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Carolina de Amuriza Chicharro



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Índice

1. INTRODUCTION.....	5
2. ROLE OF INSTITUTIONS IN THE DECISION-MAKING PROCESS ACCORDING TO DIFFERENT EU INTEGRATION THEORIES	7
3. MEMBER STATES POSITIONS	9
3.1. Visegrad states	10
3.2. Germany.....	22
3.3. German proposal as holder of the council presidency	24
3.4. Frugal member states.....	26
3.5. Southern countries.....	31
4. CONCLUSIONS	33
5. BIBLIOGRAPHY.....	34

1. Introduction

On May 2, 2018, the European Commission made a proposal for a regulation of the European Parliament and of the Council on the protection of the budget of the Union in the event of generalized rule of law deficiencies in the member states¹. With this proposal, the Commission initiated a path that would eventually, after reaching numerous agreements between the Parliament and the Council, the Union legislators, lead to Regulation (EU, Euratom) 2020/2092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2020². The objective of this regulation, as stated in its Article 1, is to protect the Union's budget from possible breaches of the rule of law in the member states. To this end, it specifically delimits that these possible violations of the rule of law must be directly linked to, and directly affect, the "sound financial management of the Union's budget"³.

It is precisely on the process of negotiations within the Council where this thesis is based on. But in order to have a good understanding of the negotiations, it is firstly needed to have a general overview of the process of adoption of the mechanism.

One of the problems associated with this mechanism from the outset was that its adoption was negotiated within the Union's budgetary cycle, the Multiannual Financial Framework. According to Article 312 of the Treaty on the Functioning of the European Union, unanimity in the Council is required for the adoption of this framework⁴. The vote against by Hungary and Poland greatly prolonged the process of adopting the MFF, which did not take place until December 17, 2020⁵, when these two member states voted in favor, just after the European Council had taken place on December 10 and 11, 2020. If the budget was not approved, the funds could not be distributed, and therefore no action could be made conditional on the allocation of funds.

However, the same did not happen with the approval of the aforementioned Regulation 2020/2092. In the vote of December 14, 2020 on the approval of the conditionality regulation, Hungary and Poland voted against, without any noticeable repercussions, since in this procedure unanimity was not required, but rather a qualified majority, so that the negative votes of two member states did not alter the result.⁶

This first position of the Regulation made by the Council had been drafted on the basis of the agreements that had been reached with the Parliament, so that the latter agreed with the text, and the Regulation was approved on December 16, 2020⁷. The starting date of application, according to Article 10 of the Regulation itself, was January 1, 2021, however, from this moment onwards is when the legal and political crossroads that has taken place between the institutions of the Union, and of course, between the States and the institutions, began.

One of the most contentious issues surrounding whether or not the regulation has been applied as of January 1, 2021, has been the development of guidelines by the Commission to explain in more detail how it will implement the regulation. The adoption of these guidelines was an item agreed and included in the conclusions of the European Council of December 10 and 11, 2020. However, it was detailed that these guidelines could not be finalized until, in the event of an action for annulment, the Court delivered its judgment. Furthermore, it was agreed that until these guidelines were finalized, the Commission could not propose any measures under the umbrella of the regulation.⁸

1 COM(2018) 1.

2 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433 of 22.12.2020, p. 1).

3 Ibidem, article 4.

4 Treaty on the Functioning of the European Union (TFEU), article 312: The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

5 14174/20, vk 1, COMM.2.C.

6 14020/20, bmp/BMP/gd 1, COMM 2C.

7 Textos Aprobados de 16.12.2020, P9_TA(2020) 0356.

8 EUCO 22/20, paragraph 2c.

Nowadays, and even more this year in which the mechanism has started to be triggered, this topic is present in our society. Conversations about the future of the European Union due to the illiberal drift of some member states concerning European values, and concretely rule of law, have marked our studies and our personal inquisitiveness. All of us have been told at some point during these past years, that Hungary and Poland violate the rule of law. All of us have also been told, of course, that a mechanism tying disbursement of funds to respect of rule of law, was not within their interest. However, we have not been told the reasons underlying those arguments. And we have neither been told about the role other important actors have played during these years in the tough negotiations.

In order to present the analysis of this issue, it shall be first contemplated a research question: Why the process of adoption of this regulation has been influenced by the interests of the actors? This research question leads to the hypothesis of the paper, considering that the negotiation of the conditionality regime has been affected by diverse interests, of different nature, that are interfering in the actions of member states.

It is indeed the role that some of the member states involved in the negotiations have played, what decided the future of the mechanism, alongside the future of member states themselves and of European politics.

Being for or being against, both options were represented in the Council of the EU, but each of them was based on different interests depending on the indicated member state. Many questions have been raised about this mechanism, among them we find questions such as what the real intention of its existence is, why its application was delayed if it entered into force more than a year ago, what role are the institutions and the member states playing in this whole process, and what are the interests of the different actors.

The goal of this thesis is understanding the behavior some key member states adopted during the process of negotiation of the mechanism, as some of them were worthy of attention, due to the role they played, either moved by their own initiative or moved by external and exceptional circumstances. For the better achievement of that objective, a classification of the states by groups sharing, apparently, similar positions, has been conducted, and consequently the sections of the thesis have followed that classification. Firstly, the states of the Visegrad Four are going to be observed, and the differences accounting among each of them. Later, some remarks are also given in relation to member states which presented issues at first towards the mechanism, but with the course of negotiations have changed their position. German position is also analyzed, as it represents the most curious one in the whole panorama, and it played a crucial role in the process. Frugal states are studied too, on behalf of the staunch defenders of the mechanism. Finally, the southern countries were worthy also of their place on this thesis due to their interest on the conditionality regime.

As sub-objectives we can find the analysis of the political aspects and factors that are hidden behind this process of negotiation. The adoption of a regulation is a process supposed to be legal. In this case, we even find that the application of the regulation seemed to depend on the outcome of a judgment of the Court of Justice of the European Union. Nevertheless, despite the legal characteristics, this process can be defined as almost more political than legal. We can also determine as subobjective the assessment of member state's actions, evaluating if their positions were politically correct given the situation, or if they would have had any other alternative of action.

In order to do so, the methodology chosen to conduct this thesis has been a case study of the negotiation of a regulation. The sources used to develop this thesis have mainly consisted on reports and briefings from think tanks, as well as journal articles specialized in politics. The election of these sources has intended to be consequent with the nature of the thesis, as the political approach of itself did not allow to use other kind of sources, such as juridical ones. Interviews would have been an extra source which would have completed the approach of the work. However, lack of time has made impossible to make use of this type of source. The use of the available sources has been useful to have a deep knowledge of the context and the state of play of the issue. They have allowed to analyze the existing studies, and the real facts, in order to develop own conclusions regarding the process of the negotiation and the interests of the member states.

I have decided to focus on the role of the member states instead of the role of the institutions based on the intergovernmentalism theory. There was a wider variety of different positions found among member states rather than among the institutions, stemming from the bigger scope member states offer. Each of the institutions had also its interests, but at the end all of them followed a common path: defending rule of law and protecting European values. Member states disagreed more, and their approach interested me more. National interests were involved

and that led the states to adopt particular positions in the phase of negotiations which were really decisive to the final approval of the mechanism. Furthermore, how the agreements were conceived, and how the ins and outs were solved, really attracted my attention.

It would have been really interesting and complete, to develop an analysis of both, member states and institutions. However, due to lack of time and paper extension, the inclusion of that section has turned out impossible to develop. All institutions' performances individually have been notoriously different, therefore an extensive analysis would have been needed. However, a perspective from the theory of intergovernmentalism has also been observed regarding both institutions and member states.

This thesis has led me to overall conclude that national interests are still above European general interests. Despite the huge step the adoption of the mechanism has signified, some member states positions during the negotiations illustrate the long path ahead that the European Union still has if it wants to achieve any, if possible, further integration.

2. Role of institutions in the decision-making process according to different EU integration theories

In order to analyze the position institutions have adopted during the negotiation phase of the regulation, and the interests that were behind those positions, it is first needed to understand the role institutions have played in the decision-making process throughout a short review of different EU integration theories. These theories are going to help us to elucidate why EU institutions, each guided by their own particularities and characteristics, have acted in the way they have, and the theoretical foundations behind them.

Focusing on the role of institutions in the decision-making process, we have to distinguish first between the concept of institutions in different EU integration theories.

Firstly, from a point of view coming from the intergovernmentalism theory of EU integration process, institutions would only exist to the extent they serve to achieve states' interests, and they are aligned with those states' interests⁹. Sovereignty resides in member states, not in institutions, even if states share some degree of sovereignty towards them, just in order to, again, achieve their interests¹⁰. That is, institutions do not have any further power beyond the one devoted to respond to the interests and plans, that states have thought for them. States would only create institutions to profit themselves from that creation, making of those institutions merely an additional branch of their state architecture. If institutions do not have such a remarkable power *per se*, they consequently do not enjoy an outstanding role in the decision-making process.

On the other hand, new intergovernmentalism, by its side, which advocates for a form of integration without supranationalism¹¹, focuses on the absence of supranational institutions in the process of decision-making¹², different from the institutions of the intergovernmentalism theory, which works in a cooperative way instead of through supranational decisions. Supranational institutions have powers by their own, conferred initially by the states, but making them independent of states' interests. That is to say they have the power to decide in a centralist way rather than in a decentralized way. However, differing from what many scholars assumed from this theory, according to this theory, supranationalist institutions are not willing by themselves to seize power¹³. Furthermore, according to new intergovernmentalism, deliberation and consensus, as methods of making decisions, are not a

9 Lucian Moga, T. "The contribution of the neofunctionalist and intergovernmentalist theories to the evolution of the european integration process", *Journal of Alternative Perspectives in the Social Sciences*, Vol 1, No 3, p. 804.

10 Cini, M. "Intergovernmentalism" in *European Union Politics*, 4th edition, Oxford University Press, 2013, p. 90.

11 Bickerton, CJ., Hodson, D., Puetter, U. "The New Intergovernmentalism: European Integration in the Post- Maastricht Era", *Journal of Common Market Studies*, Volume 53, N° 4, 2015, p. 703.

12 Ibidem, p. 706.

13 Ibidem, p. 712.

sign of supranationalism in institutions¹⁴, but a sign of relations among national actors¹⁵. According to this theory, member states still are the central actors of the European integration, but that is to say that there is indeed some degree of integration, not as in traditional intergovernmentalism, where there is no desire of integration at all and states are “obstinate”¹⁶.

There’s a branch of authors, such as Michelle Cini, who argue that intergovernmentalism advocates for the reduction of the role of supranational institutions in favor of a bigger role of institutions representing governments¹⁷. That means supranational institutions would be represented both in intergovernmentalism and new governmentalism, not differentiating among supranational institutions and the rest of institutions. Supranational institutions are those such as the Commission, the Parliament and the Court of Justice, while institutions representing national governments clearly are the European Council and the Council of the EU.

That point appears to be very relevant to the analysis of this thesis, as this dilemma of which institutions should have more power at the time of decision-making and, indeed, legislating, has been at the core heart of the discussion of the negotiation of the conditionality mechanism.

Liberal intergovernmentalism is based on intergovernmentalism theories of inter-state relations, taking off the power and impact of supranational institutions. This theory mainly focuses on the two councils, European Council and Council of the EU, since the main attention-worthy aspect of this theory is the process of intergovernmental bargains.¹⁸ According to Hooghe and Marks, liberal intergovernmentalism conceives international institutions as “a response to interdependence”, and it is the result of the exclusive action of national leaders¹⁹. Based on this theory, the decision-making process is composed by three different steps: first, national preferences are formed domestically in each member state; then, these different domestic preferences are mixed through a process of intergovernmental bargaining; and finally, European institutions are created to secure the agreements reached in the intergovernmental bargaining.²⁰ This process indeed seems very accurate to the functioning of the Council and the European Council.

By its side, the basic assumption of the theory of rational-choice institutionalism is the questioning of the fact that EU institutions exerted little influence over EU decision-making processes and outcomes²¹. Actually, the basic grounds of foundation of rational-choice institutionalism are closely similar to the ones of liberal intergovernmentalism, just going one step more into the operation of the institutions, explaining how the decisions of institutions produce dependence consequences in the long term for the states²².

Liberal institutionalism, represented by Robert Keohane, presents institutions as a way of developing inter-state bargaining, facilitating it and making it positive-sum. He considers that supranational institutions do not bias the outcome of the decision-making process away from the interest of member states.²³

If we take into consideration the arguments of these theories, and we observe the process of negotiation followed by the conditionality regulation, we can see a similarity with new intergovernmentalism, focusing on the divergences it presents in relation to supranational authorities; the Commission, the Parliament and the CJEU, and giving power to both Councils. It is clear the power the European Council acquired during the negotiation was far beyond its real powers, the powers actually conferred to it by the Treaties. This could be interpreted as a sabotaging and

14 Ibidem, p. 711.

15 Ibidem, p. 704.

16 Ibidem, p. 70.

17 Cini, M. “Intergovernmentalism” in *European Union Politics*, 4th edition, Oxford University Press, 2013, p. 88.

18 Ibidem, p. 98.

19 Hooghe, L., Marks, G. “Grand theories of European Integrations in the twenty-first century”, *Journal of European Public Policy*, 2019, p. 1116.

20 Ibidem.

21 Pollack, M. “Theorizing the European Union: Realist, Intergovernmentalism and Institutional approaches”, *The Oxford Handbook of the European Union*, 2011, p. 16.

