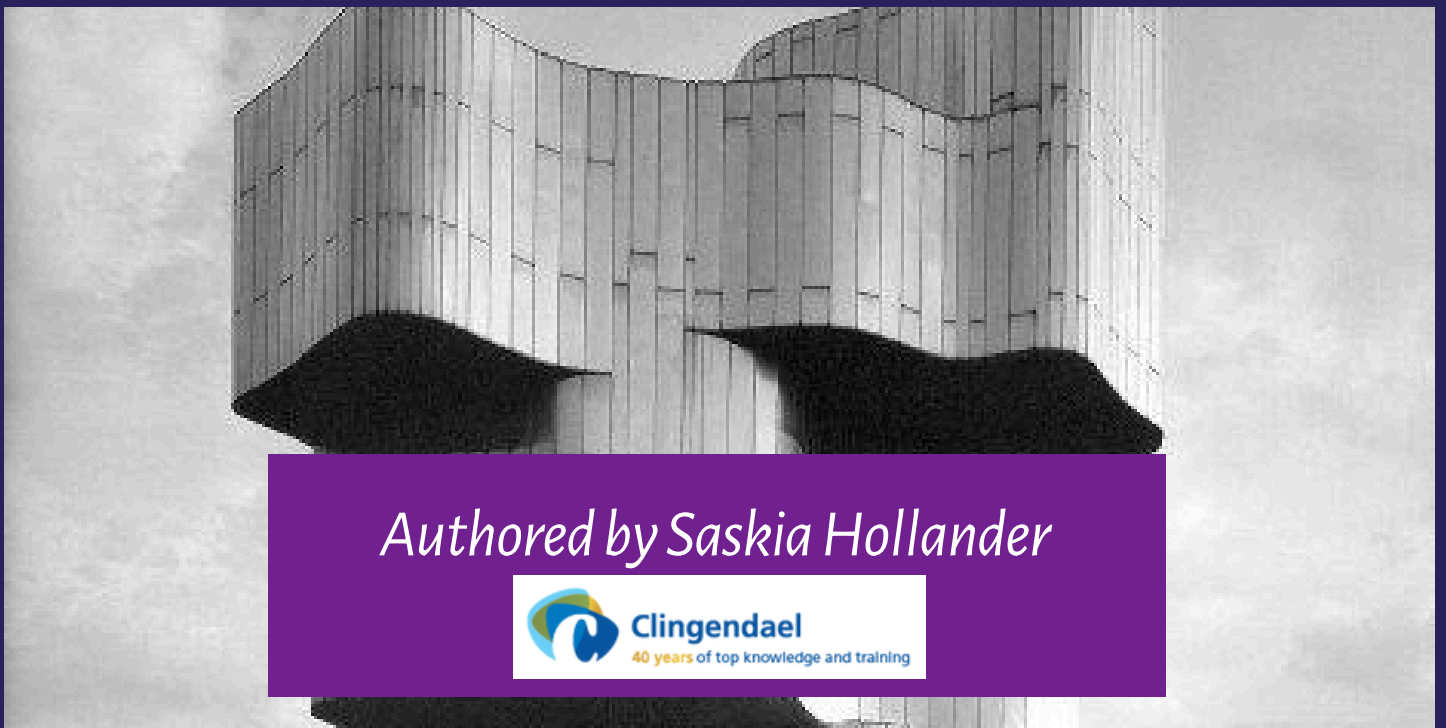


# ECONOMIC GOVERNANCE AND THE RULE OF LAW IN THE EUROPEAN UNION

## WORKING PAPER



*Authored by Saskia Hollander*



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## ABOUT THIS WORKING PAPER

This report is written within the framework of the Horizon-funded research program Respond to Emerging Dissensus: SuPranational Instruments and Norms of European democracy (RED-SPINEL). It is the first deliverable within Work package 5 on 'EU economic governance instruments and the rule of law'. The report draws extensively on the work of RED-SPINEL work package 2 on 'EU instruments defending the rule of law within the EU', in particular the state-of-the-art working paper 'Established EU rule of law instruments', by Cristina Fasone, Adriano Dirri, and Ylenia Guerra (eds.) (2023). The report aims to set the scene for the WP5 research agenda.

## ABSTRACT

The EU is increasingly relying on economic governance instruments to address rule of law issues in the Member States. Simply put, this means that receiving money from the regular EU budget, as well as from the emergency funds created in response to the COVID-19 and energy crises, is made conditional on the adherence to the rule of law and fundamental rights. The novelty of these instruments makes it impossible to assess their long-term effectiveness in addressing rule of law backsliding. At the same time, already, these instruments have led to dissensus between EU institutions and between EU Member States. This dissensus stems to a large extent from a perceived lack of clarity as to which instruments and measures apply under which conditions. The application of budgetary conditionality is a legal and technical endeavor largely in the hands of the Commission. To some extent, it is exactly this legal nature from which these instruments derive their strength. However, the context in which decisions regarding budgetary conditionality are made is highly political, and such decisions have far-reaching consequences for targeted Member States. Hence, it is crucial that such decisions can be democratically scrutinized without compromising on effectiveness. This paper addresses this issue and sets the stage for a future research agenda on the effectiveness and democratic legitimacy of using economic governance instruments to pursue the rule of law in the EU.

# FOREWORD

The Horizon Europe research project (2023-2025) RED-SPINEL (Respond to Emerging Dissensus: Supranational Instruments and Norms of European democracy) seeks to shed light on the growing dissensus surrounding liberal democracy and the rule of law within and beyond the European Union (EU). RED-SPINEL examines how policy instruments and legal mechanisms at the EU level have evolved in response to dissensus surrounding liberal democracy and its constitutive dimensions. Bringing together academics and researchers from seven universities (Université libre de Bruxelles, University of Amsterdam, Libera Università Internazionale degli Studi Sociali Guido Carli, Babes- Bolyai University, University of Warwick, Uniwersytet Mikołaja Kopernika w Toruniu, and HEC Paris) and four non-academic institutions (Peace Action Training and Research Institute in Romania, Milieu Consulting, Magyar Helsinki Bizottság / Hungarian Helsinki Committee and Stichting Nederlands Instituut voor Internationale Betrekkingen Clingendael), the project addresses key transversal questions:

1. What is the nature of the current dissensus and how disruptive is it to the EU?
2. How have EU institutional actors and instruments contributed and responded to this increased dissensus?
3. What are the implications of this dissensus for policy instruments at EU and Member State levels?

These are the main questions of the project that will be explored empirically in relation to the following topics:

- Instruments relating to the promotion of democracy and the rule of law withing the EU (Work package 2)
- Instruments relating to the promotion of democracy and the rule of law within the EU's neighbourhood (Work package 3)
- Legal mechanisms and technocratic instruments fostering citizen participation, defending fundamental rights and promoting climate justice (Work package 4)
- Instruments relating to EU economic governance, notably the European Semester (Work package 5):

The present report is produced in the framework of RED-SPINEL's Work package 5 (WP5), which focuses on two aspects: i) the use of economic/techno-managerial instruments to achieve goals related to democracy and the rule of law within and outside the EU; and ii) the rise of conditionality (in its various forms) as the key governance device in the recovery agenda.

