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## **Legal Instruments for Control of Expenditure from the EU Budget in the Light of EU and Polish Law**

**Abstract:** This study reflects on the control of expenditure made from the EU budget through instruments regulated by EU and Polish financial law, and in a broader sense also on the protection of the EU's financial interests on the expenditure side. The purpose is to present and engage in a dogmatic-legal analysis of the EU-national normative benchmark for the control of EU budget expenditure and to answer the question of its normative-axiological content, rightly taking into account the principle of the rule of law as the basic determinant of the performed control of EU budget expenditure, in accordance with the CJEU judgment C 157/21. It may justifiably be argued that the normative model of control of expenditure from the EU budget is a normative-axiological model shared by the EU and its Member States. It is hybrid in that it consists of a number of mechanisms and institutions (in the substantive sense) that are functionally interconnected. Effective implementation of the criteria of this normative benchmark (substantive, instrumental, procedural and axiological) presupposes functional links between EU and Polish regulations for the application of principles not only from Articles 317 and 325 TFEU, but also values and principles from Article 2 TEU.

**Keywords:** budget of the EU, NextGenerationEU, rule of law in financial law

### **Introduction**

The issue of legal instruments for control of expenditure from the European Union (EU) budget in the light of EU and Polish law, in view of the 2020 package of changes to EU regulations and concerning the Multiannual Financial Framework (MFF) for 2021–2027, is a timely, weighty and multifaceted subject. This study reflects on the control of expenditure made from the EU budget through instru-

ments regulated by EU and Polish financial law, and in a broader sense also on the protection of the EU's financial interests on the expenditure side.<sup>1</sup> The scope of the indicated issues will be considered from both the perspective of EU financial law regulations<sup>2</sup> and domestic public finance law with regard to the expenditure side of the EU budget. In this context, it is worth recalling at the same time that, in accordance with Article 5(3) of the Public Finance Act of 2009, funds from the EU budget constitute public funds under Polish public finance law.

The most important and largest spending item from the EU budget are structural funds, which, in the most recent financial perspective, together with the NextGenerationEU (NGEU), constitute the most powerful financial instrument since the EU's inception. Specific EU-national control over EU funds (i.e. a spending item from the EU budget) is carried out, among other things, through instruments regulated by Regulation 2018/1046,<sup>3</sup> Regulation 2020/2092,<sup>4</sup> or by national legal acts: the Law on national fiscal administration and the Law on responsibility for violation of public finance discipline.<sup>5</sup>

The protection of the EU's financial interests, expressed as a principle in Article 325 Treaty on the functioning of the European Union (TFEU), is an obligation incumbent upon EU bodies and Member States alike in terms of revenues to and expenditures from the EU budget. So is the principle of sound financial management of EU finances, enshrined in Article 317 TFEU, the obligation to implement it being incumbent on both the European Commission (EC) and the Member States. The purpose of this study is to present and engage in a dogmatic-legal analysis of the EU-national normative benchmark for control of EU budget expenditure and to answer the question of its normative-axiological content, rightly taking into account the principle of the rule of law as the basic determinant of the performed control of EU

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1 Pursuant to Article 2(1) of Parliament and Council Regulation No. 883/2013 of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (O.J. EU L 248, 18.09.2013, p. 1, as amended), 'the financial interests of the Union' include the revenues, expenditures and assets covered by the budget of the European Union and the budgets of the institutions, bodies, offices and agencies, as well as the budgets they manage or monitor.

2 For example see M. Wróblewska, *Budżet ogólny Unii Europejskiej jako narzędzie integracji europejskiej*, (in:) A. Drwiłło, A. Jurkowska-Zeidler (eds.), *System prawnofinansowy Unii Europejskiej*, Warsaw 2017, pp. 73–97.

3 European Parliament and Council Regulation No. 2018/1046 of 18 July 2018 on the financial rules applicable to the general budget of the Union (O.J. EU L 193, 30.07.2018, p. 1, as amended), the so-called Financial Regulation.

4 European Parliament and Council Regulation No. 2020/2092 of 16 December 2020 on the general system of conditionality for the protection of the Union's budget (O.J. EU LI 433, 22.12.2020, p. 1), the so-called Rule of Law Regulation.