22 Ibidem.

23 Cini, M. “Intergovernmentalism” in *European Union Politics*, 4th edition, Oxford University Press, 2013, p. 98.

undermining the power of the Parliament on one hand, since the regulation which it has co-decided alongside the Council, was suddenly depending on the political willingness of the European Council, governments indeed, an institution which has not any capacity to decide or interfere in the process of co-legislation. Furthermore, on the other hand, this power given to the European Council can be interpreted as a subjection of the Commission to the conclusions of the European Council, making its own action dependent on the political ins and outs, when in article 17 of the Treaty on the European Union, it is stated that the Commission shall not take instructions coming from any government nor any other institution²⁴. By binding itself to the conclusions of the European Council, the Commission, as a supranational institution, was losing its power.

Supranational institutions have lost power throughout the negotiation in favor of the Councils, being a signal of the power of the member states, and once more, a signal of the political weight the process has had, rather than legislative.

However, the power of the Court of Justice has not been decreased, as this theory sets as a goal. It was positioned as a requirement to confirm the validity of the mechanism. But in doing so, the CJEU has been used to draw out the beginning of application of the mechanism. In addition, keeping the power of the CJEU had the cost of bringing the power of the Parliament and the Commission, and even the Council, into question, pretending to end with the regulation the co-legislators had created and making it subject to the final approval by the Court as a needed step to reaffirm its validity, when it is not.

The process of the negotiation of the conditionality mechanism can also be found to have similarities with liberal intergovernmentalism. As previously explained, this theory argued the decision-making process was divided in three phases, matching with those of the mechanism. Firstly, each member state brought its own national preferences from their states, then they bargained among themselves both in the Council and in the European Council, and then they used the institutional framework to consolidate it.

3. Member states positions

Having discussed the role institutions play in decision-making processes and being aware of the institutional complexities of the approval mechanism, we can't leave behind the interests of the member states themselves. They are somehow connected to those of the institutions, with a relation of reciprocal influence, as in regard to some institutions, member states are the institution by itself. Member states are a key factor in the actors panorama of the Union, and therefore they have played as well a decisive role in the negotiation of the conditionality mechanism.

These states, all gathered in the European Council, have been constantly increasing the difficulty of the procedure of creation of the mechanism. During these past years, numerous European Councils and reunions of the Council of the EU have been necessary to finally approve the mechanism, after having achieved, supposedly, an agreement among the member states.

As the European Council conclusions of December 2020 show, the guidelines necessary to start applying the mechanism were to be made by the Commission "in close consultation with the member states"²⁵. Such a requirement automatically made the states the central actors of the conditionality mechanism, and therefore worthy of attention to their interests, as the "consultation" with them would be decisive for the future of the mechanism. The application of the mechanism was made subject to the voice and opinion of the member states. As well, this requirement reflects that the negotiation phase was also subject to the voice and opinion of the member states, as the pressure some member states exercised during the negotiation influenced it. If there wouldn't have been this influence by some states, the negotiation phase surely would have ended with a completely different result, that means, without such requirements as guidelines.

It must be stated that the power of the member states during the negotiations was exerted both in the European Council and the Council. The print of the negotiations in the former were translated into the guidelines, through the

24 Treaty on the European Union, Article 17, OJEU C 326/25 of 26.10.2012.

25 European Council, EUCO 22/20, CO EUR 17 CONCL 8, p. 2, 11 December 2020.

EUCO conclusions. On the other hand, the print in the Council was seen in the German proposal, which would be examined later.

According to liberal intergovernmentalism, represented by Moravcsik, national interests are not derived from the sovereign state's image of itself and the position it entails in the member states' panorama. Unlike this perception, national interests are shaped by domestic politics within each member state.²⁶ In this statement is where we found the basis of the analysis, since the interests of each member state have been shaped by the national context of each of them.

Actually, there have been, and continue to be, so many interests concerned in this procedure. Members states' interests are a driving force, sometimes in favor of pushing forward, and sometimes are a detriment posing obstacles. In this occasion, we can observe interests of different and varied nature. The weight and power of these interests have also been wide ranging. Despite the principle of equality among states governing in the foundational basis of the EU, it is true that not all the states' voices are heard always the same within the Council and the European Council. This fact depends on political, and even personal factors. Therefore, each state has fought for their own inner interest, but we can group them together mainly by states association which share a similar position, even if within the same group some states have led the way.

The main division apparently concerns those in favor of the mechanism and those against it during the negotiation phase. Poland and Hungary, not surprisingly, have been the actors most dedicated to fight against the mechanism and criticize its lack of legal certainty. The underlying reason for this outright position has been the fear both countries felt, as they were consciously aware that they were going to be indeed the first countries being targeted by the mechanism. They seem to have been united in the whole process, however we can also observe some differences regarding these both states, later explained. Differences with the other states of the Visegrad group can be remarked as well. On the other hand, we could say almost the rest of the states have been staunch defenders of the mechanism, with some exceptions such as Slovenia, but it is on their different interests where the key point lies, because some of them have interests of economic nature, others of geopolitical nature, and others simply defend the mechanism based on ideological reasons and their principles.

We find the so-called frugal states, an informal group whose members are not clearly defined, but their interests are. Furthermore, we can also observe the southern countries, not playing a fundamental role in the process of approbation of the mechanism, but with clear interests tipped towards one side of the scale, the economic one.

Moreover, there has been one state, Germany, whose behavior has been perceived as surprising by the rest of states, as well as has been openly criticized by them. We could classify the German position in a middle point between being a staunch defender of the mechanism and being a strategic actor looking more after its own interests than the general interest, that is, the full protection of the EU budget against rule of law violations.

3.1. Visegrad states

According to the Council of the EU, the Visegrad Group, better known as the Visegrad 4, is an informal framework for the relationship between its members, that is, Hungary, Poland, Slovakia, and the Czech Republic²⁷. The initial objective of the entity was to promote European integration and accession to the Union of these four countries, and once achieved, the main goal has been to increase and reinforce cooperation among them²⁸.

The political force of the Visegrad group has been remarkable and played an important role in community politics throughout the last decade, however the alliance has started to show weaknesses, political weaknesses overall. Some of these weaknesses are caused by the critics to the Hungarian government, accused of being an illiberal one by all its opponents²⁹, as well as by the political war between Brussels and the Polish government because of the

26 Cini, M. "Intergovernmentalism" in *European Union Politics*, 4th edition, Oxford University Press, 2013, p. 98.

27 Council of the European Union, *The Visegrad Group (V4)*, 2016.

28 Ibidem.

29 Herman, L. "The slow death of Hungarian popular sovereignty" *London School of Economics*, January 2019.

rule of law drift it has experienced in the last years, mainly linked to problems about the independence of its judicial power.

However, the main cause of the political weaknesses of the Visegrad group is because of the different paths their governments are taking. Actually, the choices Hungary and Poland are making, have fostered the fragmentation of the group, once united, as well as the decisions consequently taken by Slovakia and the Czech Republic. Instead of Visegrad 4, they are starting to be known as V2+2³⁰. Differences have increased among the group since the election of the new Czech Prime Minister, Petr Fiala, a pro-European politician, in November 2021³¹. The Slovak position towards Brussels and Western powers in general, differs also from the Hungarian and Polish one. The partnership Bratislava-Prague is more constructive in relation to European issues, and more approachable than the Budapest-Warsaw axis, based on the nationalist ideologies they have developed³².

These disparities between the members of the Visegrad Group are as well reflected towards the conditionality mechanism. All of them hold different positions in regard to it, but we could group Slovakia and the Czech Republic on one side, and Hungary and Poland by the other side, despite differences account among them in these two different subgroups.

One of the main points of disagreement among members of the V4 is the Russian issue. Governments such as the Hungarian one seems to be closer to the Kremlin than others, such as the Polish one. Slovak and Czech positions concerning Russia are also confused, because of their vague clarity of their actions and priorities.³³

3.1.1. Hungary

Hungary has absolutely been the rock in the conditionality mechanism's shoe. It is not interesting just to observe how the Hungarian attitude has developed through the negotiation process, but also indeed how the mechanism is going to be triggered against it, possibly³⁴.

The reality is that the Hungarian government has tried to show an image which does not coincide with the real one. Their strategy consisted in presenting the rejection to the mechanism based not only on economic reasons, but overall on ideological reasons. Their most valuable asset to do so was the defense of national sovereignty. However, this idea could be disputed, since, as we are going to observe, the Hungarian government was motivated by a monetary desire, and by a wish to protect its national budget.

Their fight against the EU has taken place since long ago. And it does not seem to be over soon. They see Brussels as the villain, imposing norms, laws, and indeed a "lifestyle". A lifestyle which Hungary does not seem to be willing to share. To be clear, we are not talking about a lifestyle, but about common values, principles, and European grounds. However, these words mean nothing to Hungary. The only matter to which Hungary awards respect and value, is its national sovereignty. And the problem lies here. Hungary is convinced that the European Union allegedly violates its national sovereignty. Every time the Parliament and the Council pass European legislation, it is interpreted as an invasion of national sovereignty by Hungary.

All European nations have the will to protect their sovereignty, if not, the European Union would already be a Federation. What other governments do not try, is to deceive their population by making them believe their government preserves its precious national sovereignty, while indeed they are profiting from them. Hungarian war

30 Bayer, L., Cienski, J. "The not-so fantastic 4: Central Europe's divided Visegrad alliance", *Politico*, 2022.

31 Iñiguez, G. "De Budapest a Berlaymont: el Estado de Derecho ante el ocaso de Visegrado". *El País: Agenda pública*, April 2022.

32 Moller, A. "Can Slovakia and the Czech Republic overcome Europe's east-west divide?" *European Council on Foreign Relations*, February 2019.

33 Kazharski, A. "The Visegrad Group: an uneasy balance between East and West. The Loop", *ECPR's Political Science Blog*, 11 May 2021.

34 By the time this thesis was written, the Commission had only sent the first notification to Hungary. Currently, the triggering process has advanced, with a further exchange of implementation measures between the Commission and Hungary to reverse the situation. Hungary has until 19th November to apply these measures, and the Commission will have possibly 10 days to review them (Zalan, E, "Hungary and EU approach year-end showdown on rule of law", *Euobserver*, 2022). By its side, the Council of the EU has until the 19th December to decide whether to adopt the measures the Commission has proposed related to Hungarian finances. Among them, a suspension of 65% of the commitments for three programmes under cohesion policy ("EU Budget: Commission proposes measures to the Council under the conditionality regulation", *European Commission* 2022).

against Brussels is championed by its complaint of losing sovereignty. However, the only reason it clashes with the EU is because democratic European policies decrease its politicians' capacity of power, as they are not designed to support authoritarian regimes. A community of values does not coincide with an illiberal government.

Hungarian politicians are getting used to take their own path, without respecting European guidelines and norms, which in truth are designed and thought to be applied equally by member states, in respect of the principle of equality and their equal treatment, something they usually demand to be respected. The illiberal drift of the Hungarian government has reached unimaginable levels.

A member state which dedicates itself to routinely violate rule of law, through several ways, couldn't stand in favor of its worst enemy: a mechanism economically sanctioning violations of the rule of law. Since the first moment, in May 2018, when the Commission launched the proposal for the mechanism, Hungary expresses manifestly its opposition to it. The first Hungarian reaction to the proposal was suspicion and mistrust.

Then, and still in office, Foreign Minister, Péter Szijjártó, suggested that the Commission's plan was to "blackmail" some member states. He alleged that funds must be disbursed to the States, according to the Treaties, and no other instrument could provide the opposite. The Minister also insinuated that the mechanism was not going to be triggered objectively, so he warned the EU executive to not introduce subjective criteria to decide when to apply the mechanism or not.³⁵

The then-president of the Commission, Jean Claude Juncker, specified that the proposal was not targeting directly any member state³⁶, because he wisely foresaw eastern countries were going to take the hint. Unsurprisingly, both Hungary and Poland understood that they were the main targets of the future mechanism and they felt threatened.

Hungary's main allegation to be targeted by the mechanism, concerned its refusal to accept the migration quotas to be allocated throughout whole Europe, established by the EU after the refugee crisis in 2015. Hungarian Minister of the Prime Minister's Office, Gergely Gulyas, expressed one time, that it was not they were against the mechanism, but simply thought, based on experiences, that political factors usually lie behind Commission's purposes.³⁷

As soon as in 2018, Viktor Orbán, the Hungarian Prime Minister, had already threatened to veto the Multiannual Financial Framework proposal for 2021-2027³⁸. This veto was prolonged until the very last moment, in December 2020, when we know that an agreement was reached in the European Council. But the path until reaching that point of the story was exhausting at least, from a negotiator point of view. The hindrances placed by Hungary were close to block the adoption of the mechanism.

A veto to the whole EU budget was the best weapon Hungary had in its power. Unanimity is required to approve the budget and both Hungary and Poland were going to take profit of that regulatory aspect. And for better or worse, a global pandemic arrived in the middle of the rule of law storm. While European nations were busy trying to deal with a pandemic, the negotiations of the mechanism became interrupted. Hungary had even more time to continue violating rule of law without any formal consequence. It was not until the German presidency when negotiations were reassumed, or at least gained more vital rhythm.

They exerted pressure over German presidency to modify as much as possible the initial Commission's proposal, and not just that, but also to get a backup with the conclusions of the European Council. The final text agreed in December 2020 did not please Hungary, therefore it seems even more logical that Hungary interposed objections to the initial text presented by the Commission in 2018.

When negotiations came in July 2020, Orbán was ready to block the budget, no matter what. A couple of days before the European Council, Orbán gave a speech in which he said the current priorities were not rule of law debates, but "resolve economic problems, restart our economies, start creating jobs"³⁹. This declaration generates suspicion

35 Wróbel, A. "Hungary rejects 'blackmail' through EU funds", *Politico*, 2018.

36 Brack, N., Coman, R. "Conditionality for protecting the rule of law: will it fly?", *Euractiv*, 2018.

37 Inotai, E. "Money talks: EU budget negotiations widen East-West divide", *Balkan Insight: Reporting democracy*, 2019.

38 "Poland plays down possible EU budget cuts", *Euractiv*, 2018.