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## LIST OF ABBREVIATIONS

**CID - Council Implementing Decision**

**CPR - Common Provisions Regulation**

**CJEU - Court of Justice of the European Union**

**CSR - Country Specific Recommendations**

**CVM - Cooperation and Verification Mechanism**

**ECA - European Court of Auditors**

**ECJ - European Court of Justice**

**EFC - Economic and Financial Committee**

**EMU - Economic and Monetary Union**

**EP - European Parliament**

**EPPO - European Public Prosecutor's Office**

**EU - European Union**

**Fidesz - Magyar Polgári Szövetség**

**LGBTIQ+ - Lesbian, Gay, Bisexual, Transgender, Intersex, Queer or Questioning**

**MEP - Member of the European Parliament**

**MFF - Multi-Financial Framework**

**NGEU - NextGenerationEU**

**NRRP - National Recovery and Resilience Plan**

**OLAF - European Anti-Fraud Office**

**PiS - Prawo i Sprawiedliwość**

**QMV - Qualified Majority Voting**

**RRF - Recovery and Resilience Facility**

**RoL - Rule of Law**

**SGP - Stability and Growth Pact**

**TEU - Treaty on European Union**

**TFEU - Treaty on the Functioning of the European Union**

# 1. INTRODUCTION

The Rule of Law (RoL) is among the fundamental values upon which the European Union (EU) is built. By definition, the RoL implies that each person enjoys equal treatment under the law and is protected against the arbitrary use of power exercised by government authorities.[1] Breaches of the RoL by EU Member States – for example related to judicial partiality, corruption, fraud, and misuse of EU-funds – not only affect the Union’s external credibility as a community of values, they also pose a direct risk to the functioning of the single market and the Union’s overall financial interests. When citizens and businesses move, work or trade across the EU, they should be able to assume that government authority is exercised in accordance with the law and that the *acquis* applies to all in the same way. In fact, the independence, efficiency and quality of justice systems are key prerequisites for attracting businesses and investments, and hence, for the EU’s overall competitiveness and geo-economic clout. As such, the adherence to the RoL entails a non-negotiable constitutional principle, enshrined in Article 2 of the Treaty on European Union (TEU), [2] and therefore is among the political EU-accession criteria that were agreed in Copenhagen in 1993.

Yet, while the EU sets strict RoL conditions for candidate countries before being able to join, it is difficult to contain Member States that are gradually backsliding on the RoL once they joined. This is also referred to as the ‘Copenhagen dilemma’. [3] Examples of countries that backslid on the RoL and democracy within roughly 5-10 years after their accession are Hungary (since 2010) and Poland (since 2015). In these two countries, the governments of respectively Fidesz - Hungarian Civic Alliance (in Hungarian: Fidesz - Magyar Polgári Szövetség) and – until the recent elections of October 2023 – Law and Justice (in Polish: Prawo i Sprawiedliwość (PiS)) started to gradually dismantle the RoL provisions that were adopted in the pre-accession context.[4] Yet, challenges to the RoL are not limited to these two countries, and have also been lurking – albeit in different degree – in other countries, including those with longer-standing EU-membership.[5]

Until recently, the EU lacked effective instruments to keep Member States on track in terms of the RoL. Article 7 of the Treaty on European Union (hereafter Article 7 TEU) provides for a procedure to suspend certain rights from a Member State in case of RoL breaches. However, it is considered as a very strong procedure that is too difficult to effectively trigger. In addition, the infringement procedure under Articles 258, 259

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[1] According to the [institutions of the European Union](#), the rule of law implies that ‘all public powers must always act within the constraints set out by law. The notion of the rule of law includes a transparent, accountable, democratic and pluralistic law-making process, effective judicial protection, including access to justice, by independent and impartial courts and separation of powers’. The [Venice Commission](#) of the Council of Europe, which advises the Council of Europe on constitutional matters, has developed a checklist for the Rule of Law, based on the five core elements: legality, legal certainty, prevention of abuse/misuse of powers, equality before the law and non-discrimination, and access to justice.’

[2] Article 2 of the Treaty on European Union (TEU) states that: ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’: Official Journal of the European Union, ‘[Consolidated version of the Treaty on European Union, Article 2](#)’, October 2012.

[3] Alexander Strelkov. “EU Justice Scoreboard: a new policy tool for “deepening” European integration?”, 2019, *Journal of Contemporary European Studies*, 27:1, 15–27; Ramona Coman. *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*. 2022, Palgrave MacMillan.

[4] Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023.

[5] Paul Taylor, “[Why the rule of law matters](#)”, *POLITICO*, 12 October 2021; Thomas Wahl, “[Rule-of-Law Developments in Other EU Countries](#)”, *Eu crim*, 8 July 2021.

and 260 of the Treaty on the Functioning of the European Union (TFEU) provides for the monitoring and sanctioning of breaches of the entire body of EU law, also (but not solely) those related to the RoL. However, in practice, this procedure is not used as procedure to address structural RoL breaches.[6] Therefore, the EU has recently added new instruments to its RoL toolbox. Notably since the beginning of the current Multi-Financial Framework (MFF) (2021-2027), the Union is increasingly relying on budgetary instruments to enforce the RoL in its Member States.[7] More precisely, this entails that obtaining funds – from the regular EU budget as well as from the emergency funds created in response to the covid and energy crises – is being made conditional on Member States' adherence to the RoL and democratic values (including respect for fundamental rights).

This extension of the EU's RoL toolbox prompts questions as to how effective the new instruments are in enforcing the RoL, as well as their broader political consequences. In this paper, three instruments are analysed: i) the Common Provisions Regulation that was introduced with the adoption of the MFF of 2021-2027 and that prescribes that EU Structural Funds are conditional on the adherence to the EU Charter of Fundamental Rights; ii) the RoL Conditionality Regulation that came into effect in 2021 as an instrument to protect the EU budget from breaches of the RoL; and iii) the post-COVID-19 Recovery and Resilience Facility (RRF) that also came into effect in 2021 and under which the distribution of emergency funds is made conditional on, among others, RoL milestones and targets.

These instruments do, as this paper will show, largely overlap, thereby offering too little clarity as to which instruments and measures apply under which conditions. Although their technical nature is an important source of their strength, it also raises questions about their democratic legitimization. Since decisions about budgetary conditionality are made in highly (geo)politicised contexts and have far-reaching implications for targeted Member States, it will be important to assess the quality of procedures and the impact on inter-institutional and intra-EU relations.

This paper identifies the future research agenda on the effectiveness and democratic legitimacy of using economic governance instruments to pursue the RoL in the EU. By drawing on state-of-the-art research conducted within the framework of RED-SPINEL research programme[8] on the EU instruments for defending the RoL, this paper first offers a brief overview of the different measures that the EU has to strengthen and protect the RoL.[9] Secondly, it specifically delves into the recent rise of economic governance instruments, their use and their impact on political dissensus between the different EU institutions and Member States. Based on desk research and interviews with experts and policy-makers, the paper draws some lessons as to the effectiveness of these measures, the perceived impact on intra-EU relations and the consequences for the broader politicization – and polarization – of the EU as such.

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[6] Luuk Molthof, Nienke van Heukelingen and Giulia Cretti, "[Exploring avenues in the EU's rule of law crisis: What role for the Netherlands?](#)," Clingendael Institute, August 2021.

[7] Marco Fisicaro (2022), "Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union's Values," *European Papers*, 2022, Vol. 7, No. 2, pp. 697-719.

[8] RED-SPINEL refers to the Horizon-funded research programme Respond to Emerging Dissensus: Supranational Instruments and Norms of European democracy (RED-SPINEL).

[9] Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023.



## 2. THE EU'S RULE OF LAW TOOLBOX

For some time, the EU only had primary law to address RoL violations, namely the above mentioned Article 7 TEU and Articles 258, 259 and 260 TFEU. In 2012, the European Parliament (EP) urged the Commission to establish a more comprehensive toolbox to address RoL challenges in Member States. [10] As such, the Commission, in 2014, introduced a general RoL framework in order to monitor and tackle systemic breaches of the RoL. [11] The framework acts as early warning mechanism and is aimed at enabling a structured dialogue with a Member State to address systemic threats to the RoL and in order to prevent escalation. In addition, it serves as preparatory phase of the Commission for proceedings under the Article 7 procedure. Alongside the general RoL framework, the Commission introduced several other instruments to the toolbox. Table 1 provides an overview of this toolbox.

Next to Article 7 and infringement – which are both primarily sanctioning instruments – the toolbox includes monitoring instruments: the EU Justice Scoreboard, the Annual RoL Report, the Cooperation and Verification Mechanism (CVM) and the European Semester. [12] More recently, instruments to apply budgetary conditionality have been introduced to the Union's RoL-framework, in order to protect the management of the EU budget. These are part of the EU's secondary legislation, and include the Common Provisions Regulation (CPR), the RoL Conditionality Regulation and the Recovery and Resilience Facility (RRF). [13] The next sections provide a more comprehensive description of these instruments.