5 Act of 16.11.2016 on national fiscal administration (consolidated text, Journal of Laws of 2022, item 813, as amended); Law of 17.12.2004 on responsibility for violation of public finance discipline (consolidated text, Journal of Laws of 2021, item 289, as amended).

budget expenditure, in accordance with the CJEU judgment C 157/21. It is worth emphasizing here that this is a single standardized benchmark determined by the legal acts analysed in this study at the level of EU and national financial law.<sup>6</sup>

## **1. The scope and notion of control of budget expenditure in EU financial law**

The analysis of the issue of control of EU budget expenditure requires not only a reference to the term of control, but also an indication of the categories of this expenditure and its main financing instruments. According to Regulation 2020/2093 on the MFF for 2021–2027, the following categories of expenditure are supported under commitment appropriations: 1) Single Market, Innovation and Digital Economy; 2) Cohesion, Resilience and Values; 3) Natural Resources and Environment; 4) Migration and Border Management; 5) Security and Defense; 6) Neighborhoods and the World; and 7) European Public Administration.

Regulation 2018/1046 is to be applied to the general budget of the EU. According to Article 7 of this regulation, which is key for audit purposes, the budget for each fiscal year shall forecast and approve all revenues and expenditure deemed necessary for the EU, and the general budget shall include revenues and expenditure of the EU, including administrative expenditure arising from the implementation of the provisions of the Treaty on European Union (TEU) relating to the Common Foreign and Security Policy (CFSP), and including operational expenditure incurred in the implementation of those provisions where they are covered by the EU budget. According to Article 41 of the TEU, in addition to covering the expenses envisaged for the CFSP from the EU budget, Member States may also bear these expenses according to the criterion of gross GDP, unless the Council unanimously decides otherwise.

Financing of designated areas in the EU general budget is carried out mainly through structural funds, which are the primary instrument for financing EU policies and its internal and external actions. The funds operating in the current financial perspective include the Cohesion Fund, the European Regional Development Fund, the European Social Fund, the Fair Transition Fund and especially the NGEU with

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6 Due to the purpose of this study and the length requirements, the article does not take into account the comparative legal method and does not study the legal solutions of spending EU budget funds in other Member States apart from Poland, which should become the subject of further in-depth research. It is important to mention that the reforms demanded by the Union in Poland and Hungary related to the recovery plans have not yet been implemented, but the conditionality associated with the disbursement of the recovery plan funds has been used successfully so far in Romania. See E. Maurice, Rule of Law: The Uncertain Gamble on Conditionality (Foundation Robert Schuman Policy Paper), 'European Issues' 2023, no. 660, p. 5, <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-660-en.pdf> (30.04.2023).

Recovery Instrument (RI).<sup>7</sup> It is worth noting that spending from the EU budget in 2021–2027, as well as RF spending, is more than €1.8 trillion, of which the EU budget accounts for more than €1 trillion, and the RF more than €750 billion at 2018 prices.<sup>8</sup>

The NGEU is an emergency instrument for responding to situations related to the post-Covid reconstruction of EU economies. The activation of this fund required that all Member States ratify the decision to increase the EU's own resources. This is because failure to ratify the decision would have halted the mobilization of the package of funds – from both the EU budget for 2021–2027 and the RF. The basis for expenditure from the NGEU is national plans (reconstruction programmes). In Poland, the basis for spending from the NGEU is the National Reconstruction Plan, which was sent to the EC on 3 May 2021 and approved on 1 June 2022, but due to the failure to meet the EC's conditions related to the rule of law, was not launched. Spending from national reconstruction plans in Member States is functionally linked to the Rule of Law Regulation, which describes the latest mechanism for controlling the execution of spending from the EU budget, completing the EU's normative benchmark for controlling the execution of budget spending.