39 Bayer, L. "No EU budget if rule of law discussed, Orbán says", *Politico*, 2020.

to some extent, taking into account the level of corruption of Hungarian government. Among Orbán's interests do not prevail the national welfare and national wealth, but his own and his closest. Furthermore, if his true and pure intentions were to revitalize the economy, he would have been the first to unblock the budget faster than what actually did. The result of his actions was exactly the opposite. Indeed, Hungary's economic situation was not at its best after the pandemic, as GDP fell by 13,6 percent in the second half of 2020, and their public debt increased to over seventy percent of GDP in the first half of the year⁴⁰. Be that as it may, Orbán should have unblocked the MFF before he did.

Orbán's demagogic ways can be found everywhere. There was an interview where he was asked about which was the Hungarian red line to not accept the budget, and what he will never refuse under any circumstances. His answer was as simply as "honor":⁴¹ What he did not clarify is if he referred to Hungarian national honor, or to his own honor.

As we will observe later, the position of most of the states during the negotiations was justified by a search of the interest of the state. Better or worse, the majority of the national leaders were thinking on their nations while discussing and bargaining in the Council. No matter if the interest was economic or geopolitical, but they looked for national benefit, Hungarian government however was close to damage its own nation, that is, they were close to lead the nation to a scenario in which no budget and no funds were disbursed for their European partners. But let's remind that includes them. In the previous financial period, Hungary was the largest beneficiary of European funds, per capita beneficiary⁴². If Viktor Orbán would have stayed firm in his decision of blocking the disbursement of the Recovery Plan and the general budget, national sovereignty wouldn't have been enough reason to convince a whole nation in need of economic assistance. The most credible scenario would then include the government manipulating the media to show a misleading version of the facts, trying to persuade the population to truly believe that Orbán's behavior had been the best option.

Anyway, that was not what happened. Luckily, Orbán came to his senses and was able to reach an agreement. The truth is that within the no-veto option, any agreed text would never convince Orbán one hundred percent. The only possibility to satisfy his desire of glory would have been to not pass the mechanism, but this option was out of the game, and he was aware of it.

Being conscious of the scare possibilities he had to be victorious, he just could play his bargaining chip: the veto. In fact, the veto was more a bluff than a real threat⁴³. The problem facing Orbán was that under any possible scenario, he would lose money. If he vetoed the MFF, he didn't get the money the country and his personal corruption network needed. And if he didn't veto the MFF and the conditionality mechanism was approved, he would also clearly lose money due to his executed violations of rule of law. Therefore, once he realized the veto was neither no longer an option, his next bargaining chip was to improve the conditions of the mechanism as much as he could. According to Patrik Szicherle, an analyst of the Hungarian Think Tank Political Capital, Orbán's plan was to "dilute the conditions enough to not limit his room for manoeuvre"⁴⁴.

The first round was in February 2020, with the president of the European Council, Charles Michel. He tried to get close to Hungary and Poland so they could reach an agreement. What Michel proposed to them was an attractive point. The president inverted the reverse qualified majority proposed by the Commission into a normal qualified majority. The reason was that Hungary and Poland felt more comfortable with it.⁴⁵

Furthermore, another point for Hungary and Poland was the specificity of "in a sufficiently direct way", also introduced by Michel in February 2020⁴⁶. All these changes proposed by the president of the EUCO were based on a

40 Jávör, B. "Orban's bluffing on a rule-of-law mechanism - here's why", *EU Observer*, 2020.

41 "Prime Minister Viktor Orbán's statement following his meeting with the President of the European Council", *Miniszter Elnök*, 2020.

42 Kölling, M. "The new conditionality mechanism for the protection of the EU budget: does the CJEU judgement give the all-clear?", *Real Instituto Elcano*, 2022.

43 Jávör, B. "Orban's bluffing on a rule-of-law mechanism - here's why", *EU Observer*, 2020.

44 Dunai, M., Charlish, A. "Poland and Hungary dig in over EU budget stand off", *Reuters*, 2020.

45 Müller, M. "Konsens um jeden Preis", *IPG*, 2020.

46 Draft Conclusions of the Special meeting of the European Council, 5846/20, February 2020.

series of bilateral meetings he had organized with most of the European Prime Ministers⁴⁷. The meeting with Orbán took place on 3 February 2020, and it was just the second meeting of the whole round⁴⁸.

Then, the role of mediator passed to Germany in June 2020 as holding the rotatory presidency of the Council. The role played by Germany, which is going to be analyzed with more detail lately, benefited Hungary and Poland. German relations with Hungary were overall of considerable weight to be relevant in the game. With the advantages Hungary had already won while negotiations were held with Charles Michel, Orbán should be content. Even more, taking into account the few possibilities he had of winning nothing more. However, he continued pressing alongside Poland and they got some additional changes to the proposal of the Commission. These changes tip the scales in Hungary's and Poland's favor, overall, the possibility of submitting the issue to the European Council if a country does not agree with the trigger of the mechanism against it. One of the most popular allegations of Hungary and Poland against the conditionality mechanism was that it transformed rule of law just into a political instrument⁴⁹. Nevertheless, awarding such power of decision to the European Council constitutes the real politization of the mechanism, and not the mechanism indeed.

This was the reflection of the real interests of Hungary. Knowing it could not stop the adoption of the mechanism, the only available possibility was to sabotage it.

After the negotiations with the German presidency previously to the EUCO in December 2020, the Hungarian Prime Minister declared he was hopeful to get his way in the EU budget fight. Furthermore, he thought that the agreement that possibly was going to be adopted, was a good outcome for both Poland and Hungary⁵⁰.

After the EUCO, Orbán also claimed victory in his fight against Brussels. He published in his Facebook profile: "Common sense has prevailed. We have defended the Hungarian funds"⁵¹. Based on his words, it could be stated that Hungary felt quite pleased with the final deal. Therefore, it does not fit how it later went before the Court of Justice claiming the mechanism lacked legal certainty⁵².

However, the truth is that despite the mechanism was adopted, it does not mean that Hungary is going to stop violating the rule of law⁵³. In those circumstances, and without it being necessary to take my analysis further, I am of the view, on the basis of the foregoing considerations, that Viktor Orbán used the situation to try to gain leverage in the negotiations. He was not motivated by a desire of pursuing the national interest, but his ambition of enriching himself.

There's also another branch of opinion, which considers that Orbán also has some diplomatic shyness. Orbán's party passed a declaration in the Hungarian parliament calling the prime minister to not approve any budget until the investigations over Hungary were withdrawn. The resolution also described the linking to values and democratic requirements as "unacceptable". This resolution was not binding, but indeed bound Orbán to the willing of the Parliament. According to Peter Kreko, the director of the previously mentioned Think Tank "Political Capital", Orbán wouldn't have vetoed the MFF if the only negative vote was his. His diplomatic image also mattered to the Prime Minister. However, if necessary, he would have had to do it, because the other way around, the national parliament would have seen it not just as an offense, but as a signal of disrespect.⁵⁴

47 Drachenberg, R. "The European Council and the 2021-27 Multiannual Financial Framework", *EPRS*, 2020, p. 4.

48 "Weekly Schedule of President Charles Michel", *European Council*, 2020.

49 "Joint Declaration of the Prime Minister of Poland and the Prime Minister of Hungary", *Poland in the EU*, 2020.

50 Bayer, L., Wanat, Z. "Orbán: agreement close on rule of law in EU budget battle", *Politico*, 2020.

51 Inotai, E., Sirotnikova, M., Gosling, T., Ciobanu, C. "Democracy digest: battle of the budget has Poland and Hungary claiming victory", *Balkan Insight: Reporting Democracy*, 2020.

52 Case C-156/21.

53 Gros, D. "The European Council's compromise on the Rule of law Regulation", *CEPS*, 2020.

54 Simon, Z. "Orban raises ante over EU virus aid with rule-of-law 'blackmail'", *Bloomberg*, 2020.

3.1.2. Poland

The previous section has analyzed the reasons why Hungary adopted its position. The next chapter will then explain the reasons underlying Polish place could think the situation is quite the same as the Hungarian one. However, areas where significant differences between Hungary and Poland have been found, include numerous realms.

First difference lies on the type of relation with rule of law they have. While Hungarian most highlighted problem is corruption and the lack of media freedom, in Poland the outstanding issue is judicial independence.

This difference matters indeed. If we talk about a mechanism that can only be triggered if a link between the violation of rule of law and the budget can be established, everyone can imagine that linking corruption with the EU budget is easier than linking judicial issues with damage to the sound management of the community budget. It's more complicate than with Hungary, but in fact, if the judiciary is politicized and controlled by the government, surely this violation would end up having an impact on the management of the budget.

These differences of both allies' places were reflected also during the negotiations. One of the most important differences between Hungary and Poland was polished internal division within the government concerning their position towards the mechanism. The Polish government is led by a ruling coalition called the United Right coalition, composed by several parties, among them, the Law and Justice (PiS by its initials in polish) and smaller parties such as United Poland and Accord⁵⁵. A core party left the coalition in 2021 due to disagreements with PiS about tax policy and media law⁵⁶. However, differences among the two parties were also in relation to European issues, and as expectable, in relation to the conditionality mechanism.

Jaroslav Gowin, the leader of Accord, was Deputy Prime Minister in the ruling coalition. Internal divisions were manifested during the negotiations of the mechanism, and overall, when the blockade of the MFF was at its worst in December 2020 just previous to the agreement being reached. Morawiecki was at the front line of the negotiations, but of course it was not the only one. Gowin had also a say in the negotiations. He was more optimistic than the PM towards the adoption of the mechanism. Indeed, he was more open to negotiations and placed fewer barriers.

Even though, the most radical position within the Polish Government was held by the Minister of Justice, Zbigniew Ziobro, from the arch-conservative party United Poland. He saw Morawiecki as moderate, not to talk about Gowin⁵⁷. Ziobro's slogan was "veto or death", while Gowin's one as "veto was death"⁵⁸.

Ziobro held the idea of maintaining the veto no matter what. His main worry was that if Poland did not fight strongly in the mechanism battle, a wide range of people would lose confidence in the PM, namely the religious conservative. Accepting the budget along the mechanism was interpreted by a few as the same as accepting liberal policies, such as LGTB marriage.⁵⁹

Contrary to what the other party leaders of the coalition considered, Gowin was not in favor of the veto option, but supported the idea of reaching a compromise between the parties. He was aware that Poland couldn't afford economically lose that amount of money if they blocked the budget.⁶⁰

The former deputy PM stated that Poland could agree with the conditionality mechanism if a binding declaration, approved by the member states, about how the mechanism was going to be applied and explaining the link between the funds and rule of law.⁶¹ Gowin belonged to the moderate branch of the government, therefore his proposal fits with its political ideas. But this was just his individual approach, not the view of the government altogether.

55 "Poland's ruling nationalists cement new coalition deal", *Euractiv*, 2020.

56 Wanat, Z. "Polish ruling coalition collapses amid media law protests", *Politico*, 2021.

57 Inotai, E., Ciobanu, C. "Hungary and Poland play 'who blinks first?' with the EU", *Balkan Insight: reporting democracy*, 2020.

58 Inotai, E., Sirotnikova, M., Gosling, T., Ciobanu, C. "Democracy digest: battle of the budget has Poland and Hungary claiming victory", *Balkan Insight: reporting democracy*, 2020.

59 Ibidem.

60 "Poland ready to drop EU budget veto for EU summit declaration on rule of law", *Euractiv*, 2020.

61 "Cracks showing in Polish ruling coalition over EU budget veto", *Euractiv*, 2020.

The fact that finally Poland actually did not veto the budget does not answer to Gowin decision. It is improbable that he got to exert that much influence over Morawiecki and the rest of the government so he changed his mind. Morawiecki realized by his own, as well as Hungary, that Poland did not have any other way out. It is even possible that Morawiecki's original thought was not to support the veto, but at some point of the negotiations he could let himself be carried away by external factors. This leads us to the next point, the figure of the PM himself.

He is the most eurosceptic PM Poland has seen since the end of communism in its country⁶². However, while being eurosceptic, it seems quite surprising how the main reason argued by Morawiecki to justify its opposition to the mechanism, has been allegations to European unity. He warned that linking funds to democratic standards endangers European unity and could create the breakup of the union. He also tried to justify the use of the veto because he considered it would be to the benefit of the whole Europe.⁶³

This attitude shown by the Polish prime minister is considerably different to the one showed by Viktor Orbán. Orbán's character was more aggressive during the whole process of negotiation, translating it into Hungarian hard opposition and abrupt. It is not that the Polish one was amicable in fact, but there was a difference among both PM strategies. Hungarian PM did not use at any moment the card of "European unity" and "the benefit of the whole Europe." Possibly Morawiecki did not care neither about European unity, but he dissimulated it. Orbán did not even pretend to.

Allegations of Poland to reject the mechanism have also to be observed. One of the reasons Poland claimed the most was that the mechanism was trying to substitute Article 7 of the Treaty on the European Union⁶⁴, an article which serves as an instrument to annul powers of member states who are found to be violating foundational values of the EU, such as rule of law. Creating another mechanism but with different types of sanctions contradict the Treaty and the general logic, according to the Polish government⁶⁵. It is rather clear that both instruments are not the same at all, neither in purpose and in content, nor in procedure. Comparing one with the other is simply another attempt of Poland to discredit the mechanism. Equalize them would mean that there's no need to the creation of the second one, so that just Article 7 remains, and we already know that Article 7 proceeding is controlled by the alliance of Poland and Hungary.