### Sanctioning mechanisms in EU primary law to tackle RoL violations

As argued above, there are two ways in which EU primary law regulates the possible sanctioning of breaches of the RoL by Member States: Article 7 of the TEU – in short, the Article 7 procedure – and Articles 258, 259 & 260 of the TFEU – also called the infringement procedure.

#### Article 7

Article 7 TEU is a procedure by which certain rights of a Member State – for example, voting rights – can be suspended in case it breaches the Union's founding principles. [14]

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[10] European Parliament, "[European Parliament resolution of 12 December 2012 on the situation of fundamental rights in the European Union](#)", 12 December 2012 – Strasbourg.

[11] European Commission, "[Communication from the Commission to the European Parliament and the Council a new EU framework to strengthen the rule of law](#)", 2014.

[12] For a comprehensive analysis of these instruments, the state-of-the-art working paper that was written within the framework of RED-SPINEL: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023.

[13] This paper does not discuss budgetary conditionality in the Common Agricultural Policy (CAP), because this entails only the suspension of the adoption of national plans in case of non-compliance with the Charter of Fundamental Rights, and not (yet) the suspension of payments.

[14] Article 7 TEU states : : (1) 'On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. [...] (2) The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations. [...] (3) Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council': Official Journal of the European Union, "[Consolidated version of the treaty on European Union, Article 7](#)," 26 October 2012.

Table 1 - EU instruments to address RoL violations<sup>[15]</sup>

Sanctioning measures provided for in EU primary law	Budgetary conditionality in secondary legislation	Monitoring mechanisms and frameworks
<p><b>Article 7 procedure:</b> Article 7 of the TEU is a three-stage procedure to suspend certain rights from a Member State, notably voting rights. The first stage (Article 7(1)) starts with a proposal by the Commission, the EP or one-third of the Member States. The Council can decide – by a majority of four-fifths and with consent of the EP – to identify a risk of a serious breach of the Union’s founding values. The second stage (Article 7(2)) to determine a ‘serious and persistent breach can be triggered by the European Council by an unanimous decision. The third stage (Article 7 (3) to suspend certain rights of the Member State in question is triggered by the Council by a qualified majority.</p> <p><b>Infringement procedure:</b> The infringement procedures under Articles 258, 259 &amp; 260 of the TFEU is a procedure that allows the EU to take action when a Member State has failed to fulfil an obligation under the Treaties. This can be done by the Commission (Article 258), or by another Member State (Article 259). The Commission shall deliver a reasoned opinion on the matter. If the Member State does not comply, the Commission can decide to refer the matter to the EU Court of Justice (CJEU). The CJEU can impose a lump sum or penalty payment (Article 260).</p>	<p><b>The Common Provisions Regulation (CPR):</b> The CPR (Regulation (EU) 2021/1060) prescribes that EU Structural Funds are conditional on the adherence to the EU Charter of Fundamental Rights. This implies a non-reimbursement of costs in case of non-compliance with the EU Charter or a suspension of the approval of a programme in case of such a non-compliance.</p> <p><b>RoL conditionality Regulation:</b> The Conditionality Regulation (Regulation (EU) 2020/2092) is an instrument to protect the EU budget from breaches of RoL. It applies to breaches that affect or seriously risk affecting the sound financial management of the budget or the protection of the financial interests of the Union.</p> <p><b>The Recovery and Resilience Facility (RRF) Regulation:</b> The RRF-Regulation (Regulation (EU) 2021/241) is the instrument that establishes the operation of the RRF. According to the regulation, the distribution of RRF-funds to each Member State has been made conditional on a series of milestones and targets outlined in the CSRs.</p>	<p><b>EU justice scoreboard:</b> An annual report providing comparable data on the independence, quality and efficiency of national justice systems.</p> <p><b>Rule of Law Mechanism &amp; Annual Rule of Law Report:</b> The RoL-mechanism is a yearly cycle with an annual report at its centre, with the aim to promote the RoL in Member States through dialogue and exchange of information.</p> <p><b>Cooperation and Verification Mechanism (CVM):</b> The Cooperation and Verification Mechanism (CVM) was established for Romania and Bulgaria to monitor these countries after their EU accession and assist them in resolving shortcomings in their judicial systems and fighting corruption.</p> <p><b>European Semester:</b> An annual cycle of economic and fiscal policy coordination running from November to June. It is preceded by a national semester running from July to October in which the Commission’ recommendations are to be adopted by national parliaments.</p>

[15] This table does not represent the entire RoL toolbox of the EU. Other instruments are of political nature, and include for example the support of structural reform, the European Structural and Investment Funds, and support of civil society networks and projects.

The provision was established with the treaties of Amsterdam (1997) and Nice (2001).[16] It is a heavy procedure, which has three stages. The first stage (Article 7(1)) is preventive of nature, and starts with a proposal by either the Commission, the EP or one-third of the Member States. The Member State is then heard by the Council, which may decide – by a majority of four-fifths and after obtaining consent of the EP – to identify a risk of a serious breach of the Union’s founding values. If the Member State does not comply with the recommendations of the Council, the European Council can – on a proposal by one-third of the Member States or the Commission, and after consent of the EP – trigger the second stage (Article 7(2)), and determine that there is a ‘serious and persistent breach’. This second stage requires approval of all Member States minus the country question. Once the European Council has unanimously determined a breach, the Council can trigger the third stage (Article 7(3)) and decide by qualified majority to suspend certain rights of the Member State in question, for example voting rights in the Council or the right to take over the Council’s presidency.

As a consequence of the high threshold to trigger the second (and third) stage, the procedure has often been referred to as a “Sisyphian procedure”, illustrating the endlessness of the process with multiple steps and high hurdles.[17] This is illustrated by political practice: up till now, Article 7 has not been triggered successfully to its full. The first stage of Article 7 has been triggered twice: in 2017 by the European Commission against Poland, and in 2018 by the European Parliament against Hungary.[18] However, due to the required unanimity to trigger the second stage – and these two countries backing each other – there has been a general reluctance on the part of the EU institutions and Member States to trigger the next stages of Article 7.[19] After triggering the first stage, hearings of the General Affairs Council were stalled since the beginning of the Covid-19 pandemic, on grounds that such hearings would require physical meetings to take place. Yet, also after the pandemic, hearings have not resumed on a ‘regular, structured and open manner’.[20]

### Infringement procedure

The second instrument in primary law is the infringement procedure under Articles 258, 259 and 260 of the TFEU. Unlike Article 7, the infringement procedure is not merely aimed at tackling systemic violations of the RoL, but rather at monitoring and tackling breaches of the entire body of EU law. The infringement procedure can be triggered by the Commission (Article 258),[21] or another Member State (Article 259),[22] and can entail sanction in the form of a lump sum or penalty payment (Article 260).[23] In the past eleven years, the procedure has been used to address RoL backsliding in Poland and Hungary.

[16] Initially, in the Treaty of Amsterdam, Article 7 only included the sanctioning parts (hence, the second and third stage). In the Treaty of Nice, the preventive first stage was introduced.

[17] Laurent Pech, “Article 7 TEU: From ‘Nuclear Option’ to ‘Sisyphian Procedure’?,” in Belavusau, U., & Gliszczynska-Grabias, A., (eds.), *Constitutionalism under Stress*, 2020, Oxford, Oxford University Press, 157-174.

[18] Against Poland due to the erosion of judicial independence by the Law and Justice (PiS)-government and against Hungary due to structural attacks on democratic institutions and human rights by the Fidesz-led government.

[19] Luuk Molthof, Nienke van Heukelingen, and Giulia Cretti, “[Exploring avenues in the EU’s rule of law crisis: What role for the Netherlands?](#),” Clingendael Institute, August 2021.