The notion of control in Article 2(19) of Regulation 2018/1046 is rightly very broad: 'control' means, in fact, any measures taken to obtain reasonable assurance as to the effectiveness, efficiency and economy of operations, the reliability of reporting, the protection of assets and information, the prevention, detection, correction and monitoring of fraud and irregularities, and the adequate management of risks relating to the legality and regularity of the underlying operations, taking into account the multi-annual nature of the programmes as well as the nature of the payments concerned. Controls may include various reviews, as well as the implementation of any policies and procedures to achieve the objectives referred to in Article 2(19) of the Regulation 2018/1046. The EU notion of control applied to EU budget expenditure is very wide-ranging, as it includes not only the application of countermeasures, but also monitoring, policies and procedures to achieve control objectives, and risk management (which, incidentally, is a necessary introduction of market elements into public finance).

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7 European Parliament and Council Regulation No. 2021/1060 of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fund for a Just Transition and the European Maritime, Fisheries and Aquaculture Fund and the financial rules for these funds and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Financial Support Facility for Border Management and Visa Policy (O.J. EU L 231, 30.06.2021, p. 159); Council Regulation No. 2020/2094 of 14 December 2020, establishing the European Union Reconstruction Facility to support reconstruction in the wake of the COVID-19 crisis (O.J. EU L 433I, 22.12.2020, p. 23).

8 Multiannual Financial Framework 2021–2027 and Next Generation EU, <https://www.consilium.europa.eu/pl/info/graphics/mff2021-2027-ngeu-final/> (23.09.2021).

What is most relevant to the findings made in this section is the conclusion regarding the inclusion in the control model of instruments to support the principle of the rule of law with regard to EU budget expenditure. Thus, what is at stake here is not only the substantive concretization of the control model in the context of the rule of law, carried out mainly thanks to the CJEU ruling on Case C 157/21, but also the new legal instruments for expenditure control (from Regulation 2020/2092).

## 2. Mechanisms and instruments for control of expenditure in EU law

### 2.1. Regulation 2020/2092

The expenditure side of the EU budget is mainly comprised of funds, which requires compliance with the principle of sound financial management enshrined in Article 317 of the TFEU, applicable to EU finances as a whole. In 2020, the entire regulatory package for the new EU Multiannual Financial Framework for 2021–2027 was adopted, including Regulation 2020/2092,<sup>9</sup> as a concretization of the model of control of EU budget expenditure referred to in Article 2 TEU. Pursuant to this regulation, appropriate measures may be adopted against EU Member States in violation of the rule of law which affect or pose a serious risk of affecting, in a sufficiently direct manner, the sound financial management of the EU budget or the protection of the EU's financial interests.<sup>10</sup>

When analysing Regulation 2020/2092, it is important to point out the links between respect for the rule of law and effective implementation of the EU budget, in accordance with the principle of sound financial management (see also recital 14 of Regulation 2020/2092). As rightly elaborated in recital 8 of the C 157/21 judgment:

‘sound financial management can only be ensured by the [Member States] if public authorities act in accordance with the law and if cases of fraud, including tax fraud, tax evasion, corruption, conflicts of interest and other violations of the law are effectively prosecuted by the investigative and prosecutorial services and if arbitrary or unlawful decisions of public authorities, including law enforcement agencies, can

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9 The CJEU, at the request of Poland and Hungary (filed 11.03.2021), ruled in Cases C 157/21 (Poland) and C 156/21 (Hungary) on 16.02.2022 on the compatibility of the conditionality mechanism with the EU treaties and dismissed the complaints as unfounded. The application of the conditionality mechanism, which allows the suspension of the payment of EU funds in the event of violations of the rule of law in Member States, concerns Poland, among others, in connection with the failure to implement the CJEU judgment of 15 July 2021 on the case of *Commission v. Poland*, C 791/19.

10 For more on the conditionality regulation, see A. Wyrozumska, *Czy porozumienie w sprawie rozporządzenia ‘pieniądze za praworządność’ będzie skuteczne? ‘Europejski Przegląd Sądowy’* 2021, no. 1, p. 24 ff; J. Łacny, *System warunkowości mający chronić budżet UE przed naruszeniami zasady państwa prawnego przez państwa członkowskie*, *‘Państwo i Prawo’* 2021, no. 11, p. 5 ff.

be subject to effective judicial review by independent courts and the Court of Justice of the EU.