Another reason argued by Poland was that the mechanism implied an unequal treatment of EU member states. Polish Europe Minister, Konrad Szymański, insinuated in 2018 that the Commission proposal of the mechanism was guided by political discretion, indeed contrary to rule of law principles. He claimed, "A legal norm must be clear and it cannot be an object of political emotions."⁶⁶ Polish argument couldn't be sustainable taking into account its high level of politicization of the judiciary. A country which does not have a clear division of powers, since indeed the executive can be said that controls the rest of powers, can't demand that European legal norms can't be an object of political emotions.

The final result of the negotiations implied some advantages for Poland. For instance, the addition of the requirement of the violation affecting the budget in a "sufficiently direct way" benefited Poland more than Hungary. Now it is not enough to make a link between the breach and the management of the budget, but the link has to be sufficiently direct. If it is difficult to establish apparently a bound between lack of judicial independence and a bad management of the community budget. There could be of course a link, the problem is that perhaps not "sufficiently direct". Poland scored a point in favor.

On the basis of the already stated considerations, it may seem than the Polish government chose a softer approach towards the mechanism than the Hungarian one. Apparently, they were united and therefore their position was unanimous. However, behind closed door each of them held different interests, and their place was influenced by different factors. Poland was slightly more criticized by the European executive than Hungary. Actually, it was

62 Sirotnikova, M., Inotai, E., Gosling, T., Ciobanu, C. "Democracy digest: Hungary and Poland remain defiant over EU budget Block", *Balkan Insight: reporting democracy*, 2020.

63 Von der Burchard, H. "Hungary and Poland escalate budget fight over rule of law", *Politico*, 2020.

64 Ananicz, S., Buras, P. "Five Polish government claims about the EU budget debunked", *Notes from Poland*, 2020.

65 Ibidem.

66 Bayer, L., Gray, A. "Brussels unveils battle plan to hit 'illiberal democracies'", *Politico*, 2018.

the European Parliament the institution which triggered Article 7 against Hungary, while it was the European Commission the one initiating the instrument against Poland⁶⁷. Poland has not enjoyed the protection Hungary had due to its membership of the EPP. Nor it had the close link with Germany that Hungary had. It can be stated that Poland was more cornered than Hungary and therefore it adopted a softer attitude. Probably it felt that lacking the “protection” Hungary enjoyed, its position was weaker, and it must not endanger its place.

However, although differences account between the two allies, the underlying ground of their rejection towards the mechanism is the same: power which brings them money, and money which brings them power. Poland, to a lesser extent than Hungary, also has a corrupt renown. According to Transparency International, in 2021, Poland scored 56 points out of 100, being 100 the less level of corruption⁶⁸, and Hungary scored 43 out of 100⁶⁹. It is not a good result for neither of them, showing a desire of economic benefits and a corrupt trend which betray themselves. They found the perfect ally in each other, and they obtained advantages that individually wouldn't have been possible.

All the foregoing considerations are related to the time of negotiations of the mechanism, that is, till December 2020. What happened after the mechanism has been adopted was not the objective of this thesis. However, the outcome of the occurrences is worthy of attention. Actually, the Commission sent a letter in April to Hungary communicating that it was going to trigger the mechanism, due to serious concerns regarding the use of funds in EU-funded projects⁷⁰.

Poland has escaped the mechanism, for now. One could think that the current situation motivated by the war in Ukraine, has something to do, but again, that analysis does not fit the purpose of this work. Furthermore, linking the outcome of the proceedings with the position adopted by Poland during the negotiations would be ventured, as there's no objective foundation to think so. It would just be a possible theory, such as many other possible theories.

In any case, Poland has not been the target of the mechanism, while Hungary has been. Maintaining a similar approach, and constituting an apparently non-breakable alliance, has been of no use for Hungary.

3.1.3. Slovakia

Slovak place in this subject has been radically the opposite to Hungary and Poland. Visegrad countries may share lots of interests and aspects because of obvious reasons, but rule of law is precisely one of the points in which these member states differ.

Just as soon as the Commission's proposal of 2018 regarding the conditionality mechanism saw the light, Slovakia made no complaint in relation to it. As Peter Javorcik, who was the permanent ambassador of Slovakia to the EU at the moment, said “Bratislava has no problem with rule of law as a condition for the implementation of EU funds”⁷¹, in contrast to Hungary and Poland's first reactions, which were quite more sceptic, doubting about the legality of the proposal. Furthermore, Slovak Minister of foreign affairs, Ivan Korčok, also stated the overriding need to link the EU funds to a mechanism of respect to rule of law, indeed, he didn't foresee a new European budget without it⁷². The disagreement with Hungary and Poland was such, that the minister said that cultural and ethical matters were not part of the accomplishment with rule of law in the mechanism, neither migration issues, since Hungary had argued that the regulation was an attempt to punish those states which reject refugee quotas⁷³. In an attempt to bring positions closer, the Minister said he will try to convince his Hungarian and Polish partners not to block the compromise deal on the budget and Recovery Plan⁷⁴.

67 “Rule of law in Hungary and Poland: plenary debate and resolution” in *Plenary Sessions*, DG for Communication, 2022, p. 13.

68 “Country data: Poland”, Transparency International.

69 “Country data: Hungary”, Transparency International.

70 Bakó, B. “How Hungary might avoid the suspension of EU funds”, *Balkan Insight: Reporting democracy*, 2022.

71 Zalan, E. Visegrad Four “nothing to hide” on rule of law issues, *EU Observer*, May 2018.

72 Martin, A. “Globsec Intelligence Briefing”, *Globsec*, 2020, p. 3.

73 Matisak, A., Frantova, E. “Korčok: Apoyamos el estado de derecho”, *Pravda*, 2020.

74 Brzozowski, A., Plevák, O., Gabrizova, Z. “Rule of law causes cracks in Visegrad Four”, *Euractiv*, 2020.

There have been also some statements in the European Parliament by Slovak MEPs, such as Michal Simecka, from the Renew Europe Group, claiming the usefulness of the rule of law conditionality mechanism. He has argued on several occasions, the EU funds must be spent in a proper way, especially the ones of Next Generation EU, which shall not “end up in the pockets of oligarchs”. In addition, he has refuted the Hungarian complaints arguing the mechanism would actually damage the citizens of the states observed under the mechanism. The Slovak MEP considers the goal of the mechanism is radically the opposite, as the regulation is intended to protect the final beneficiaries of the funds no matter what.⁷⁵

There are more MEPs from different political parties who have expressed their opinion concerning the mechanism. These MEPs reacted to the sentence of the Court of Justice of the EU, declaring the legal validity of the mechanism, after the Hungarian and Polish lawsuits. The overarching opinion from all of them is a generalized support towards the ruling and the mechanism itself. They showed with their statements the necessity to have a democratic government, not spending the funds corruptly, and being subject to the values and principles of the EU. They also criticized the fact that Poland and Hungary were the ones appealing to the CJEU, but once the verdict has been ruled, contrary to their willingness, then they bring into question the power of the Court and its political neutrality.⁷⁶

Actually, the fact that Slovak politicians showed its support to rule of law is not a decisive fact to interpret consequent support to the mechanism. Indeed, Hungarian politicians also declared the importance to safeguard rule of law, when the Commission launched the proposal of the mechanism in 2018⁷⁷. The real signal of support to the mechanism is not criticizing it. They both supported publicly, with words, rule of law, but the main difference between Hungary and Poland, and Slovakia, was that the former feared the mechanism, while the latter did not.

However, the Slovak position is neither the most aligned with other members' positions. Last October, after the ruling of the Polish Constitutional Court declaring the incompatibility of some provisions of the EU treaties with the Polish Constitution, some member states such as Belgium, Netherlands or Luxembourg, declared that the conditionality mechanism should be immediately activated. Eduard Heger, Slovak Prime minister, however advocated for the preservation of unity instead of implementing the mechanism, as he thought that any escalation of tension would be counterproductive.⁷⁸

The Slovak position could be greatly described as a prudent one. Slovakia is aware of its limited political influence, even compared with its neighbors Hungary and Poland. Such limitation could make these member states widely dependent on them. Currently, if Slovakia would have this dependence on Hungary and Poland, and alignment with them, could lead Slovakia to a non-desirable position in the European panorama. It has played its cards wisely on this occasion. It knew that remaining on the illiberal side with its partners would be a synonym of sharing that illiberal drift. It is in Slovak interest to adopt a pro-rule of law point of view. The image it reflects towards western Europe, overall, would perhaps be useful for Slovakia in other matters. It had to take a stance, and it clearly did. The fact that Slovakia belongs to the Euro zone, because it uses the Euro as its currency, also plays a vital role to tip the scales in favor of Western Europe instead of Hungary and Poland. The bonds Slovakia has with western Europe, including economic bonds, make clear that it does not want to distance itself from these states' stance about the conditionality mechanism.

However, it must also be stated, that a complete disassociation of Slovakia from its Visegrad counterparts, wouldn't be either an intelligent movement. Therefore, Slovakia had to be cautious when it came to the negotiations. Its position could be interpreted similarly to the Austrian one to some degree, but more politicized and “prisoner”, as it belongs to a states group with the other, unlike Austria.

75 Sirotnikova, M., Mr Rule of Law seeks to fix Europe's crisis in values, *Balkan Insight: Reporting Democracy*, November 2020.

76 Oficina del Parlamento Europeo en Eslovaquia, “Reacciones de los eurodiputados a la sentencia del TJUE”, 2022.

77 Zalan, E. “Visegrad Four ‘nothing to hide’ on rule of law issue”, *EU Observer*, 2018.

78 Europa Press, Los líderes de la UE se debaten entre el dialogo y la sanción para responder al desafío de Polonia, October 2021.

3.1.4. Czech Republic

Analysis concerning the Czech government's position during the negotiations differs also from the Slovak one. Czech place entails its own particularities, and if it must be said, a more challenging one than the others.

Hungary and Poland are clearly against the mechanism, and they hadn't any qualm to express it. Slovakia, objectively declared from the very beginning its support to the mechanism, as it didn't have any objection, nor fear, towards it. What is confusing is the Czech attitude, positioning itself in a middle point, which is not clear at all.

One of the first facts influencing Czech ambiguity is the two different governments it has witnessed, each of them with approaches towards the mechanism, towards rule of law, and towards its neighbors, completely diverse.

Firstly, under the government of Andrej Babiš, Czech Republic can be said that it was nearer to the side of Hungary and Poland than to the rest of member states. His government was close to be considered Eurosceptic, not to mention the accusation to the Prime Minister of conflict of interests⁷⁹.

The European Commission made an audit to investigate "Agrofert", an agricultural conglomerate owned by Babiš, previously to being Prime Minister, supposedly. The audit elucidated that indeed Babiš continued controlling the agricultural conglomerate, despite he had put his assets into trust. He still controlled the business and of course the disbursement of EU funds to it. In doing so, he was violating the EU Conflict of Interests Act.⁸⁰

Obviously, this issue raised lots of suspicions around the following question: Had this conflict of interests affected the management of EU budget? Commissioner Johannes Hahn himself clarified in a statement before the European Parliament, that "no expenditure was so far declared for any of the operations affected by this audit, therefore the Union budget has been and remains fully protected"⁸¹.

Despite the Commissioner's declaration, lots of political parties have demanded the application of the conditionality mechanism to the Czech Republic, as they consider that such a violation of rule of law is directly affecting the sound financial management of the EU budget⁸². The Commission can't trigger the mechanism against the Czech Republic until it can be proved that the breaches of rule of law have had an impact on the budget. Nobody doubts the violation of rule of law itself, it is clear that the Prime Minister was guilty of using his power to carry out a conflict of interests. But if his fact can't be linked to a damage of the budget, the mechanism must remain out of action.

In any case, what must be observed is the Czech disposition to accept or reject the conditionality mechanism while it was negotiated. From the outset, the Czech attitude towards the mechanism was not one of complete rejection, but also neither of complete alignment.

After the Commission proposal in 2018, the Czech State Secretary for European Affairs, Milena Hrdinkova, wanted to make sure that the conditions to apply the mechanism were transparent and they "avoid any biased or priority treatment"⁸³. She wanted to assure equal treatment and that the Czech Republic did not end damaged by this mechanism, but at the same time showing friendly support. Therefore, she treaded carefully.

Furthermore, another reason why it was thought that the Czech Republic measured carefully its words, was that Vera Jourova, the Czech commissioner, was in charge of the portfolio of values and transparency⁸⁴. Positioning radically and manifestly against the mechanism while having a Czech commissioner in charge of dealing with these issues, would be shocking at least. They could take advantage of Jourova's post to associate her reputation with a general pro-rule of law Czech image.

Actually, the Czech government supported the proposal made by Germany and adopted by the Council in agreement with the Parliament on November 2020 and did not endorse its Visegrad fellows' mutiny to the MFF⁸⁴. Foreign

79 Anderson, R. "Money talks: EU budget negotiations widen East-West divide", *Reporting democracy, Balkan Insight*, 2019.

80 Mortkowitz, S. "Babiš under fire after Commission audit published", *Politico*, 2021.

81 European Parliament, "Conflict of interests and misuse of EU funds: the case of Czech PM Babiš", 2021.

82 Banks, M. "MEPs step up pressure on Commission to take action over rule of law breaches", *The Parliament Magazine*, 2021.

83 Anderson, R. "Money talks: EU budget negotiations widen East-West divide", *Reporting democracy, Balkan Insight*, 2019.