[20] European Parliament, European Parliament resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary (Brussels: European Parliament, 2020). See also: Eric Maurice, “The Rule of Law: the uncertain gamble on conditionality”, Fondation Robert Schuman, 13 March 2023.

[21] Article 258 states that: ‘If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. [...] If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union’: Official Journal of the European Union, “[Consolidated version of the Treaty on the Functioning of the European Union, Article 258](#)”, 7 June 2016.

[22] Article 259 states that: ‘A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union’: Official Journal of the European Union, “[Consolidated version of the Treaty on the Functioning of the European Union, Article 259](#)”, 7 June 2016.

[23] Article 260 provides a sanctioning mechanism and states that: ‘If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court. [...] If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it’: Official Journal of the European Union, “[Consolidated version of the Treaty on the Functioning of the European Union, Article 260](#)”, 7 June 2016.

This use of the infringement procedure was announced by the Commission in 2017 in its Communication ‘EU law: Better results through better application’, in which it promised a more strategic and systematic approach to tackle ‘wider problems with the enforcement of EU law’.[24]

In 2012, the Commission started with using the infringement procedure to address constitutional backsliding in Hungary with the coming into force of the new Hungarian Basic Law.[25] The Commission launched three infringement procedures targeted at different constitutional reforms as to the independence of the Central Bank, the retirement age of judges, prosecutors and public notaries, and the violation of Independence of Data Protection Supervisory Authority. In 2017, and in line with its own Communication, the Commission started to more systematically use the infringement procedure to address violations of the Union’s fundamental values by Hungary, targeted at the Hungarian Higher Education Law (2017), the Act on the Transparency of Organisations Supported from Abroad (2017), legislation that criminalises support to asylum seekers – the so-called ‘Stop Soros’ legislation (2018), the practice of keeping asylum seekers in a closed transit zone border with Serbia (2020), the restriction of the rights of LGBTIQ+ (2021), and the ‘Child Protection Act’ (2021).[26]

Since 2018, six infringement procedures have been initiated to tackle RoL backsliding in Poland. Five were related to the independence of the judiciary, for example related to the independence and irremovability of Polish ordinary and Supreme Court judges (2018), the disciplinary regime of judges (the so-called ‘Muzzle-law’ in 2019 and 2020) and the ruling of the Polish Constitutional Tribunal (in 2021). In addition, in 2021, the Commission launched an infringement procedure against Poland due to so-called ‘LGBTIQ+ ideology-free zones’.

Nevertheless, the infringement procedure has been criticized for not providing an effective measure to tackle systemic breaches of the RoL. It is used mainly on technical and narrow grounds.[27] As such, rather than referring to Article 2 of the TEU (the EU’s foundational values of democracy and the RoL), the Commission based its infringement on violations of other (mainly secondary) EU law.[28] Moreover, the Commission is criticized for not systematically linking attacks on judiciary independence to attacks on the fundamental rights in the EU.[29] Also, the procedure is said to lack effectiveness because countries simply refuse to abide to the rulings of the EU Court of Justice (CJEU), even when confronted with financial penalties.[30]

[24] European Commission, ‘Communication from the Commission – EU Law: Better Results through Better Application’, Brussels, 19 January 2017, Doc. 2017/C 18/02.

[25] Matteo Bonelli, ‘[Infringement Actions 2.0: How to Protect EU Values before the Court of Justice](#)’, *European Constitutional Law Review*, 18: 30–58, 2022.

[26] Lisa H. Anders and Sonja Priebus ‘Does It Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary’. In: Lorenz, A. & Anders, L.H., (eds.), *Illiberal Trends and Anti-EU Politics in East Central Europe*, 2021, Palgrave, Cham, 235-262.

[27] Erin K. Jenne and Cas Mudde, ‘Hungary’s Illiberal Turn: Can Outsiders Help?’, 2012, *Journal of Democracy* 23 (3): 147–155; Lisa H. Anders and Sonja Priebus ‘Does It Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary’. In: Lorenz, A. & Anders, L.H., (eds.), *Illiberal Trends and Anti-EU Politics in East Central Europe*, 2021, Palgrave, Cham, 235-262; Luuk Molthof, Nienke van Heukelingen and Giulia Cretti, ‘[Exploring avenues in the EU’s rule of law crisis: What role for the Netherlands?](#)’, Clingendael Institute, August 2021.

[28] Lisa H. Anders and Sonja Priebus, ‘Does It Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary’. In: Lorenz, A. & Anders, L.H., (eds.), *Illiberal Trends and Anti-EU Politics in East Central Europe*, 2021, Palgrave, Cham, 235-262, p. 241.

[29] Petra Bárd and Anna Śledzińska-Simon, ‘[Rule of law infringement procedures: A proposal to extend the EU’s rule of law toolbox](#)’, CEPS paper in Liberty and Security, No. 2019-09, May 2019.

[30] For example, in October 2021, the EU Court of Justice penalized Poland with a daily fine of 1 million euro for failing to comply with an order to suspend its controversial disciplinary mechanism for judges. In April 2023, the fine was cut by half (to 500k per day respectively) after Poland asked for a suspension of the fine after having implemented (although minor) reforms.

## Monitoring instruments to address RoL breaches

Next to the general sanctioning mechanisms provided for in EU primary law, the RoL toolbox of EU provides for several instruments to monitor Member States' compliance with the RoL: the EU justice scoreboard, the Annual RoL report, the CVM and the European Semester.

### EU justice scoreboard

The EU justice scoreboard provides for an annual overview how Member States perform on the efficiency, quality and independence of justice systems. The instrument was developed in 2013 as a soft prescriptive instrument, aimed at shaping behaviour through dialogue and persuasion.[31] The scoreboard was introduced with the idea that sound justice systems could contribute to the restoring of confidence and growth after the economic and financial crisis starting in 2008. The purpose is to assist the Member States in improving the effectiveness of their national justice systems by providing objective, reliable and comparable data for all Member States on the efficiency of the procedures and the independence of the justice system.[32]

The EU justice scoreboard provides input for the Annual RoL Report (see next section). Nevertheless, positions taken by the Commission based on the scoreboard are contested by some of the Member States (on grounds related to its methodology and data collection) and subject to discussion and interpretation.[33]

### RoL Mechanism & Annual RoL Report

The RoL Mechanism is an instrument that allows the structural monitoring of the RoL situation in all EU Member States and the identification of any issues at an early stage. At its centre is the Annual RoL Report. The first RoL Annual Report was developed in 2020 with the aim to promote the RoL in all Member States through dialogue and exchange of information. Therefore, the RoL Mechanism provides a process for annual dialogue between the Commission, the Council, the European Parliament and the Member States, as well as national parliaments and civil society.[34] The Annual Report monitors developments in all 27 Member States, both positive and negative, on four specific pillars: the justice system, anti-corruption, media pluralism, and other institutional issues related to checks and balances. In 2022, the Annual Report for the first time included country chapters with specific recommendations. Moreover, since 2023, the Report include progress on these recommendations.[35]

Next to a monitoring mechanism, it also aimed at preventing challenges from emerging or deteriorate. The mechanism is based on peer review and dialogue and does not have legally binding implications. However, the Annual RoL Report is the most important source of information to identify breaches of the RoL in Member States and used in decisions on other enforcement instruments, such as the Article 7 procedure and the RoL Conditionality Regulation. Moreover, according to the Commission, 'the report has become a key driver for change and positive reforms [...and...] 65 % of the recommendations issued in 2022 have been, either fully or partially, addressed.'[36]

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[31] Ramona Coman. *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*, 2022, Palgrave MacMillan.

[32] Ylenia Guerra, "The EU Justice Scoreboard," in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 58-62.

[33] Ibid; Laurent Pech. *The Rule of Law*, in Craig, P. De Búrca G. (eds.), *The Evolution of EU Law*, Third edition, Oxford, Oxford University Press, 2021, 307-338.

[34] Ylenia Maria Citino, "The Rule of Law Reports", in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 63-68..

[35] European Court of Auditors, "[The Commission's rule of law reporting](#)", Review 02/2024.