In its judgment in Case C 157/21 (recital 297), the CJEU further outlined that ‘the concept of the EU’s “financial interests” within the meaning of Article 325(1) TFEU includes not only the payment of the relevant funds to the EU budget, but also the expenditure covered by that budget’. It has to be underlined that, in my opinion, this concept, in the CJEU’s correct and legitimate assessment, is relevant not only in the context of the anti-irregularity and anti-fraud measures referred to in this provision, but also from the point of view of sound financial management within this budget, since the protection of these financial interests also contributes to sound management. After all, respect for the rule of law is not only important for EU citizens, but also underpins the success of economic initiatives and economic and social cohesion, and is fundamental to the functioning of the internal market.

After reading the CJEU ruling in Case C 157/21 and Regulation 2020/2092, it can be pointed out that, being rightly based on Article 322 TFEU, Regulation 2020/2092 must be seen as a budgetary, financial *sui generis* complement (in a functional sense) to a number of instruments and processes promoting the rule of law and its application, including financial support for civil society organizations, the European Rule of Law Mechanism and the EU Justice Scoreboard, and ensuring an effective response by EU institutions to violations of the rule of law.<sup>11</sup> Besides, as highlighted in recital 14 of Regulation 2020/2092, the instruments and mechanisms in this regulation are intended to protect the EU budget from violations of the rule of law that affect sound financial management within the EU budget and the protection of the EU’s financial interests. Since the principles and values of Article 2 TEU are the basis of the entire EU legal system, they also belong to EU budget law, now enriched by the conditionality mechanism as an extremely important premise for the EU citizen for the broadly understood protection and control of the EU budget. It is rightly pointed out that this system complements other procedures for protecting the EU’s financial interests.<sup>12</sup> It must be emphasized that the shared value of the rule of law among the EU and Member States, which belongs to the very foundations of the EU and its legal order, justifies a conditionality mechanism that falls, according to the CJEU’s correct ruling in Case C 157/21, within the concept of ‘financial rules’ within the meaning of Article 322(1)(a) TFEU.

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11 M. Fedorowicz, *Prawo budżetowe Unii Europejskiej*, (in:) J. Barcik, R. Grzeszczak (eds.), *Prawo Unii Europejskiej*, Warsaw 2022, pp. 419–444.

12 J. Barcz, R. Grzeszczak, A. Nowak-Far, J. Truszczyński, *Praworządność a unijne fundusze (prawne i praktyczne aspekty interpretacji ustaleń Rady Europejskiej z 11.12.2020 r.)*, ‘Państwo i Prawo’ 2021, no. 11, *passim*; N. Kirst, *Rule of Law Conditionality: The Long-Awaited Step towards a Solution of the Rule of Law Crisis in the European Union*, ‘European Forum Papers, Insight’ 2021, no. 1, p. 105, [https://www.europeanpapers.eu/en/system/files/pdf\\_version/EP\\_EF\\_2021\\_I\\_011\\_Niels\\_Kirst\\_00454.pdf](https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2021_I_011_Niels_Kirst_00454.pdf) (30.04.2023).

According to Article 3 of Regulation 2020/2092, violations of the rule of law may be indicated, first, by threats to the independence of the judiciary; second, by failure to prevent arbitrary or unlawful decisions by public authorities; and third, by restrictions on the availability and effectiveness of legal remedies. Safeguard measures under Article 5 of Regulation 2020/2092 are adopted when it is established that violations of the rule of law in a Member State affect or pose a serious risk of affecting (and in a sufficiently direct manner) the sound financial management of the EU budget or the protection of the EU's financial interests. These measures include, but are not limited to, suspending payment or performance of a legal obligation or terminating it, pursuant to Article 131(3) of Regulation 2018/1046; prohibiting new legal obligations; suspending or reducing an economic benefit under an instrument guaranteed by the EU budget; suspending approval of a programme or programmes or modifying such a suspension; limiting obligations, including through financial adjustments or reallocating funds to other spending programmes or suspending the running of payment deadlines; or, finally, suspending payments. However, in order to apply EU budget protection measures, Regulation 2020/2092 clarifies that the violation of the rule of law must relate to certain elements, which it is worth recounting: first, the proper functioning of bodies implementing the EU budget, including loans and other instruments guaranteed by the budget, particularly in the context of public procurement procedures or grant procedures; second, the proper functioning of bodies carrying out financial control, monitoring and audits, as well as the proper functioning of effective and transparent financial management and accountability systems; third, the proper functioning of investigative and prosecutorial services in connection with the investigation, prosecution, and filing and supporting of charges in connection with fraud, including tax fraud, corruption or other violations of EU law related to the implementation of the EU budget or the protection of the EU's financial interests, and the effective judicial review of the actions or omissions of the aforementioned bodies by independent courts.