84 Ibidem.

Affairs minister, Tomáš Petříček, stated that they “cannot always agree with our partners in the V4” because they fully believe in European values and principles, and he also asked for the urgency of adopting the budget as soon as possible so funds could start to be disbursed,⁸⁵ the same request as many other member states.

However, there was an interesting plot twist on the 9th of December 2020, when both Czech President, Miloš Zeman, and Polish President, Andrzej Duda, hold a meeting in Prague to discuss European issues⁸⁶. Clearly, the intentions of the Polish president were to persuade, or at least wormed information out of the Czech president about how was going to approach the Czech government the European Council of the following days. The result of the meeting was quite surprising. Zeman announced that the Czech Republic, and all the Visegrad Four together, should be united in the battle of the negotiations of the MFF and the conditionality mechanism it entailed, and show their support towards Hungary and Poland⁸⁷. Zeman also expressed, in what seemed a yearning for the past, that the unity the V4 reflected during the migration crisis helped them to avoid the quotas the EU had established⁸⁸. Zeman distanced himself from the position the government had hold till that moment, more cut off from Hungary and Poland, as we have seen with the statements of different politician leading figures.

It must however be stated, that Zeman was hoping to achieve a deal between his partners and the German presidency⁸⁹. Anyway, manifestly positioning on the Hungarian and Polish side was a risky movement. The Czech Republic already found itself in a complicated situation, because of Babiš’s issue. It could have ended up being also target of the mechanism. Surely, the Czech position in the last moment did not please the rest of member states.

Having said that, it was surprising, again, that the Czech Republic voted in favor of the conditionality mechanism at the end, contradicting its Visegrad colleagues– just Hungary and Poland. It is confusing the mixing of actions, positions, and perhaps strategies, that the Czech government followed. The only logical explanation is that Zeman decided to follow his own path, clearly different from the one the government had adopted. And at the end of the day, what mattered was the strategy of the government, and not the strategy of the President. In any case, Zeman was trying to maintain the bonds with Hungary and Poland as a unique bloc, the Visegrad States. It would not be a bad move if the Czech Republic’s intention would be to take also an illiberal drift. If the three actors would share a common goal, a common bloc and position would have been clearly stronger. But the point is that Czech Republic’s plan was not indeed to follow the Hungarian and Polish path in Europe. Everything changed, once more, with the elections of November 2021, when the Czech position towards the conditionality mechanism turned completely different. Indeed, not only the place during conditionality mechanism negotiations changed, but the general Czech place in the European panorama. This position has been mainly shaped by its new political leaders.

In November 2021 the state saw a change of government, now led by the pro-European Petr Fiala. One of the first changes the new prime minister made just-arrived to the office, was the appointment of Jan Lipavský as the new Foreign Affairs Minister. He is a well-known young pro-European politician, willing to change the course of the foreign affairs of his government, more inclined until the moment towards Russia and China than towards Western Europe and the United States.⁹⁰

With this appointment, the new government wanted to clarify its position in the European panorama and show that they don’t share the illiberal drift of Hungary and Poland⁹¹.

The position of the Czech Republic towards the mechanism has been lately perhaps more observed than that of Slovakia by the other members as regards the upcoming presidency of the Council of the EU by the Czech government in July 2022.

85 Janebová, P., Dostál, V., Havlíček, P. “EU budget and the Recovery Fund” in *Agenda for Czech Foreign Policy*, Association for International Affairs, 2021, p. 33.

86 Brzozowski, A., Plevák, O., Gabrizova, Z. “Rule of law causes cracks in Visegrad Four”, *Euractiv*, 2020.

87 “El presidente Zeman se reunirá con su homólogo polaco Duda la próxima semana”, *Eurozprávy*, 2020.

88 Janebová, P., Dostál, V., Havlíček, P. “EU budget and the Recovery Fund” in *Agenda for Czech Foreign Policy*, Association for International Affairs, 2021, p. 33.

89 “Czech President Zeman supports Poland and Hungary in dispute with EU over rule of law”, *Remix*, 2020.

90 Ibidem.

91 Mortkowitz, S. On Day 1, new Czech Prime minister turns West. *Político*, 2021.

3.1.5. Slovenia, Bulgaria and Romania

Bulgaria was the country holding the presidency of the Council of the EU when the Commission launched the proposal for the conditionality mechanism in 2018⁹². The first reaction that Bulgaria showed was manifested by its Finance Minister, Vladislav Goranov, who stated that Bulgaria is completely in favor of rule of law and supremacy of rules, but not in favor of imposing political interference or unequal treatment among countries⁹². He also declared that Bulgaria would not say anything further in relation to the proposal for the moment, since it had to seek consensus as holder of the presidency⁹³, rather than feeding gaps between states in favor of the proposal and states who had also revealed their dislike towards it.

Romanian government did also express its disagreement with the idea of linking the budget to the rule of law even before the proposal of the Commission. In February 2018, the Romanian Foreign Affairs minister, Teodor Meleşcanu, said that linking the funds to other elements would be a violation of EU principles and that it would be against the initial aim of the disbursement of funds that is solidarity and convergence⁹⁴. This country then indicated its dissent from the very first moment, alleging that is “does not conform to the treaties”⁹⁵.

During 2019 Romanian rotating presidency, this member state was not able to achieve the so wished consensus on the budget, although some steps forward were produced. Romania had not neither the diplomatic impetus that Germany had during its presidency –next following Romania–, nor the stimulus needed to boost such a new instrument. The Romanian presidency was held by the Social Democrats, the same that had shown a strong disagreement with the proposal in 2018.

It was not until the end 2019 when Romania changed completely its approach towards the mechanism. In 2020 PM Ludovic Orban adopted the opposite position compared to his predecessor, urging Poland and Hungary to unblock the negotiations of the MFF by accepting the rule of law conditions⁹⁶. The difference of opinion between both politicians lies in the different political parties they belong to. Teodor Meleşcanu belonged to the Social Democratic Party, while Orban was part of the National Liberal Party (part of the EPP). Indeed, the PM during the final negotiations of the mechanism, that is in the EU CO of December 2020, was Nicolae Ciucă, the current PM, also from the National Liberal Party.

PM Ludovic Orban’s place towards rule of law differs from the Social Democrats, who, according to him, were the ones introducing reforms in Romania affecting the judiciary. He claimed that his government has changed its attitude when talking about rule of law and justice, and corruption. Therefore, they completely supported the rule of law conditionality mechanism.⁹⁷

The truth is that despite both member states are subject to the process of Cooperation and Verification Mechanism, according to the assessment of the Commission, both of them are achieving notorious progress and the goals established for them⁹⁸. Wisely, Romania has opted for the rule of law side. Following a political strategy or not, the result is that it is solving step by step its corruption problems and its judiciary problems. Being realistic, if the Commission has not triggered yet the mechanism against Poland, Romania can remain peaceful, since it is not the most probable next target.

What is more interesting is the Slovenian position in the negotiations of the conditionality mechanism. Slovenia is not part of the Visegrad Four, and despite that, it has been the only member state openly supporting and taking the

92 Iñiguez, G. “De Budapest a Berlaymont: el Estado de Derecho ante el ocaso de Visegrado”. *El País: Agenda pública*, April 2022.

93 Council Decision (EU) 2016/1316 amending Decision 2009/908/EU, laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, OJUE, L 208/42 of 2 August 2016.

94 Gotev, G. “Bulgaria dislikes Commission plan to link EU funding to rule of law”, *Euractiv*, 2018.

95 Ibidem.

96 “Romania backs Poland in rejecting EU funding conditionality”, *Euractiv*, 2018.

97 Gotev, G. “Bulgaria dislikes Commission plan to link EU funding to rule of law”, *Euractiv*, 2018.

98 Rosca, M. “Hungary and Poland must back down in EU budget fight, says Romania’s PM”, *Político*, 2020.

Hungarian and Polish side in the fight against the mechanism. The only possible reason underlying this support is that Slovenia also felt frightened of being a target of the mechanism.

Indeed, there were five members of the European Parliament who asked for the trigger of the mechanism against Slovenia, since its PM, Janez Janša, has been accused of undermining the media and the judiciary in his country⁹⁹.

3.2. Germany

The German position regarding the rule of law conditionality mechanism has been probably the most interesting one among all the member states. For better or worse, Germany held the rotatory presidency of the Council of the EU from June 2020 until December 2020, matching the months of most workload concerning the mechanism. The period September-December was decisive to reach an agreement between the Council and the Parliament, and between the member states themselves. Prior to the work done by the German presidency, the Romanian presidency from January 2019 until June 2019 was also remarkable as the first steps right after the proposal of the Commission. However they did not have a repercussion as huge as the German proposal. It was in these months when the first reading of the Parliament took place, in April 2019.

Germany was entrusted with the difficult task of finding a solution to the blockade of the different positions of the member states¹⁰⁰. The interests of the states, as varied as possible, came into the surface, and brought serious problems that were leading the agreement into a dead path without end.

It was not only the entrusting from the other member states that put pressure on Germany, but it was also the ambition desired to score the victory of having achieved to approve this regulation, a mission that apparently seemed impossible at every stand. However, Germany had also two heavy factors constraining it from solving the situation by its own means. These factors were, on the one side, the economic relations Germany maintains with Hungary and Poland, and on the other side, its reliance on the European People's Party, of which Merkel's CDU is a member.

Regarding the first one, it shall be pointed out that among a list of several factors that compose Germany as a strong economy, there are some academics who find that an important one is the close economic relationship with Central and Eastern Europe, the Visegrad 4 group concretely¹⁰¹. Regarding both foreign trade and outward processing traffic of the Central and East European countries there were 3 main states during the 1990's decade which occupied large shares, Germany, Italy and France, but Germany has the biggest share among them all¹⁰². However, in the 2010 decade, the country which had more shares of foreign direct investment flows in the V4 was The Netherlands, concretely in Poland it was bigger than Germany, while in Hungary it was the German state the one that maintained the first position in the podium¹⁰³. Another remarkable factor in the economic relation between Germany and the V4 is the production of components for automobiles, which mostly takes place in Hungary, as well as the production of components of electro- mechanical machines¹⁰⁴.

The whole European community expected from the German presidency to solve the situation not as a fair arbitrator, but as a biased one who would defend the rule of law, no matter what consequences there would be, including the economic ones. However, that scenario was not real, and Germany behaved exactly as every other single state would have done, protecting its interests. Possibly, Germany did not want to endanger one of its most important economic partners, the Visegrad Group. Taking a clear stance in favor of the mechanism would have offended Hungary and Poland mostly, and possibly they would have adopted an economic and commercial answer to German actions. It is in the interest of the German industry to maintain subsidiaries of its firms in the Visegrad states and to obtain cheaper transport for the products than if they were produced in Asia, besides the cheap labor force that Germany

99 Hopkins, V. "Romania PM berates Poland and Hungary over EU budget veto", *Financial Times*, 2020.

100 "The reports on progress in Bulgaria and Romania", European Commission.

101 Midžić, Z. "MEPs call for rule of law conditionality to be triggered against Slovenia", *Euractiv*, 2021.

102 Palop, J. ¿Hasta dónde pueden llevar Hungría y Polonia su pulso con el presupuesto de la UE?, *Esglobal*, November 2020.

103 Koyama, Y. "Germany: Core of EU-Visegrad Economic Relations", *Historical Studies of Socialist System*, No. 17, February 2021, p. 3.

104 *Ibidem*, p. 7.

finds in Hungary and Poland in comparison with Western countries. Another decisive factor is that Hungary has the lowest corporate tax rate in the EU, being a 9% in 2021, when the EU average is close to 20%¹⁰⁵. Nobody can assure what would have been the reaction of Hungary and Poland if Germany would have had a more forceful position defending the conditionality mechanism, but possibly they would have slowed down the intensity of their economic relations and would have put hindrances to the establishment of German firms on their territories, maybe favoring their relations with other states such as Russia.

Regarding the second factor, the dependence of the EPP, it must be said that the figure of Merkel by her own was also an important factor to consider during the negotiations of the regulation. She is characterized for her aversion to confrontation and for her taste for grey positions, neither completely white nor black, greys where she finds consensus, but consensus which do not please anyone at its fullness.¹⁰⁶

Merkel recognized it was necessary to adopt concessions by each party of the agreement, which means concessions from Hungary and Poland and concessions from the rest of the Council. She was sure a compromise was necessary to make the mechanism work, but she was pressured to not change a single word of the proposal and reaching an agreement at the same time¹⁰⁷, a task quite difficult. Germany's reputation as a diplomat would be in question if it did not achieve to come to an end of the blockade of the budget deal, but Merkel's legacy would be also put into question¹⁰⁸.

Surely Merkel was worried about the illiberal drift of Hungary and Poland, and as a good German, the European finances surely were also among her concerns. In a press conference, Merkel expressed these demolishing words: "To link funds to the rule of law, you first need funds"¹⁰⁹. And she was right indeed. No politician who lends himself to look after the interests of Europe wouldn't be worried about the sound management of European money. However, this must be counterbalanced by national worries.

It is neither surprising the fact that Merkel was inclined towards supporting Orban's Fidesz party during her legacy, as they have had good relations between them. Among their interests we find that Merkel wanted Fidesz seats in the European Parliament as part of the European People's Party to help it to be the first largest party in the EP¹¹⁰, which is the same as saying that Merkel wanted to have power secured in her favor when shaping European politics. By contrast, what Orban got from this partnership was legitimacy. If Hungary was seen as having the protection of Germany, it would attract more sympathy and overall, foreign direct investment. Besides, Merkel was one of the few who advocated for the remain of Fidesz in the European People's Party when it was suspected of being expelled, although finally it was the one who decided to leave it.