[36] European Commission, 'European Commission, [Ninth report on economic, social and territorial cohesion](#)', March 2024, p. 217.

## Cooperation and Verification Mechanism

The Cooperation and Verification Mechanism (CVM) was introduced in 2007 as transitional measure after the accession of Bulgaria and Romania. The objective was to assist these countries in resolving shortcomings in their judicial systems and in fighting corruption. Under the CVM, the Commission has been monitoring progress on these issues by setting specific benchmarks for a period of up to three years. The CVM terminated in September 2023, despite assessments that further reforms in both countries remained necessary.

## European Semester

The European Semester was introduced in 2010 as a reaction to the financial and economic crisis of 2008-2013. The Semester is a yearly process resulting in country-specific recommendations (CSR's) on macroeconomic and structural reforms to improve the economic and financial position of individual Member States and the Economic and Monetary Union (EMU). It is a coordination process through which the Commission annually identifies economic and social challenges that could damage the economic situation in a particular country, in the EMU or the EU in general. It formulates recommendations also with regard to the position of judiciary and anti-corruption measures.

The Semester runs from November to June, and starts with an 'Autumn Package', consisting of the Commission's view on economic policy priorities for each Member State, as well as specific recommendations for the Eurozone. In May, the Commission comes with the 'Spring Package', in which it presents its country reports, in which the Commission takes stock of national reforms, as well as CSRs for each Member State.[37] The CSRs are adopted by the Council by a qualified majority after unanimous endorsement by the European Council.

The European Semester was not designed with the explicit aim to protect the RoL. Yet, in the absence of a comprehensive RoL mechanism (recall that the first RoL Annual Report was developed only in 2020), since 2016, the Semester has become the main institutional framework for EU 'rule of law guidance, monitoring and enforcement.'[38] In practice, this meant that the country reports and CSRs have been used to monitor compliance with RoL principles and fundamental values of the EU. In addition, explicit reference has been made to the quality of institutions, transparency, media freedom, political pluralism and respect for the primacy of EU law.[39]

In 2019, the European Semester country reports for Poland and Hungary for the first time addressed the RoL situation in both countries. Nevertheless, RoL issues are flagged as concerns only in association with macro-economic considerations, such as a country's capacity to attract business and investments as well as to enable economic growth.[40] More importantly, the European Semester in itself does not provide for binding instruments to enforce RoL-related reforms.

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[37] Andrea Capati and Thomas Christiansen, "The European Semester: EU Rule of Law Guidance, Monitoring and Enforcement Through Economic Governance Mechanisms", in: in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 69-72.

[38] Andrea Capati and Thomas Christiansen, "The European Semester: EU Rule of Law Guidance, Monitoring and Enforcement Through Economic Governance Mechanisms", in: in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 69-72, p. 71.

[39] Andrea Capati and Thomas Christiansen, "The European Semester: EU Rule of Law Guidance, Monitoring and Enforcement Through Economic Governance Mechanisms", in: in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 69-72.

[40] Louise Fromont and Arnaud Van Waeyenberge, "Trading rule of law for recovery? The new EU strategy in the post-Covid era." *European Law Journal*, 2022, 27: 132-147.

It relies on soft-instruments to effectuate change, such as constructive dialogue between the Commission and the Member State in question, peer review, peer pressure and consensus-seeking.[41] When the CSRs are not sufficiently followed-up, the Semester in itself does not provide for sanctioning mechanisms. This explains why the rate of the implementation of the recommendations adopted during the European Semester has been disappointing and gradually declining since its initiation.[42]

### **Budgetary conditionality to tackle RoL breaches**

More recently, the Union has developed regulatory regimes for budgetary conditionality to address breaches of the RoL: the Common Provisions Regulation (CPR), the RoL conditionality regulation, and the Recovery and Resilience Facility (RRF) that was created in reaction to the COVID-19 pandemic. Budgetary conditionality has become common since the adoption of the previous MFF. As a response to the financial crisis, in 2014 macro-economic conditionality was introduced, meaning that the allocation of EU funds under shared management was made conditional on fiscal compliance with the Stability and Growth Pact (SGP). In addition, as a reaction to the so-called RoL-crises in Hungary and Poland, budgetary conditionality was introduced to enforce adherence to the RoL, fundamental rights and democratic principles. It is likely that in the future MFF, the regime for budgetary conditionality will be reinforced and extended to other European policy priorities.[43] The instruments for RoL conditionality are enshrined in secondary legislation; the next sections provide a description of each of the three instruments.

### **The Common Provisions Regulation**

Under the Common Provisions Regulation (CPR, Regulation (EU) 2021/1060), the obtaining of EU Structural Funds covered by this regulation depends on whether country fulfils certain conditions.[44] The CPR is based on ex-ante conditionality, meaning that funds can only be accessed when indicated conditions are met.[44] These conditions are so-called ‘horizontal enabling conditions’, including the adherence to the EU Charter of Fundamental Rights.[46] This means that in case of discrimination, breaches of the principle of judicial independence and/or fraud, the Commission can decide to not reimburse costs (Article 15 of the CPR) or to suspend the approval of a specific programme (or enforce amendment of a programme) (Article 9(1) CPR).[47]

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[41] Jonathan Zeitlin and Bart Vanhercke, “Socializing the European Semester: EU Social and Economic Policy Co-ordination in Crisis and Beyond”, *Journal of European Public Policy*, 2018, 25:2, 149-174; Andrea Capati and Thomas Christiansen, “The European Semester: EU Rule of Law Guidance, Monitoring and Enforcement Through Economic Governance Mechanisms”, in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023, pp. 69-72.

[42] Ibid

[43] European Commission, ‘[Ninth report on economic, social and territorial cohesion](#)’, March 2024, p.15.

[44] The funds under this regulation are the Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund (CF), the Just Transition Fund (JTF) and the European Maritime, Fisheries and Aquaculture Fund (EMFAF)– and for measures financed under shared management by the so-called ‘Home’ funds - the Asylum, Migration and Integration Fund (AMIF), the Internal Security Fund (ISF) and the Instrument for Financial Support for Border Management and Visa Policy (BMVI).

[45] László Detre, András Jakab, Tamás Lukácsi, ‘Comparing Three Financial Conditionality Regimes and their Application to Hungary: The Conditionality Regulation, the Recovery and Resilience Facility Regulation, and the Common Provisions Regulation,’ Max Planck Institute, MPIL RESEARCH PAPER SERIES | No. 2023-23, p. 50.

[46] Official Journal of the European Union, “[Regulation \(EU\) 2021/1060 of the European Parliament and of the Council](#)”, 24 June 2021.

[47] Ibid.

Article 15 of the CPR was introduced with the adoption of the Multiannual Financial Framework (MFF) of 2021-2027. As compared to the MFF of 2014-2020, payments could also be suspended, but only if a Member State failed to implement agreed remedial actions.[48] Under the new Article 15 of the CPR, non-reimbursement is automatic: the Member State in question can receive pre-financing, but other costs can only be reimbursed until the Member State complies with the horizontal enabling conditions.

### RoL Conditionality Regulation

In addition to the CPR, the Commission, proposed a new Regulation in 2018 to protect the Union's budget against breaches of the RoL that affect the sound financial management of the EU budget.[49] Under this RoL Conditionality Regulation (also referred to as the MFF Rule of Law regulation, Regulation (EU) 2020/2092), the Commission can take protective measures in case it identifies such breaches in a Member State, including withholding of payments from the EU budget, the reduction of pre-financing, and prohibiting the Member State to enter legal obligations. It includes an indicative list of breaches, namely: 'i) endangering the independence of the judiciary; ii) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law-enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest; iii) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.'[50] The Conditionality Regulation partly overlaps with the CPR, as both entail conditions as to the independence of the judiciary. Yet, where the conditions under the CPR specifically also relate to fundamental rights, the Conditionality Regulation specifically addresses breaches that affect the EU budget, and hence, put specific emphasis on breaches related to public procurement and corruption.[51]

Different than the CPR, the Conditionality Regulation is based on ex-post conditionality, meaning that reactive measures can be taken in case the Commission identifies a breach that is already taking place. According to the Regulation, the Commission needs to identify a breach of the RoL and assess whether such a breach i) 'affects, or seriously risks affecting, the sound financial management of the Union budget or the protection of the Union's financial interests', ii) 'in a sufficiently direct way'.[52]

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[48] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Fornis Gómez, 'The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context', 2023, [IPOL STU\(2023\)747469\\_EN.pdf\(europa.eu\)](#), p. 40.

