i) a suspension of payments or of the implementation of the legal commitment or a termination of the legal commitment pursuant to Article 131(3) of the Financial Regulation;
- [...]

5. Conclusions.

- Empowering the European Union in times of crisis
- Budget law and potential new sources of revenue
- Flexibility and resilience of EU primary law
- Respect of the principle of conferral
- National constitutional law
- Treaty amendments