However, what is quite surprising is the fact that Merkel remained insistent in the protection of her relations with Hungary, while Orban was by his side hatching relations with Alternative für Deutschland, better known as AfD, the German far-right wing party.

Nevertheless, now the position of German chancellor is held by Olaf Scholz, things will turn differently for sure. Scholz belongs to the German SPD, being a member of the Socialist & Democrats in the EP. This chancellor, influenced by its political family, will not approach relations with Hungary in the same way as Merkel did. The question standing before us is, what would have happened to the conditionality mechanism if the German government would have been held by Olaf Scholz in December 2020, and therefore the German presidency of the Council would not have been led by Merkel. The scenario is completely hypothetical but serves us to understand the complexity of the issue. In this hypothetical case, Scholz, as German chancellor, would have had the same national interests as Merkel to protect industry and economic relations with Hungary. What would have been different is the EPP fact. Be that as it may, Scholz wouldn't have been constrained by any supreme political force and he would not have the necessity

105 Ibidem, p. 12.

106 Ibidem, p. 14.

107 OECD. Stat, Statutory Corporate Income Tax Rates, 2022.

108 Ibidem.

109 Von der Burchard, H. "Merkel says all sides must make compromises to break budget deadlock", *Politico*, November 2020.

110 Hegedus, D. The rule of law deal that saved Merkel's legacy. *EUobserver*, December 2020.

to please anybody to maintain power (as the EPP needed the MEPs of Orban), almost the opposite, the European S&D probably would have pressed Scholz to adopt a harder position towards Hungary and Poland during the negotiations than Merkel's.

Then the logical thing to think would have been that strong opposition, being taken by Germany, to any Hungarian interest in the negotiation during the last semester of 2020 to reach an agreement regarding the mechanism. However, considering recent events, such strong adversity towards Orban does not appear as clear as it may be. Viktor Orban recently won the Hungarian elections in April 2022, again. The general overview in the European panorama has been similar throughout different European capitals. Almost no European leader has congratulated PM Orban for his re-election¹¹¹, but the German chancellor has. On a statement on 22nd April, two weeks later after the elections, the German chancellor wished the Hungarian PM success in the new government¹¹². This event could lead us to think that at the end of the day Olaf Scholz may want to maintain a good relationship with Orban, just as his predecessor did. Then, perhaps the hypothetical German attitude during the negotiation of the mechanism wouldn't have been different from the real one we are aware of.

What is clear is that the factor of German national interests is shared by both political families and leaders. In Merkel's case, this factor was aligned with and was of the same restrictive nature as the factor of her *modus operandi* and the EPP family, and therefore it serves anything trying to analyze which one of the factors had more weight, as the result would always be the same no matter which. The question is if Scholz would have been subject of any other pressing factor, of which nature would it have been? As we have said previously, maybe his side of the political spectrum, the S&D, would have established more pressure than the EPP on Merkel, to achieve a better deal. The benefits Germany could get from this, besides the clear winning for the rule of law, could have been translated into some degree of political benefits, regarding German relationship with the so called frugal states, whose position will be explained later. Having these states as synchronized partners with common positions on issues of such magnitude as rule of law, is of notorious interest to Germany. The question, once again, is if this interest would have surpassed the factor of national interests in relation to Hungary. Merkel, by her side, seemed to prefer maintaining relations with Hungary and Poland rather than with frugal states, since later it was criticized by them, as it was to be expected.

3.3. German proposal as holder of the council presidency

As a result of all the negotiations, and the pressure the German government was subject to, an agreement was finally reached among all member states. Germany succeeded in its mission of avoiding the veto posed by Hungary and Poland to the whole budget¹¹³, that was linked to the conditionality mechanism. Nevertheless, due to the success of the management of the situation by Germany, it has become a broad term and one open to debate depending on whom is asked.

Some consider that the agreement got by the German presidency was an expensive one, paying the price of a complete victory for Hungary and Poland, as following the conclusions of the European Council, the mechanism could only be applied after a pronouncement of the European Court of Justice on the issue. This time allowed was interpreted by some member states as a gift to the Polish and Hungarian government, that with that delay could have time to win the parliamentary elections of last April 2022, and the former would have time to finish with what's left of the independent judiciary.¹¹⁴

In September 2020, the German presidency put forward a proposal for the regulation of the conditionality mechanism¹¹⁵, modifying the original proposal of the Commission. The modification was interpreted by some as a watered-down version of the Commission's proposal from two years before¹¹⁶, and a took weak position by some

111 Makszimov, V. "Michel proposal offers Council more control over rule of law conditionality", *Euractiv*, 2020.

112 Daniel Kelemen, R. "The European Union's Authoritarian Equilibrium", *Journal of European Public Policy*, 2019, pp. 6-7.

113 Michalopoulos, S. EU democratic leaders turn their back on Orbán, *Euractiv*, 2022.

114 Die Bundesregierung, Bundeskanzler Scholz gratuliert dem Ministerpräsidenten von Ungarn, Dr. Viktor Orbán, 2022.

115 Alemanno, A., Chamon, M. "To save the rule of law you must apparently break it". *Verfassungsblog*, December 2020.

116 Steinbeis, M. "If that's the happy ending, could I have another loo at the unhappy ending, please?". *Verfassungsblog*, December 2020.

member states such as the Nordics, Benelux and Austria¹¹⁷. Which were such changes Germany made, that rose suspicions among so many member states?

There were several modifications of the original text. At first, when the regulation was brought into the scene, it was written in general and broad terms, with no specification on details concerning multiple factors. The reason was that the regulation had to be approved by all member states. However, the biggest problem came when the Parliament and the Council had to agree on a common legislative text, based on the proposal of the Commission. They had to agree on specific terms and details, something which was difficult because of the disparities of opinion of the different governments. Not even an agreement within the Council was likely, so even less with the Parliament.¹¹⁸

The most remarkable changes were the following ones:

- In the initial proposal, measures regarding the mechanism were to be taken where “a generalized deficiency regarding the rule of law in a member state affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union”¹¹⁹. The conditions for applying to the mechanism were changed, since the term “generalized deficiency” was substituted by the term “breaches”¹²⁰. This implied a reduction in the level of exigency of respect to the rule of law, as a “generalized deficiency” is more easily to be detected than a “breach” which is more forceful.
- The original text talked about “risks affecting”. Instead, the German proposal changed the term “risk” by the term “serious risk”, in relation to the financial management of the budget.¹²¹ In addition, the afterthought reading “in a sufficiently direct way” was added in February 2020 by the President of the European Council, and it was maintained by the German presidency¹²².

The more exigences were added to the text, the more difficult it would be to find enough conditions to trigger the mechanism. The inclusion of the concept of “seriously” constitutes a sharp statement, and even worse, subject to interpretation. If an agreement on what a “risk” means was already difficult, it is almost inconceivable to reach an agreement on what a “serious risk” constitutes. Surely a serious risk for the financial management of the budget is not the same for Hungary and The Netherlands. States with a high threshold for protection of monetary and financial issues will consider a breach easily “seriously risking” the budget, but that’s not the case for the rest of the states.

- The procedure to trigger the mechanism was also changed. The commission had proposed the use of a reverse qualified majority intending to facilitate the adoption of decisions in the Council, which means that something is automatically approved, unless a qualified majority votes against it. However, the German presidency suppressed the reversed qualified majority and introduced a normal qualified majority, making the decisions of the council subject to be approved by a qualified majority of states, instead of being rejected by a qualified majority.¹²³

Actually, this change was already introduced by the President of the European Council, Charles Michel in February 2020. He proposed that “The Commission will recommend corrective measures to be approved by the Council by a qualified majority”¹²⁴. The German presidency just limited itself maintaining the President’s idea.

Member states such as Hungary and Poland were opposed to this system of reverse majority voting¹²⁵, as they would have more problems finding supports to get a reverse qualified majority than a normal one. However,

117 Council of the European Union, 11045/220, September 2020.

118 De la Baume, M., Bayer, L. “Germany seeks breakthrough on linking Eu payouts to rule of law”. *POLÍTICO*, September 2020.

119 Rubio, E. “Rule of law conditionality: what could an acceptable compromise look like?” *Institut Delors*, October 2020, p. 1

120 Ibidem.

121 COM (2018) 324 final, p. 9.

122 Platon, S. “Bringing a Knife to a Gunfight: the European Parliament, the Rule of Law Conditionality and the action for failure to act”. *Verfassungsblog*, June 2021.

123 Ibidem.

124 Draft Conclusions of the Special meeting of the European Council, 5846/20, February 2020.

125 Ibidem.

the truth is that some other member states with rule of law problems, such as Romania or Bulgaria, also had its reservations towards the reverse qualified majority, because they feared it could be use also against them¹²⁶.

Indeed, taking into account the parameters to be followed calculating votes, based on a vote estimation, Hungary and Poland would have the same probabilities of winning both a qualified majority and a reversed qualified majority, that is to say, none. If you calculate that the other two Visegrad states vote in line with Hungary and Poland, as well as Slovenia, Bulgaria, Romania, and maybe even Malta, that are the states with rule of law problems or the states that have publicly supported Hungary and Poland, their chances to succeed are far away from reality in any of the voting methods.

- An “emergency brake” was added to the text¹²⁷. In recital number 17, it was added the possibility of referring an issue to the president of the European Council, if a member state considers that the principles of objectivity, non-discrimination or equal treatment had not been respected. In that case no measure could be applied to the state until the matter had been dealt with in the next European Council¹²⁸. The risk of this emergency brake was that matters in the European Council are dealt with unanimity, so the qualified majority of the mechanism could end up being indeed unanimity¹²⁹.

This clause, of what we could consider a contract having reached this point, makes almost impossible to carry out any possible measure under the mechanism. It is more than clear that every state targeted by this mechanism is going to make a victim of itself, stating it has suffered discrimination or any other of the principles listed. Introducing this possibility is the same as killing the objective and purpose of the mechanism, and even more considering the profile of states such as Hungary and Poland, which are always claiming how bad the EU is and how bad it is behaving against them. This clause means giving them the perfect opportunity to materialize these complaints through regulatory means.

If we take as a reference instrument the proposal of the Commission, and as a reference objective the protection of both the budget and the values of the Union, the German proposal is objectively below the starting point. The description of it as a “watered-down version” is enough accurate to add anything further. However, we must also state, that the possibilities of achieving a better agreement were far from probable, as negotiating with Hungary and Poland to release the MFF implied some concessions by the German side. Perhaps, after all, Germany did all what it was in its hands, as any other presidency would have made.

3.4. Frugal member states

The so-called “Frugal Four” group of member states, is composed by Austria, Sweden, Denmark, and The Netherlands. The membership of the fifth frugal, Finland, is not as clear as the rest, as it has never described itself as such, but its behavior could be defined as frugal.

During the Special European Council of July 2020, Finland was thought to have joined the group, basing the assumption on different signals. Among the signals we find that Sanna Marin, the Finnish prime minister, sat with the rest of the frugal leaders during the meeting¹³⁰. In addition, ahead of the summit, she stated that a rebalance of the grants and loans was needed¹³¹. Furthermore, a little confrontation between Marin and the Spanish prime minister was noticed, due to Spanish pretensions of rich countries raising their offer to the grants¹³². However, despite these events, the Finnish prime minister herself, explained that Finland was not part of the established

126 “President Charles Michel presents his proposal for the MFF and the recovery package”, *European Council*, 2020.

127 Rubio, E. “Rule of law conditionality: what could an acceptable compromise look like?” *Institut Delors*, October 2020, p. 2.

128 Kelemen, D. “The European Union’s authoritarian equilibrium”, *Journal of European Public Policy*, 27:3, 2020, p. 490.

129 Platon, S. “Bringing a Knife to a Gunfight: the European Parliament, the Rule of Law Conditionality and the action for failure to act”. *Verfassungsblog*, June 2021.

130 Council of the European Union, 11045/220, September 2020, p. 7.

131 Platon, S. “Bringing a Knife to a Gunfight: the European Parliament, the Rule of Law Conditionality and the action for failure to act”. *Verfassungsblog*, June 2021.

132 Ojanen, H. “Why Finland never joined the frugal four”, *European Council on Foreign Relations*, 2020.

group of the frugal, it was only forging partnerships with different countries concerning different issues¹³³. This group of states is well-known by its aversion to spend EU resources, their liberal instincts, and their championship supporting some central issues such as digital issues, foreign policy or rule of law¹³⁴. As the former chancellor of Austria, Sebastian Kurz, wrote by himself:

“Above all, our budget contribution must remain stable, taking into account inflation and economic growth. This requires the budget to remain at 1% of EU gross national income and a system of permanent corrections to protect individual states from having to shoulder excessive budgetary burdens”¹³⁵.

He continued writing: “we are ready to pay significantly more to the EU than we get back. We benefit greatly from being a member of the EU and the single market. However, there are limits”¹³⁶.

With these statements, and an additional wording assuring that the budget must be subject to the upholding of the rule of law¹³⁷, it is more than clear that this group of states, wants to protect firstly their own money, and secondly the whole amount of European resources. If they consider that contributing to the European budget is something remarkable, they want it for sure to be spent properly.

There was a main debate held during the COVID-19 pandemic relative to the recovery funds that clearly were necessary to overpass the economic recession some of the member states were suffering. The debate revolved around the form in which these projects were going to be disbursed. One of the sides of the spectrum, involving France and Germany, proposed a plan consisting of sharing a common debt among all the member states in the form of both grants and soft loans, for the first time in EU history¹³⁸. Nevertheless, as everybody expected, the other side of the spectrum of member states did not agree that easily to accept these conditions. This side mainly involved the Frugal states, which established another requirement to accept this unprecedented plan: a strict conditionality to be attached to the disbursement of the funds. Such a petition laid the Commission proposal of 2018 on the table again.¹³⁹ The desire to protect their own budget fits with the requirement of linking such a risk plan of community debt with some insurance. Frugal states were the first countries to restart the negotiation of the mechanism, as it was paralyzed since June 2019, under the Romanian presidency.