[49] European Commission, "[Proposal for a Regulation of the European Parliament and the Council on the Protection of the Union's Budget in Case of Generalised Deficiencies as Regards the Rule of Law in the Member States](#)". COM(2018) 324 final - 2018/0136(COD).

[50] Official Journal of the European Union, "[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](#)", [EUR-Lex - 32020R2092 - EN - EUR-Lex \(europa.eu\)](#)

[51] László Detre, András Jakab, Tamás Lukácsi, 'Comparing Three Financial Conditionality Regimes and their Application to Hungary: The Conditionality Regulation, the Recovery and Resilience Facility Regulation, and the Common Provisions Regulation,' Max Planck Institute, MPIL RESEARCH PAPER SERIES | No. 2023-23, P. 48.

[52] Official Journal of the European Union, "[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](#)", [EUR-Lex - 32020R2092 - EN - EUR-Lex \(europa.eu\)](#) ; European Commission, "[Guidelines on the application of the Regulation \(EU, EURATOM\) 2020/2092 on a general regime of conditionality for the protection of the Union budget](#)", 2 March 2022.



In addition, the Regulation entails a list of conditions under which it can be triggered, [53] and can only be applied if the Commission can justify that other instruments are less effective in protecting the budget. The mechanism came into effect on 1 January 2021. Different than the CPR and -notably – the Article 7 procedure, the Conditionality Regulation is not an instrument to tackle structural violations of the RoL, but violations that impact – or risk to affect – the EU budget. In addition, and different than the CPR which only applies to Structural Funds, the Conditionality Regulation covers all funds.

### **The Recovery and Resilience Facility Regulation**

As a reaction to the COVID-19 pandemic and the economic downturn that it caused, the EU developed the so-called NextGenerationEU (NGEU) financial aid package, with at its core the Recovery and Resilience Facility (RRF). To finance RRF, the EU decided – for the first time in history – to borrow resources in addition to its seven-year budget. While being groundbreaking in itself, the RRF also meant a push for the RoL Conditionality Regulation. During the European Council in July 2020, Member States decided that the Conditionality Regulation was introduced together with the RRF. Moreover, the Conditionality Regulation was made a *sine qua non*: without agreement on the Regulation, there would be no agreement on the RRF. This implied that to be able to approve the RRF and for countries to obtain funds for their economic recovery, agreement on the Commission's proposal for the RoL Conditionality Regulation was made a prerequisite.[54] Tying its approval to the approval of the RRF was crucial to the adoption of the Conditionality Regulation in December 2020.

The RRF (Regulation (EU) 2021/241) includes *ex-ante* conditionality, meaning that the distribution of the funds are conditional on a series of milestones (qualitative objectives) and targets (quantitative objectives).[55] For a number of countries (see paragraph 3) – who have received CSRs on these topics within the framework of the European Semester – funds are conditional on milestones that relate to the RoL. These can be divided into three groups: those related to the independence and effectiveness of judicial systems, those aimed at strengthening anti-fraud and anti-corruption policies, and those aimed at tackling money laundering.[56] In addition, super-milestones refer to milestones that should be met in order to receive the first RRF payment, and are related to either the RoL or to national control and audit systems. The (super-)milestones and targets are outlined in Member States' National Recovery and Resilience Plans (NRRP's).[57] In addition to the RRF, the Russian invasion of Ukraine led to another recovery package, namely REPowerEU, to assist Member States in becoming independent from Russian gas. This implied that the national plans were supplemented by an additional chapter on REPowerEU. Also these funds were made conditional on the fulfilment of the (super-)milestones and targets identified in the NRRPs.

[53] These include : 'a) the proper functioning of the authorities implementing the Union budget, including loans and other instruments guaranteed by the Union budget, in particular in the context of public procurement or grant procedures; b) the proper functioning of the authorities carrying out financial control, monitoring and audit, and the proper functioning of effective and transparent financial management and accountability systems; c) the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union; d) the effective judicial review by independent courts of actions or omissions by the authorities referred to in points (a), (b) and (c); e) the prevention and sanctioning of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities; f) the recovery of funds unduly paid; g) effective and timely cooperation with OLAF and, subject to the participation of the Member State concerned, with EPPO in their investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation; h) other situations or conduct of authorities that are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union.' EUR-Lex - 32020R2092 - EN - EUR-Lex (europa.eu)

[54] Nicola Lupo, "The Recovery and Resilience Facility and its effects on the rule of law", in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 84-89.

[55] Official Journal of the European Union, "Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility", 12 February 2021.

[56] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Forns Gómez, "The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context", 2023, IPOL\_STU(2023)747469\_EN.pdf (europa.eu), p. 52.

[57] Official Journal of the European Union, "Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility", 12 February 2021.

To obtain money from the RRF, Member States have to file payments requests to the Commission. Both the indicative timetable for payments and the milestones and targets to be achieved are set-out in a Council Implementing Decision (CID).[58] Progress as to the achievement of RoL reform is monitored by the Commission and the decision on whether milestones and targets are achieved lies also with the Commission.

## 3. CONDITIONALITY IN PRACTICE

### The CPR

The CPR has been deployed against both Hungary and Poland, meaning that both countries have been withheld from serious sums of cohesion funds due to non-adherence to the EU Charter of Fundamental Rights. In the case of Poland, the Commission decided, in October 2022 to freeze over 75 billion euro of cohesion funds until the country meets the horizontal enabling conditions as to judicial independence.[59] The current government of Donald Tusk has committed itself to restoring the rule of law, on the basis of which the Commission, in February 2024, proposed to unfreeze the funds.

In the case of Hungary, the Commission decided in December 2022 to suspend all Hungarian cohesion fund money – a total of 22 billion euro – until the Fidesz-government implements reforms necessary to adhere to the EU Charter of Fundamental Rights, as to judiciary independence, academic freedom, LGBTIQ+ rights and the rights of asylum seekers.[60] In December 2023, just before the European Council, the Commission decided to unfreeze part of the Hungarian cohesion funds, due to a reform with which Hungary would comply to the horizontal enabling condition of the EU Charter of Fundamental Rights regarding judicial independence. As such, roughly 10 billion euro of programme funding to which only this condition applies is now unblocked.

### The RoL Conditionality Regulation

The RoL Conditionality Regulation to tackle RoL breaches has – so far – only been activated against Hungary. The Commission triggered the regulation in April 2022, due to RoL breaches related to public procurement, the effectiveness of prosecutorial action and corruption. In the face of the withholding of funds, Hungary did commit to adopt a number of remedial measures, but these were considered insufficient by the Commission. As a result, on 12 December 2022, the Council decided to cut Hungary's payment from three cohesion policy operational programmes[61] by 55% (over 6 billion euro) and to prohibit Hungarian public interest trusts from entering into legal obligations, including Erasmus and Horizon programmes.[62] In practice, this means that Hungary has to implement no less than 17 corrective measures to tackle breaches related to public procurement and corruption, for example on transparency of public spending and judicial review of decisions not to prosecute corruption cases. Although the Commission had decided to unlock cohesion funds that were blocked under the CPR as a reaction to the country's planned judiciary reform, the funds that were blocked under the Conditionality Regulation remain blocked due to unresolved problems related to public procurement and the associated risks for the EU budget.

[58] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Fornas Gómez, 'The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context', 2023, [IPOL STU\(2023\)747469 EN.pdf\(europa.eu\)](#), p. 51.