In applying the measures indicated to protect the EU budget, it is essential that the EC make an in-depth qualitative assessment when finding violations of the rule of law, which must be objective, impartial and fair. It should take into account relevant information from available sources and recognized institutions, including judgments of the CJEU, European Court of Auditors (ECA) reports, the EC's annual rule of law reports and the EU Justice Scoreboard, reports from European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO) where applicable, and the conclusions and recommendations of relevant international organizations and networks, including Council of Europe bodies such as the Group of States Against Corruption and the Venice Commission (in particular, its checklist on the rule of law), as well as the European Network of Supreme Courts and the European Network of Councils for the Judiciary. The design of the procedure for imposing EU budget

protection measures allows us to conclude that the EC is a kind of guardian of compliance with Regulation 2020/2092.

What is particularly important for the detailed model of EU budget expenditure control, and another great achievement of this regulation, is the stronger empowerment of the beneficiaries of EU budget funds. This is because the control continues after the suspension of funds and results in a stronger empowerment of EU citizens. In order to ensure that the amounts due from government entities or Member States are actually paid to the final recipients or beneficiaries, the EC will recover the payments made or, as the case may be, make a financial correction by reducing EU support to the programme in question in accordance with the applicable sectoral and financial regulations. The EC will make available on its website or web portal appropriate tools for final recipients or beneficiaries to inform the EC of violations of these obligations that, in their opinion, directly affect them.

Member States affected by the measures should regularly report to the EC on the fulfillment of their obligations to end recipients or beneficiaries. A stronger empowerment of EU citizens in this regulation and important budgetary functional links between the rule of law and the EU budget belong, in my opinion, to the achievements of Regulation 2020/2092 and enlarge and correctly strengthen the normative pattern of EU budgetary expenditure control.

## **2.2. Regulation 2018/1046**

Regulation 2018/1046 is another fundamental piece of EU secondary legislation for establishing the normative model for the control of EU budget expenditure, in most of its provisions concerning internal control of the implementation of the EU budget. Of course, the principal executor of the EU budget is the EC, but it should be recalled that it can use the methods of direct management, indirect management and shared management with the Member States.

According to Article 33 of Regulation 2018/1046, funds from the EU budget shall be used in accordance with the principle of sound financial management, i.e. economically, efficiently and effectively. The principle of sound financial management also manifests itself in the fact that the use of funds must be performance-oriented, which implies *ex ante* setting of the objectives of the programmes and activities, and monitoring of progress in achieving the objectives by means of performance indicators and transparency of information and reports in this regard. In the framework of the internal control of the implementation of the EU budget, in accordance with Article 36 of Regulation 2018/1046 and in the implementation of the principle of sound financial management of EU funds, the following objectives shall be realized: efficiency, effectiveness and economy with respect to operations; reliability of reporting; protection of assets and information; prevention, detection, correction and follow-up of fraud and irregularities; and appropriate management of risks related to the legality and regularity of the underlying operations, taking into account the multi-year



nature of the programmes as well as the nature of the payments concerned. In addition, each EU institution shall establish an internal audit function in accordance with Article 117 of Regulation 2018/1046. The internal auditor appointed by an EU institution is responsible to the institution for verifying the proper functioning of systems and procedures for budget execution.

Article 63 of the regulation indicates that ‘in fulfilling their tasks of implementing the budget, Member States shall take all necessary measures, including legislative, executive and administrative measures, to protect the financial interests of the Union’. The indicated provision of Regulation 2018/1046 also became the subject of the CJEU ruling of 16 February 2022 in Case C 157/21, analysed above. This includes, in particular, shared management with Member States, in accordance with Articles 62 and 63 of Regulation 2018/1046. Member States, in order to protect the interests of EU finances and guided by the principle of proportionality, are required to carry out *ex ante* and *ex post* controls, including on-the-spot checks on representative or risk-selected samples of transactions, and recover unduly paid funds, if necessary initiating legal proceedings in this regard.