This course of events leads us to some statements to be considered. The first one is that probably if COVID wouldn't have taken place, the debate of the conditionality regime wouldn't have been resumed. On the other hand, if this group of frugal states would not have made such a demand of attaching the funds to rule of law, it does not seem clear that any other group of states would have raised such a request, or at least not with that firmness.

What is indeed surprising is that despite the fact all these states have presented themselves as staunch defenders of rule of law, of good management of funds, and almost as defenders of justice, and overall, as sharply critical with Germany, when the time of voting in the Council arrived in December 2020, all of them voted in favour of the German proposal. Just Hungary and Poland voted against it, ironically, as claimed by themselves, the proposal and the outcome were a “victory” for them¹⁴⁰.

The Finnish position is perhaps the most consistent, as its traditional partner has always been Germany and it has tried to maintain itself aligned with German positions, overall, in high politics issues¹⁴¹. What a better occasion than the negotiation of one of the most important mechanisms in the past years, to stay close to its biggest partner? Finland did not want to endanger its traditional neutral position and its good relationship with Germany, therefore it

133 Khan, M. “Frugal states push to cut size of EU recovery package”, *Financial Times*, 2020.

134 Khan, M., Fleming, S., Brunsdon, J. “Despite historic EU deal, deep rifts remain”, *Financial Times*, 2020.

135 Ibidem.

136 Dennison, S., Zerka, P. “The transformative Five: a new role for the frugal states after the EU recovery deal”, *European Council on Foreign Relations*, 2020, p. 2.

137 Kurz, S. “The ‘Frugal Four’ advocate a responsible EU budget”, *Financial Times*, 2020.

138 Ibidem.

139 Ibidem.

140 Platon, S. “Bringing a Knife to a Gunfight: The European Parliament, the Rule of Law Conditionality, and the action for failure to act”, *Verfassungsblog on matters constitutional*, 2021.

141 Ibidem.

did not explicitly take a stance with the frugal states, which were the ones who criticized Germany the most because of its proposal. But at the same time Finland found itself distrusting how the funds were going to be managed. It was among its interests to have a healthily spent budget, spent properly and respecting the foundations of the Union, including the rule of law. In the end, this member state, like all the others, was looking to its own interests, in this case, economic interests prevailing over the rest. Assumably, geopolitical interests were also on the table.

Finland held Council's presidency in the second semester of 2019. Among its four priorities, we find that the most outstanding one was to strengthen common values and the rule of law. The Finnish presidency committed itself at that time to promote the work of the Commission 2018 proposal, to fasten its reading and to deal with the financial framework negotiations.¹⁴² Nevertheless, the actual negotiation did not go any further than it went with the Romanian Presidency, and the mechanism stayed exactly how it was a couple of months previously. At least that was what was available to the public.

Possibly the reason why these frugal states voted in favor was because there was no alternative option rather than the veto from Hungary and Poland to the MFF. However, before the final voting on December, the Coreper II discussed the German proposal on September 2020, when the committee agreed on a mandate for negotiation with the EP¹⁴³. It is not stated how many representatives of the member states voted in favor or against, but it might be possible that frugal states positioned themselves against this proposal at first instance, when there were still chances of amending the situation.

In December, when the two only paths were the veto to the multiannual financial framework or the German proposal, they chose reasonably the second one, as in this way both rule of law and the budget were secured, while by choosing the first option, these states would have sinned of being too blinded by their own interests. They would also have been too naïve of thinking that a possible better deal would have been achieved later on, as if Hungary or Poland wouldn't change suddenly their mind and wouldn't have released the blocking of the MFF without demanding something in return. The truth is, that blocking the approval of the German proposal by these frugal states would have been interpreted also as a victory to Hungary and Poland, even if the reasons behind would have been radically the opposite of theirs.

In addition, waiting for another presidency of the Council to take a different path from the German one, would have also been improbable. Any other different presidency would not have had the incentive of German national interests, that is, its own relation with the Visegrad Four, but, in any way the Hungarian and polish blackmail threatening to use the veto would remain independent of the presidency.

Besides the attitude of this group of states during the negotiation of the mechanism, it must also be highlighted that once the mechanism was agreed, they advocated for a strong implementation of the conditionality regime. Last February, when the ECJ released its ruling concerning the sues of Hungary and Poland, the Dutch Minister of Foreign Affairs urged the Commission to start implementing the mechanism without further delay and stop the disbursement of funds to the countries involved¹⁴⁴.

However, there's another reading of the same situation. The other side of the story, far from justifying the disagreement of frugal states due to concerns about the minimum of the proposal, states that Frugal members were obstructing the negotiations because they were going to benefit from the delays of the conditionality mechanism¹⁴⁵. This sentiment is felt overall by southern countries, which as it's going to be explained in the next point, were the most affected party by the delay of the disbursement of funds. These states feared there was a plot against the mechanism from the frugal states, by refusing a compromise with Hungary and Poland during the negotiations¹⁴⁶.

The supposed reasons to block the mechanism, alongside the funds, were different between the two parties. Hungary and Poland based their reasons in obvious fear of the mechanism. Meanwhile, frugal states were blocking

142 Bayer, L., Wanat, Z. "Orban: Agreement close on rule of law in EU budget battle", 2020, *Politico*.

143 Ojanen, H. "Why Finland never joined the frugal four", *European Council on Foreign Relations*, 2020.

144 EU2019.FI, "Strengthening the rule of law".

145 Council of the European Union, Summary Record Permanent Representatives Committee 29 and 20 September 2020, 11771/20.

146 Bayer, L. "Top Court clears EU to cut funds over rule-of-law concerns", *Politico*, 2022.

the mechanism because of monetary reasons, since the delays would be translated into more saved money¹⁴⁷. According to theory, the bickering of rule of law would be an excuse to slow down the process¹⁴⁸.

Individually, they also had unilateral interests. For instance, the Dutch particular situation involved an electoral panorama. It was thought that the Netherlands was buying time until its spring elections¹⁴⁹. Firstly, this state seems the outstanding defendant, even among its frugal states partners, of rule of law, of the mechanism, and of the budget, all together. Its figure among the others was understood as the leader of the group. At the beginning of the issue, during the assessment of the Rule of Law report 2020 by the Commission of each country, we find that the government itself declared it was striving “to guarantee effective conditionality with regard to compliance with the principles of rule of law”¹⁵⁰. And since the first moment, when dealing with budget negotiations in July 2020, Mark Rutte was a tough nut to crack, as the President of the European Council, Charles Michel recognized himself¹⁵¹.

Furthermore, according to a poll published by the European Council on Foreign Relations in November 2020, supporters of the VVD (People’s Party for Freedom and Democracy), Rutte’s party, when asked about its predominant feeling towards the COVID-19 recovery fund, answered that they mostly felt worried. This sentiment of worry expressed by the respondents was based on the fear of an existing possibility that the funds were spent corruptly, leading to a waste of them. Their worry was not linked to the thought of the EU spending too much money on the funds.¹⁵² There were between 70% and 80% of voters who do not think that the EU is spending a lot, a fact contrary to what would be expected from a country such as the Netherlands, considering its frugal facet¹⁵³. This means that the biggest share of population’s concerns were not towards monetary issues, but towards matters linked to values and European unity. In addition, another remarkable statistic showed that the respondents who found that the EU is spending a lot, matched with the ones who perceived Netherlands had decreased its influence within the EU¹⁵⁴.

These polls are related to the pandemic recovery fund, they do not reflect directly the people’s perception of the conditionality mechanism itself. Nevertheless, considering that the biggest worry of Dutch people was the misuse of the funds, involving corruption and waste, these polls can be compared as if they would deal with the rule of law regime.

Following that reason, it would be expectable the fact that Rutte played its cards ahead of the elections. Voters of the VVD were in favor of the mechanism, and concretely because of their support towards the rule of law itself, not because of economic reasons. Their main worry was that values were not respected, and the budget was spent in a corrupt way rather than making healthy use of European funds. If that was the case, Rutte was well aware of his electors’ preferences. He would try to base its refusal to the mechanism in the negotiations arguing that it was not enough to properly protect the budget and the rule of law. Its argument would not be that his country was spending already a lot of money, that delays in the negotiation would be fantastic news, considering that these delays would mean saving a quite huge amount of money. It is logical that the Dutch president wanted to secure the vote of its supporters, giving them an extra reason to vote for the VVD: the intention of the party to protect the rule of law, and the budget –not the government treasury.

Moving to Austria, this country has its own particularities when dealing with the mechanism, mainly due to its geographical situation, and then consequently, due to its geopolitical circumstances. Austria finds itself surrounded by the states of the Visegrad Four, except Poland, with which it has no territorial frontiers. But at the same time Austria has Germany and Italy as closest neighbors, excluding Switzerland as it does not contribute to the analysis of the conditionality mechanism. Therefore, it is clear the role Austria plays in the European panorama is the bridge

147 De la Baume, M., Bayer, L. “Germany seeks breakthrough on linking Eu payouts to rule of law”, *Politico*, September 2020.

148 De Gruyter, C. “A fundamental fight: the frugal four and the rule of law”, *European Council on Foreign Relations*, 2020.

149 De la Baume, M., Bayer, L. “Germany seeks breakthrough on linking Eu payouts to rule of law”, *Politico*, September 2020.

150 Brzozowski, A. “The Brief – Rule of law proxy war”, *Euractiv*, 2020.

151 Ibidem.

152 Government of the Netherlands, “Dutch government assessment of the European Commission’s 2020 Rule of Law Report”, 2020.

153 Herszenhorn, D., Eder, F. “Charles Michel, the budget deal and the art of the terrace tête-à-tête”, *Politico*, 2020.

154 Dennison, S., Zerka, P. “The transformative Five: a new role for the frugal states after the EU recovery deal”, *European Council on Foreign Relations*, 2020, pp. 8-9.

of Western Europe, Central Europe, and Eastern Europe. This geographical position entails its consequences, but it goes along with political, commercial and economic consequences.

Austria has some degree of economic dependence on Central and Eastern Europe states¹⁵⁵. When it comes to trade relations, Hungary is the fifth EU member state with which Austria has important flows of trade (6.1 billion euros), and the Czech Republic is the sixth with 6 billion euros¹⁵⁶. In addition, Hungary is the third country where Austrian enterprises invest the most in central and Eastern Europe, and Austria is the fourth biggest investor in Hungary (after Germany, Luxembourg and the Netherlands)¹⁵⁷.

This economic dependence makes Austria more vulnerable also to cases of corruption and violations of rule of law in its neighboring countries. Commercial contracts and economic relations would be affected if one of the governments involved, is responsible for corruption.¹⁵⁸ At the end of the day, Austria is interested in Hungary having a good relationship with rule of law because of its own national interests.

In addition, besides these economic relations, political relations have also considerable weight among these states. According to the EU Coalition Explorer, Hungary is the fourth most contacted country by Austria when it comes to European policy (9 percent) –just preceded by Germany, France and the Netherlands– and the Czech Republic (6 percent) and Slovakia (3 percent) hold the eighth and ninth position respectively. Poland is the only country which remains outside the top ten. The other way around, among the countries that contact Austria concerning European affairs, Hungary holds the third position, with 14 percent, followed by Slovakia with the same percentage. The Czech Republic is the seventh state that contacts the most Austria (10 percent). Again, Poland does not make it in the top ten, with a less significant 1 percent.¹⁵⁹

These positions, no matter which direction, are considerably high as to be relevant in the political panorama of Austria. Among 27 EU countries, Hungary is the fourth most contacted state by Austria in order to consult European policy, a place of major significance taking into account that it only goes after three of the biggest economies in Europe.

It is clear that although Austria maintains relations with several of the Visegrad Four countries, and with Central and Eastern European countries in general, its relationship with Hungary is particularly special. Historical relations bind both countries, but beyond these historical bounds, current economic and political Austrian influence in Hungary stands out among the other eastern neighbors. Be that as it may, it's not surprising that Austria tries to maintain good relations with Hungary.

Resorting again to the previous poll of the ECFR, it shows that the percentage of people in Austria whose main worry in relation to the recovery fund is how it is going to be spent, is 48 percent¹⁶⁰, a high percentage, almost half of the respondents, and the highest among frugal states. It is insightful how Austrian people prioritize sound management of European funds, considering the bad experience they have had because of violations of the rule of law. Austria is the best example of the statement affirming that you learn from your mistakes.

It is however surprising the fact that Austria advocates for the defense of rule of law in such a staunch way, since Austria it's the first country to handle rule of law issues. It is not necessary to go far backwards in time to realize that Austria does not lead by example.

Last October 2021, Sebastian Kurz, Austrian Chancellor, resigned because he was accused of being involved in a case of corruption, well-known as the Kurz affair. The chancellor was accused of paying a media company, with taxpayers' money (1,2 million euros), to disrupt the results of popularity polls of the People's Party internal elections candidates and obtain the first place among them, as the most popular.¹⁶¹ When he resigned, he argued he was

155 Ibidem, p. 14.

156 Ibidem, p. 15.

157 Satanakis, S. "Why the rule of law matters so much to Austria", *European Council on Foreign Relations*, 2020.

158 Federal Ministry digital and economic affairs, "Bilateral economic relations with Europe".

159 Österreichische Botschaft in Budapest, "Wirtschaft: Bilaterale Wirtschaftsbeziehungen".