[59] Aleksandra Krzyszczoszek, 'European Commission to freeze Poland's cohesion money', [Euractiv](#), 18 October 2022.

[60] Kate Abnett and Jan Strupczewski, 'EU holds back all of Hungary's cohesion funds over rights concerns', [Reuters](#), 22 December 2022.

[61] The Environment and Energy Efficiency Operational Programme Plus, the Integrated Transport Operational Programme Plus and the Territorial and Settlement Development Operational Programme Plus.

[62] Council of the European Union, '[Rule of law conditionality mechanism: Council decides to suspend €6.3 billion given only partial remedial action by Hungary](#),' 12 December 2022.

Although Poland has been withheld from EU funds under the CPR – for not fulfilling the horizontal enabling conditions as to judicial independence–the Commission has not activated the Conditionality Regulation against Poland. In November 2021, the Commission requested Poland to submit information necessary for the Commission to assess a RoL breach under the RoL Conditionality Regulation. In its request, the Commission explicated its suspicions of RoL breaches that could affect the Union’s budget.[63] Yet, the Commission has not taken further steps. Arguably, the Commission perceived it as impossible to give substance to the claim that the RoL breaches in Poland affects, or risks to affect, the budget or financial interests of the EU in a sufficiently direct way.[64]

### The RRF

Conditionality under the RRF affected both Hungary and Poland. For Hungary – whose national plan is worth of roughly ten billion euro – no less than 27 super-milestones were identified, broadly relating to corruption, public procurement and judicial independence, but also to control and audit systems. [65] Disbursement of the roughly six billion in grants and four billion in loans will take place on the basis of the fulfillment of these RoL-related milestones. Of the 27 super-milestones, 21 super-milestones build on the above mentioned 17 corrective measures to tackle corruption under the RoL Conditionality Regulation. Two super-milestones relate to audit and control procedures. Finally, four super-milestones relate to the independence of the judiciary and overlap with the conditions on judicial independence under the CPR - which were considered achieved by the Commission in December 2023. At the time of writing, Hungary has not filed a payment request.[66]

Poland’s national RRF-plan – worth of roughly 58 billion euro –contains three super-milestones related to the independence of the judiciary.[67] The approximately 24 billion in grants and 34 billion of loans are suspended until the super-milestones are fulfilled. On 15 December 2023, Poland submitted its first payment request for a first tranche of roughly 6 billion euro.[68] On 29 February 2024 the Commission issued a positive preliminary assessment of the satisfactory fulfilment of milestones and targets related to the first payment request.[69] On 5 April 2024, the Commission authorized the payment through an implementing decision, following the opinion of the Economic and Financial Committee (EFC).[70]

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[63] Laurent Pech, Anna Wójcik and Patryk Wachowiec, “The case for activating the rule of law conditionality regulation in respect of Poland”, [rule of law vz.1.pdf\(greens-efa.eu\)](#).

[64] Idem, p. 57.

[65] On the basis of the Commission’s country-specific recommendations for Hungary of 2019, 2020 and 2022; European Parliament, “[Rule of law-related ‘super milestones’ in the recovery and resilience plans of Hungary and Poland](#)”, Briefing Requested by the CONT committee, January 2023; European Commission, “[Hungary’s recovery and resilience plan](#)”, accessed 14 March 2024.

[66] European Commission, “[Hungary’s recovery and resilience plan](#)”, accessed 14 March 2024.

[67] European Commission, “[Poland’s recovery and resilience plan](#)”, accessed 14 March 2024.

[68] European Commission, “[Commission receives Poland’s first payment request under the Recovery and Resilience Facility](#)”, 15 December 2023.

[69] European Commission, “[Positive preliminary assessment of the satisfactory fulfilment of milestones and targets related to the first payment request submitted by Poland on 15 December 2023, transmitted to the Economic and Financial Committee by the European Commission](#)”, 29 February 2024.

[70] European Commission, “[Commission implementing decision of 5.4.2024 on the authorisation of the disbursement of the first instalment of the non-repayable support and the first instalment of the loan support for Poland](#)”, 5 April 2024. See also: European Commission, “[Questions and answers on rule of law and EU funds for Poland](#)”, 29 February 2024; European Commission, “[NextGenerationEU: Questions and answers on the Recovery and Resilience Facility](#)”, 16 June 2021

## 4. THE EFFECTIVENESS OF RoL CONDITIONALITY

Rather than sanctioning mechanisms, such as the Article 7 procedure and infringement, the instruments for budgetary conditionality are instruments to protect the EU's financial interests from RoL violations (in case of the Conditionality Regulation and the RRF), as well as to protect fundamental rights within the EU (in case of CPR). The instruments are reactive, as they are activated as a reaction to breaches of the RoL and fundamental rights, but also preventive, as they allow the Commission – as part of the annual RoL mechanism and European Semester – to permanently monitor the RoL situation in all Member States. Arguably, financial implications are deemed effective in addressing RoL breaches, since money talks and makes politics move. As such, reliance on conditionality is becoming more standard.[71]

Following evaluations from both the Commission itself, the European Court of Auditors (ECA), and a study issued by the EP's budgetary committee, there is some evidence that budgetary suspensions have been effective in protecting the EU's financial interests, and have been effectuating change in targeted countries, notably Poland and Hungary.[72] Their strength lies largely in the full toolbox of mutual complementary soft (for example dialogue) and hard (for example budget suspensions) measures.[73] Nevertheless, according to the ECA's audit of the EU's rule of law toolbox, it is too early to fully assess the long-term impact of conditionality on the RoL in Member States. The next sections provide some preliminary conclusions as to the effectiveness of budgetary conditionality and areas for future research.

### The CPR

A study of a broad group of EU experts – that was requested by the EP – concludes that the conditionality in the CPR has had considerable effect on preventing the adoption of anti-LGTBI measures in certain EU regions (without specifying which regions however).[74] Its corrective impact is however difficult to assess, since funds have only been suspended so far for Hungary and Poland. Of course, the sums of money involved are considerable, making the stakes high. For Hungary, roughly 22 billion euro of cohesion funds had been suspended, and for Poland no less than 75 billion. This combination means that there is a strong financial interest in pursuing reform.

This becomes clear when looking at Poland. Right after the elections, new prime minister Donald Tusk had stressed that Poland must 'use all possible methods' to unblock EU funds.[75] At the same time, reforms in the judiciary have been piecemeal, not in the last place because Tusk is opposed by incumbent President Andrzej Duda from the PiS-party.

[71] Antonia Baraggia and Matteo Bonelli, "Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges", *German Law Journal* (2022), 23, pp. 131–156.

[72] European Commission, "Communication from the Commission to the European Parliament and the Council on the application of 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", 12 January 2024; European Court of Auditors (2024) 'The rule of law in the EU: An improved framework to protect the EU's financial interests, but risks remain', *Special report 03/2024: The rule of law in the EU* | [European Court of Auditors \(europa.eu\)](#); Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Forns Gómez, 'The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context', 2023, [IPOL STU\(2023\)747469\\_EN.pdf\(europa.eu\)](#).

[73] Franco-German Working Group on EU Reforms, "[Sailing on High Seas – Reforming and Enlarging the EU for the 21st Century](#)", 18 September 2023.

[74] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Forns Gómez, "The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context", 2023, [IPOL STU\(2023\)747469\\_EN.pdf\(europa.eu\)](#), p. 58.

[75] Reuters, "[Poland must do all it takes to unblock EU funds, says Tusk](#)", 25 October 2023.

Fully restoring the RoL through constitutional measures will take time. Nevertheless, the Commission in February 2024 agreed to deblock all frozen funds. In this context, the ECA has pointed to the necessity to examine long-term impact and assess whether the reforms announced to reclaim funds, are not just reforms on paper.[76]

The same applies to Hungary, where in May 2023 a reform bill was approved to strengthen judicial independence and to depoliticize the courts.[77] According to the Commission, Hungary has taken sufficient measures for the Commission to consider that the horizontal enabling condition of the EU Charter of Fundamental Rights related to judicial independence is fulfilled. Nevertheless, this reform bill only partially addresses the long-standing issues that the country has with the RoL. Remaining issues include reforms to tackle corruption, to protect fundamental rights its citizens, to protect academic & media freedom and reforms as to its asylum policy. For that reason, funds have been deblocked to which only the condition of judicial independence applies. Cohesion funds that are conditional on fundamental rights or public procurement conditions remain blocked under respectively the CPR or the Conditionality Regulation. Hence, the CPR has effectuated some change in Hungary, but long-term impact remains to be seen.