Member States shall impose effective, dissuasive and proportionate penalties on recipients where provided for in sectoral legislation or specific national laws, and the EC shall monitor the management and control systems put in place in Member States. In turn, on the basis of Article 135 of Regulation 2018/1046, the EC has established an early detection and debarment system for the protection of the EU’s financial interests, which aims to facilitate the early detection of entities that pose a risk to the Union’s financial interests. Therefore, it can be pointed out that, as mentioned above, selected provisions of Regulation 2018/1046 are also functionally linked to the conditionality mechanism, enabling effective control of spending and reinforcing the pattern of control.

### **3. Special EU bodies and institutions controlling expenditure from the EU budget**

In addition to the new conditionality mechanism, the control of EU budget expenditure continues to be handled by special bodies and institutions set up to carry out control tasks. These are, of course, the ECA, OLAF and the relatively new structure of the EPPO, introduced by Regulation 2017/1939.<sup>13</sup> While the objectives, tasks

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13 Council Regulation No. 2017/1939 of 12 October 2017 (O.J. EU L 283, 31.10.2017, p. 1, as amended). As of 1 June 2021, this regulation established an independent EU body, the European Public Prosecutor’s Office, responsible for protecting the EU budget and including the implementation in Member States of the Reconstruction Fund. Under Article 4 of this regulation, the EPPO is competent to investigate, prosecute and bring to justice the perpetrators and accomplices of crimes affecting the EU’s financial interests in the area of fraud, such as fraud against EU struc-

and competences of the ECA and OLAF in protecting the financial interests of the EU are known and elaborated on by scholars of the doctrine of the subject,<sup>14</sup> the establishment of the EPPO and the most recent EU regulations linking the disbursement of EU funds to sound economic management require comment.

Regulation 1939/2017 as well as Regulation 2018/1046 introduced a strong legal basis for cooperation between the EPPO, OLAF and the ECA (Article 110 of Regulation 2017/1939 and Article 129 of Regulation 2018/1046 or, for example, Articles 8 and 12(e)–(g) of Regulation 883/2013). The arrangement of this cooperation is not competitive between the named institutions but complementary, which generally does not result in duplication of competencies and investigations or pre-trial proceedings (e.g. Article 12(b)–(g) of Regulation 883/2013). Thus the control model shaped at the level of EU law includes not only classical criteria tied to the most efficient, economical and sustainable use of EU budget funds in Member States, but also constructs procedural (EPPO) and institutional (ECA, OLAF, CJEU) criteria and guarantees. It can be argued that the 2017 creation of the EPPO with new competences, including the protection of EU financial interests, as well as the expansion of the normative model for the control of EU budget expenditure, with the values and principles constituting the axiology of the EU legal system from Article 2 TEU in the form of the implementation of the conditionality mechanism in 2020, exhibits the very dynamic evolution *sensu largo* of the rules on the protection of EU financial interests, including the protection of the EU budget, which affects both the revenue and expenditure sides of the EU budget presented in this study.

It should be noted as well that the various elements and priorities related to the model of control of EU budget expenditure contained in EU legal acts also have a systemic, fiscal dimension, referring to the principle of sound finances from Articles 119(2) and (3) TFEU. An argument supporting this point is, for example, Article 19 of Regulation 2021/1060 on measures linking the effectiveness of the funds to sound economic management in the Member States. According to this provision, the extent and level of suspension of obligations or payments for one or more of the Member States' programmes to be imposed shall be proportionate, consistent with the principle of equal treatment of the Member States, and shall take into account the economic and social situation of the Member State concerned, in particular the level of unemployment, the level of poverty or social exclusion in the Member State compared to the EU average, and the impact of the suspension on the Member State's economy. Special consideration is given to the impact of suspensions on programmes critical

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tural funds, corruption, money laundering or cross-border VAT fraud. Poland, Hungary, Ireland, Denmark (opt-out) and Sweden have not joined this system for protecting EU financial interests.