160 Satanakis, S. "Why the rule of law matters so much to Austria", *European Council on Foreign Relations*, 2020.

161 Busse, C., Franke, U. et al. "EU Coalition Explorer", *European Council on Foreign Relations*, 2020.

handing on the position to prevent political chaos in his country which, he said, was more important than his own person¹⁶².

Some may then perceive the Austrian position during the negotiations of rule of law conditionality mechanism as hypocritical. Kurz was defending, alongside with his other frugal colleagues, rule of law, budget, and an endless list of other European values. But while he was doing so, he was corruptly misusing Austrian people's money. How could have Kurz defended the Austrian place during the creation of the mechanism, if this scandal would have seen previously the light? How could have defended any chancellor, in general, an Austrian "pro-rule of law" position after such an inner violation of rule of law in their own country? Its position would have been as weak as other Eastern European countries. Austria must be thankful this scandal was exposed after the negotiations. The other way around, it may be possible that Austria wouldn't have had neither influence nor strength to defend that rule of law breaches that could affect the sound financial management of the budget are not compatible with receiving funds. Let him who is without sin cast the first stone.

Denmark was ranked as the first country, out of 139, in the Rule of Law Index of World Justice Project in 2021¹⁶³. It does not need to be explained then why Denmark was one of the first countries asking for a binding conditionality of funds to the rule of law a long time ago in 2013, alongside Germany, Finland, and the Netherlands¹⁶⁴. Mette Frederiksen, Danish Prime Minister, has also been one of the most stubborn leaders concerning respect to rule of law. Previously to the European Council of July 2020, she was one of the two prime ministers who pressured Charles Michel to make conditions on funding to the recovery funds even harder and tougher¹⁶⁵.

Each of the frugal states has its own preferences, and for Denmark it was clearly the rule of law. One of the signals that the rule of law is over money in Danish top priorities, is the fact that while some frugal states, such as the Netherlands, were immovable in their position regarding loans and grants, Denmark finally accepted the existence of grants in the disbursement of the funds¹⁶⁶.

3.5. Southern countries

We have already seen how different groups of states had different interests, such as economic, political, even social. Southern countries wouldn't be less than the others. It is normal, being part of the EU, they also held their own preferences, priorities and interests during the negotiations of the conditionality mechanism.

As we know, southern countries, Italy and Spain overall, were the most affected by the coronavirus crisis, in all the possible ways we could imagine: in a sanitary way, economic, social displeasure... The crisis hit these states hard. Consequently, it was predictable they were going to be the biggest recipients of the recovery funds. It is not the first time that these countries are beneficiaries of large amounts of EU funds because of a crisis, as in the 2008 financial crisis they also needed European help to overcome the problems, Greece overall. However, the circumstances were completely different from that occasion to the current one. Recovery funds, or example Next Generation EU, is composed not only of loans, as 2008 help was, but also of grants. This aspect makes life easier for these southern states that always face difficulties to confront the reimbursement of these loans, usually adopting hard fiscal measures that create political and social instability in their countries.

Be that as it may, the EU budget and recovery funds were conceived by those states as a miracle and a gift fallen from heaven. As opposed to the conditionality mechanism. To be more concrete, as opposed to the negotiation process of the conditionality mechanism. If these states were in favor of the mechanism or not is not the question here. Anyway, they are not decisive member states whose opinion is leading or influential when dealing with monetary

162 Dennison, S., Zerka, P. "The transformative Five: a new role for the frugal states after the EU recovery deal", *European Council on Foreign Relations*, 2020, p. 13.

163 Thomsen, A. "Sebastian Kurz: the chancellor in the shadows", *European Council on Foreign Relations*, 2021.

164 Karnitschnig, M. "Austria's Sebastian Kurz steps down amid corruption probe", *Político*, October 2021.

165 "Countries Scored by Overall Score", World Justice Project.

166 Rijksoverheid, "Letter to the European Commission on the rule of law mechanism", 2013, as cited in Šelih, J., Bond, I., Dolan, C. "Can EU funds promote the rule of law in Europe?", *Centre for European Reform*, 2017, p. 7.

issues. Frugal states are not either their best friends indeed. The matter to be observed is how the delays in the adoption of the mechanism led to delays in the disbursement of the funds.

Hungarian and Polish blockade of the Multiannual Financial Framework led these states to appear in the playing field, since probably without eastern countries' blackmail, Spain and Italy would even do not be included in the analysis of this thesis.

Blockade of the mechanism, and therefore blockade of the disbursements, aligned also Southern countries to form a bloc by themselves.¹⁶⁷ This bloc has its own enemies. On the one hand, we clearly find they felt great animosity towards Hungary and Poland due to the obvious reason for the intentioned veto. But on the other hand, we also find a different bloc, the frugal states. Southern countries had hostility towards them because they had the impression frugal states were also against the mechanism, such as Hungary and Poland. They suspected that, refusing the mechanism and constantly placing hindrances to its adoption, they were also killing off the fund¹⁶⁸. Frugal states and southern countries had never had a friendly relationship. Differences among them are notorious, and their position towards the rule of law conditionality mechanism was not going to be an exception.

Focusing on Spain, there were several occasions in which Spanish politicians claimed their disagreement with the slowness of the proceedings and the negotiations to adopt the budget and recovery funds. Spanish Prime Minister, Pedro Sánchez, declared during the Berlin Foreign Policy Forum 2020 (November), that he maintained his hope in reaching an agreement, as he didn't see any other possible alternative¹⁶⁹.

In addition, Spanish Minister of Economic Affairs and Digital Transformation, Nadia Calviño, also followed her President's steps and preferred to adopt an encouraging attitude during the final stages of the negotiations. She transmitted to her European colleagues the urgency to reach an agreement.¹⁷⁰

Spanish Secretary to the European Union, Juan González-Barba expressed his worry about the funds too. He states that if Hungary and Poland maintained their blockade of the communitarian budget, the EU would be submerged in a profound crisis, much worse than that of 2008. For him, the solution was as simple as the assumption by Hungary and Poland that the disbursement of EU funds must be linked to respect to rule of law. European values must be above all, and democracy, judicial independence and rule of law must be upheld, according to him.¹⁷¹

These statements may also sound kind of surprising, coming from Spain. Spain is facing one of the biggest judicial problems in Europe. The renovation of the General Council of the Judiciary is blocked since December 2018, because of a lack of agreement between the two main parties in Spain. This blockade indeed also reflects a lack of judicial independence, as the way judges are elected in Spain is perceived as politicized. This may remind us of Poland, although the Spanish case has not enjoyed such a presence in the media.

Polish vice minister of Foreign Affairs himself, Marcin Przydacz, dropped a bomb, saying that the mechanism could be used also against southern states, such as Spain, Portugal or Italy¹⁷². Surely this movement was a Polish strategy to try to convince other states, frighten indeed, so as to secure a couple more votes against the mechanism.

However, the reality was that these southern countries were much more in need, desperately perhaps, of approving the budget, alongside the conditionality mechanism, to face their economic problems. This necessity overpassed a hypothetical threat of being subject to the mechanism. Again, it was a matter of national interest. Southern countries may not be politically influential, but they have a vote, and indeed a huge vote in the Council because of the Spanish and Italian population, enabling them to play their cards as every other member state.

We don't know if the mechanism will target Spain in the future or not, probably it could do it if Spain continues with this judicial drift. But we can not forget that a link harming the EU budget must be proven. And as in the Polish case,

167 Boffey, D. "Poland should get less from Covid-19 fund due to rights record, claim EU member states", *The Guardian*, 2020.

168 Kölling, M. "Solidaridad y condicionalidad europea en tiempos post COVID-19", *Real Instituto Elcano*, 2020.

169 Palop, J. "¿Hasta dónde pueden llevar Hungría y Polonia su pulso con el presupuesto de la UE?", *Esglobal*, 2020.

170 De Gruyter, C. "A fundamental fight: the frugal four and the rule of law", *European Council on Foreign Relations*, 2020.

171 Efe-Berlín, "Madrid y Berlín esperan un acuerdo sobre el presupuesto que libere los fondos de la UE", *Euractiv*, 2020.

172 EuroEFE Bruselas, "Calviño espera que el plan de recuperación de la UE se desbloquee en las próximas semanas", *Euractiv*, 2020.

it is more difficult to establish a link between judicial problems and financial problems, than to prove it between governmental corruption and European financial problems, as in Hungary. Anyway, Spain has still time to solve its judicial issues before the European Commission points it as the next target of the regulation.

4. Conclusions

In order to explain the conclusions obtained throughout the research of this work, it could be helpful first to remind the research question and the hypothesis. The formulated question was “Why the process of adoption of this regulation has been influenced by the interests of the actors?”, being the hypothesis of the paper, a statement considering that the negotiation of the conditionality regime has been affected by diverse interests, of different nature, that is interfering in the actions of member states.

The development of this work has led to reach several conclusions, which are described below.

The results make noticeable that the process of negotiations was an intense and agitated one. Effectively, as my initial hypothesis suggested, the whole process has been defined by a conflict of interests among the different actors, both member states and institutions. And even more, in many of the cases, what apparently were the main interests, really were not, and were used as a cover. Political interests have been claimed to justify member states’ conduct, but indeed economic interests lay behind most of the positions. Economic incentives have motivated the real behavior of state actors. It must be stated that this conclusion not only applies to Hungary and Poland, but also to frugal states and Germany. It is perhaps in the case of other states with less political relevance, such as Slovakia or the Czech Republic, where political interests have surpassed economic interests.

Furthermore, this conclusion can also be bound together with the fact that protection of rule of law has not been the ultimate goal of any member state, but indeed it has been used as a tool, or as an excuse, to achieve other interests, namely the economic interests that have already been mentioned. The objective of the mechanism was to protect the budget against violations of rule of law, it was not directly to protect rule of law. However, it was indirectly. Therefore, it is remarkable the fact that almost none of the principal actors during the negotiation process has sought to protect rule of law, but only the community budget – their own indeed.

In line with that conclusion, we could bring up another one in relation to prevailing national interests, rather than European interests. This conclusion can be useful to answer the research question of the thesis. As it was stated in the introduction of this thesis, the adoption of this mechanism has constituted a significant step within the European Union, since for the first time the disbursement of funds was linked to any other requirements. However, despite the progress, it can be concluded that there is still a long path ahead in the process of European further integration. Member states seem not yet ready to give preference to the common good instead of the national good, and therefore, national interests prevail in decision-making processes. The ideal would be both level of interests to coincide, and not to be incompatible one with the other during the negotiation of a European Regulation.

It must also be highlighted the role of Germany. Before deepening in the research of the question, what I considered firstly was that Germany was a member state influenced that had succumbed to other governments’ pleas, such as The Hungarian and Polish ones. However, this vision was grounded overall in the following idea: the perception of Germany as the defensor of the European flag. If you conceive a country as such, it is logical to reach that disappointment. Nevertheless, throughout the analysis of the thesis, I have come up with other different vision. German position could seem confusing at first, but indeed it is perfectly understandable, and consequent with itself. It has been consequent with its role, that is, being a member state. It has limited itself to act just as the other member states, seeking its national interest. If we don’t demand that requirement to other states, and what we demand is equal treatment among nations, then we can’t neither ask for a different role to Germany. Furthermore, if Germany is characterized by anything, is by its diplomatic skills. Europe needed the unblock of the MFF, and that’s what Germany achieved. Of course, its own national interests were going to weight within its position, but again, beyond holding the rotatory presidency, Germany is as protective of its interests as the rest of member states.

Frugal member states do not scape neither to that conclusion. However, indeed, they were the most consequent, as their national interests and European interests were more connected, since they are some of the biggest contributors

to the community budget. I would not want to employ the term “winners” and “losers”, but if there were both of them, frugal states would have been the winners of the negotiation process, as actually all of their interests were achieved.

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Resumen: El reglamento de condicionalidad del Estado de Derecho se adoptó en diciembre de 2020, con el objetivo de proteger el presupuesto de la UE contra las infracciones del Estado de Derecho. Durante las negociaciones, cada uno de los Estados miembros mostró sus desacuerdos y demandas, estando las posiciones de los gobiernos influenciadas por intereses nacionales de distinta naturaleza. Por un lado, Hungría y Polonia fueron los principales detractores del mecanismo, y aunque compartían una alianza aparentemente inquebrantable, sus posiciones e intereses diferían sustancialmente. El resto del grupo de los Cuatro de Visegrado no estuvo al lado de Hungría y Polonia, mientras que Alemania, como presidente de turno del Consejo en ese momento, tenía encomendada la responsabilidad de lograr un acuerdo. Algunos Estados, principalmente los frugales, se mostraron decepcionados con la intervención de Alemania, ya que consideraban que había empeorado la propuesta de la Comisión.

Abstract: The rule of law conditionality regulation was adopted in December 2020, with the objective of protecting the EU budget against breaches of rule of law. During the negotiations, each of the Member states showed their disagreements and demands, being governments' positions influenced by national interests of different nature. On the first hand, Hungary and Poland were the main detractors of the mechanism, and although they shared an apparently unbreakable alliance, their positions and interests differed substantially. The rest of the Visegrad Four group didn't stand by Hungarian and Polish side, while Germany, as the rotatory president of the Council at the moment, was entrusted the responsibility of achieving an agreement. Some states, mainly Frugal states, were disappointed with Germany's intervention, since they considered it had worsened Commission's proposal.

Palabras clave: mecanismo de condicionalidad, Estado de Derecho, presupuesto, Marco Financiero Plurianual, Cuatro de Visegrado, Hungría, Polonia, Alemania, Estados frugales, intereses nacionales.

Keywords: Conditionality mechanism, Rule of Law, Budget, Multiannual Financial Framework, Visegrad Four, Hungary, Poland, Germany, Frugal states, national interests.