14 See for example V. Pujas, 'The European Anti-Fraud Office (OLAF): A European Policy to Fight against Economic and Financial Fraud?' *Journal of European Public Policy* 2003, vol. 10, no. 5, pp. 778–797.

to counteracting adverse economic or social conditions. Another interesting instrument of systemic protection and also control of public finances from the perspective of EU law is Article 20 of Regulation 2021/1060, which provides for provisional measures on the use of funds in response to exceptional or extraordinary circumstances. These are situations where the Council identifies an extraordinary event beyond the control of one or more Member States which has a significant impact on the financial position of government institutions, or a significant economic downturn in the eurozone or the EU as a whole. It is then possible, for example, to increase payments to the Member State concerned.

In this context of consideration, it should be noted that from the institutional and procedural side, the EU budget is, for the time being, protected by 22 EU countries under enhanced cooperation, which, as can be seen, weakens the procedural and institutional element of the created normative pattern of protection of the EU budget.

#### **4. Instruments for control of expenditure from the EU budget in Polish law: selected issues**

In national law, due to the need to comply with the provisions of EU law on sound financial management of EU finances (Article 317 TFEU) and protection of EU financial interests (Article 325 TFEU), there are a number of instruments and mechanisms in place to safeguard the implementation of the aforementioned principles and thus protect expenditure from the EU budget in the Member States. From the perspective of Polish budgetary law, expenditure from EU funds is safeguarded by Article 13 in conjunction with Article 4(a) of the 2004 Law on responsibility for violation of public finance discipline, where acts constituting a violation of public finance discipline in connection with the improper use of EU funds (e.g. structural funds) are relatively precisely provided for. In turn, Article 4(a) of that law, which delineates the scope of the subjects of acts relating to the improper use of EU funds, introduces a definition of EU funds as funds related to the implementation of a programme financed with funds from the EU budget, non-reimbursable funds from assistance provided by Member States of the European Free Trade Agreement, or other funds from non-reimbursable foreign sources. It is also worth noting the provisions of Article 12(a) of the Law on the Supreme Audit Office (SAO), according to which the SAO may carry out audits jointly with the EU's supreme audit bodies and those of other countries under agreements concluded for this purpose to audit expenditure originating from the EU budget.<sup>15</sup> In any case, the ECA conducts annual inspections in Poland, in which SAO inspectors participate as observers. Provisions protecting

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15 Act of 23.12.1994 on the Supreme Audit Office (unified text, Journal of Laws of 2022, item 623).

the proper making of expenditure from the EU budget can also be found in the National Fiscal Administration Act (NFA), according to which the Head of the NFA is an auditing authority and performs the tasks regulated in Article 14(1)(10) of the NFA Act. The Head of the NFA also performs tasks under Article 3(4) of Regulation 883/2013.

The above regulations allow us to conclude that, in the indicated scope, there is a formal complementarity of financial solutions at the national level for the implementation of control and protection of expenditure from the EU budget. The Public Finances Act also regulates institutions (in the material sense) implemented, *inter alia*, for better control of public finances and the achievement of control objectives relevant to ensuring the principle of sound public finances (from Article 119, paragraphs 2 and 3, of the TFEU), but also helpful for more effective planning and use of EU funds such as, in particular, the budget of European funds, the Multiannual Financial Plan of the state, or the financial forecasts of local government units.<sup>16</sup> It is acknowledged, though, that these institutions were not introduced solely in connection with optimizing the use of EU funds, and some imperfections in these institutions are known.<sup>17</sup>

## Conclusions

The instruments for control of expenditure from the EU budget are regulated in a functional relationship in EU and Polish law, including not only the criteria of economy, discipline, reliability or timeliness of spending, but also procedural, formal elements related to the establishment of new bodies for the protection of the EU budget in connection with existing ones (EPPO, OLAF, ECA); they also include mechanisms that are intended to contribute to the lawful spending of EU funds on the one hand, and on the other to respect the mechanism of conditionality in this process, since the process of spending all funds must have normative standards appropriate for the rule of law.

The normative and axiological content of the model of control of expenditure from the EU budget rightly takes into account the principle of the rule of law as a fundamental determinant of the control exercised over EU budget expenditure, in accordance with the CJEU judgment in Case C 157/21. This means that any functional relationship between the EU budget and the national budgets of EU Member States must realize and reflect the principle of the rule of law. The rule of law principle was a necessary element to be added to the EU budget expenditure mechanism, and Reg-

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16 Public Finances Act of 27.08.2009 (unified text, Journal of Laws of 2021, item 305, as amended).

17 For more on this subject, see for example K. Kopyściańska, Komentarz do art. 103 ustawy o finansach publicznych, (in:) Z. Ofiarski (ed.), Ustawa o finansach publicznych. Komentarz (2nd ed.), Warszawa 2020, pp. 661–669.

ulation 2020/2092 gives the possibility of strengthening the normative pattern for expenditure control from the EU budget. Respect for the rule of law is one of the essential conditions for compliance with the principle of sound financial management enshrined in Article 317 TFEU, just as the maintenance of convergent fiscal conditions ensures the principle of sound finances in Articles 119(2) and (3) TFEU. This therefore means that, on the one hand, the protection of the values and principles of Article 2 TEU has also acquired an economic dimension, related to the mechanism of conditionality as a mechanism linked to EU budgetary law, and on the other hand, the values and principles of Article 2 TEU are relevant for establishing the model for the control of spending from the EU budget.

For the analysed model of control of EU budget expenditure, the beneficiary of these funds is also of fundamental importance. Both Regulation 2020/2092 and the CJEU ruling in Case C 157/21 emphasize that the legitimate interests of final recipients and beneficiaries must be protected when adopting measures in case of violations of the rule of law, which I include as a further great achievement of this regulation. Thanks to the conditionality mechanism, EU citizens become more empowered and protected, since the normative standard for the Member States' compliance with their obligations towards the beneficiaries of these measures also belongs to the standard of control in the event of protective measures.

In my opinion, the control model satisfying the principle of sound financial management which has been reconstructed in this paper rightly includes the following: 1) the principles and values of Article 2 TEU and the corresponding conditionality mechanism; 2) the criteria for sound management of funds, in accordance with Article 36 of Regulation 2018/1046 (economy, optimization of expenditure, cost-effectiveness, timeliness and those specific criteria provided for in sectoral acts); 3) the institutional dimension related to the functioning of specialized bodies and institutions for the protection of the EU's financial interests (ECA, OLAF and also the EPPO); 4) the systemic elements that relate to linking the spending of EU budget funds (mainly EU funds) with sound economic management in the Member States; and 5) the regulations empowering the beneficiaries of EU funds. Also, the procedural sixth aspect (dimension) of the analysed model includes the EPPO as a new independent EU body protecting the EU's financial interests. The provisions of Article 2 TEU are the normative foundation of the EU and the normative building block of the EU legal body and EU Member States, including financial law, as is also evident from the normative content of Article 4(2) of Regulation 2020/2092.

The provisions of Polish national financial laws on the control of EU budget expenditure, outlined above, implement in their normative, formal form the various elements of the normative model for the control of EU budget expenditure, but the milestones of the EC related to the proper application in Poland of the principles of Article 2 TEU, which provisions in Regulation 2020/2092 refer to, still remain unimplemented. Thanks to the normative construction of the conditionality mechanism

there exists a hope that expenditure from the EU budget will in future be further guarded by the created EU control mechanism, which rightly takes into account the rule of law. It should be emphasized again that Poland has not joined the EPPO, and the funds from the National Recovery Plan have not (as of 30 April 2023) been released, due to Poland's failure to meet the EC's requirements regarding the rule of law, i.e. the fundamental normative and axiological element of the model.

The presented reconstruction of the control model with its elements shows, on the one hand, that it is the budget that allows the implementation and concretization of EU policies based on the values of Article 2 TEU, rightly including the rule of law and the principle of solidarity; and on the other hand, the proper spending of the budget contributes not only to the loyal cooperation of Member States, but also to responsibility in the spending of EU funds, and thus building the future of the EU, which must take into account the rule of law. The mechanism provided for in Regulation 2020/2092 complements in a functional sense the protection of the EU budget from violations of the rule of law affecting the sound financial management of the budget or the protection of the Union's financial interests.

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