### The RoL Conditionality Regulation

When it comes to assessing the effectiveness of the Conditionality Regulation, it is important to stress that the aim of the Regulation is not to sanction RoL violations in Member States, but to protect the EU budget against such violations. As expressed in an Opinion of the Council Legal Service, it is this link with the EU budget that defines the complementary feature of the Regulation as compared to for example the Article 7 procedure.[78] Nonetheless, the fact that the Regulation has so far only been activated against Hungary, makes it difficult to fully determine whether the measure is effective, especially in the long-term. The Commission evaluated the Regulation in January 2024 and has come to a positive assessment. According to the Commission, ‘the procedure effectively spurs changes that increase the protection of the financial interests of the Union from breaches of the principles of the rule of law.’[79] This conclusion is shared by the ECA, which furthermore stresses that triggering the Regulation against Hungary ‘complemented the other budgetary mechanisms’.[80] The report of ECA, issued in February 2024, concludes that the Regulation contributes to an improved framework for protection the EU budget, since the other financial instruments are not aimed at protecting the budget as such, but the RoL in particular.[81]

Accordingly, the Regulation has been effective in effectuating change in Hungary, which has proposed commitments related to the 17 corrective measures to tackle corruption. The Commission considered these pertinent and adequate ‘if correctly and fully implemented’.[82]

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[76] European Court of Auditors (2024) ‘The rule of law in the EU: An improved framework to protect the EU’s financial interests, but risks remain’, [Special report 03/2024: The rule of law in the EU | European Court of Auditors \(europa.eu\)](#).

[77] Jorge Liboreiro, “[European Commission could unblock €10 billion in cohesion funds for Hungary as early as next month](#)”, Euronews, 30 November 2023.

[78] Council Legal Service, ‘Opinion of the Legal Service: Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States’, Interinstitutional File: 2018/0136(COD)’.

[79] Communication from the Commission to the European Parliament and the Council on the application of 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, 12 January 2024.

[80] European Court of Auditors (2024) ‘The rule of law in the EU: An improved framework to protect the EU’s financial interests, but risks remain’, [Special report 03/2024: The rule of law in the EU | European Court of Auditors \(europa.eu\)](#)

[81] European Court of Auditors (2024) ‘The rule of law in the EU: An improved framework to protect the EU’s financial interests, but risks remain’, [Special report 03/2024: The rule of law in the EU | European Court of Auditors \(europa.eu\)](#), p. 20.

[82] European Commission, “[Communication from the Commission to the European Parliament and the Council on the application of 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](#)”, 12 January 2024.

Examples are the launch of an ‘Integrity Authority Act’, proposals to strengthen the anti-corruption framework, the establishment of an Anti-Corruption Task Force, and proposals to strengthen audit and control mechanisms. Although these – and other commitments – are still largely measures on paper, the Commission stresses that they imply already a step forward and that ‘other instruments under Union legislation would not have led to the same results.’[83] Nevertheless, it is too early to assess whether the reforms will be sustainable in the long-term. As the ECA puts it: ‘a member state’s formal compliance with the remedial measures may not necessarily result in effective and sustainable improvements on the ground that go beyond a mere box-ticking exercise.’[84]

Moreover, in the same report, the ECA identified several shortcomings of the Regulation which could hamper its effectiveness. These, for example, relate to lagging administrative capacity and human resources on the part of the Commission. Secondly, the ECA stresses that the Regulation does not provide detailed criteria for assessing the link between the RoL breach and the EU budget. This makes the process of triggering the Regulation difficult and, potentially, ambiguous. Finally, according to the Court of Auditors, although the Regulation’s guidelines provide some instructions on how to justify the use of the Regulation as compared to other to the possibilities offered by CPR and the RRF, ‘they do not cover essential aspects such as the scope of their application, possible measures, or the adoption procedure to be followed’.[85] These shortcomings could ultimately impact on the Regulation’s effectiveness.

### The RRF

Also the effectiveness of the RRF is difficult to determine, since the announced reforms in Hungary and Poland have not yet been implemented. Yet, since more countries have been affected by the RoL conditionality under the RRF, some preliminary optimistic conclusions could be drawn. For example, also Bulgaria, the Czech Republic, Malta, Romania and Slovakia had been requested to include milestones on judicial independence in order to get their national plans approved (and even more countries had to include targets on anti-corruption, anti-fraud and anti-money laundering).[86] Of these countries, the Czech Republic, Greece, Malta and Slovakia had already enacted these judicial reforms before the eventual adoption of their national plans, which indicates that the RRF conditionality framework provided an important incentive for reforms.[87]

In the cases of Bulgaria and Romania, improvements with regard to the independence of the judiciary system and the fight against corruption were already closely monitored under the CVM. In 2022 – after fifteen years of little progress under the CVM – both countries included reforms in these areas in their national RRF plans.[88] Nevertheless, as pointed out in a study requested by the European Parliament’s Committee on Budgets,[89] an important pitfall of the RRF is that it is a one-shot instrument: if countries face RoL backsliding in the coming years – thus, after approval of the national plans – the Commission cannot impose new RoL milestones and targets.

[83] Idem.

[84] European Court of Auditors (2024) ‘The rule of law in the EU: An improved framework to protect the EU’s financial interests, but risks remain’, [Special report 03/2024: The rule of law in the EU | European Court of Auditors \(europa.eu\)](#), p. 7.

[85] European Court of Auditors (2024) ‘The rule of law in the EU: An improved framework to protect the EU’s financial interests, but risks remain’, [Special report 03/2024: The rule of law in the EU | European Court of Auditors \(europa.eu\)](#), p. 24; Communication from the Commission, Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget, C(2022) 1382 final

[86] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Forns Gómez, ‘The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context’, 2023, [IPOL STU\(2023\)747469 EN.pdf\(europa.eu\)](#)

[87] Idem

[88] European Commission, “[2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria](#)”, 13 July 2022, European Commission, “[2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania](#)”, 13 July 2022.

[89] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Forns Gómez, ‘The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context’, 2023, [IPOL STU\(2023\)747469 EN.pdf\(europa.eu\)](#)

## 5. THE DEMOCRATIC LEGITIMACY OF RoL CONDITIONALITY

Next to questions regarding the long-term effectiveness of budgetary conditionality on the RoL in Member States – in other words, their output-legitimacy – other concerns are related to the instruments' input- and procedural-legitimacy.[90] Decisions regarding budgetary conditionality have far-reaching implications for targeted countries and could well be interpreted as a centralization of EU powers on policy fields on which the EU only has limited competences – such as the organization of the national judiciaries and democratic polities.[91] Therefore, questions arise as to the inter-institutional dynamics, as well as the overall democratic quality and transparency of procedures. So far, this is an element that has been less extensively researched, also due to the novelty of the RoL framework. To address these issues, it is important to look at the roles of various institutions (notably the Commission, Council and the EP), as well as political dynamics between Member States. The next sections provide some preliminary conclusions and identifies areas for future research on the democratic legitimacy of budgetary conditionality.

### Inter-institutional relations

Overall, the Commission plays a central role in applying the RoL framework, which is given by its function as guardian of the Treaties and manager of the EU budget. The Commission is responsible for monitoring, identifying and acting against RoL breaches under the entire RoL framework. To fulfil this, it relies on several EU offices, notably the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO), and builds on several external sources for information, such as the judgments of the ECJ and the reports of the ECA. Also the Council has an important role to play within the RoL framework by taking legally binding decisions under the Article 7 TEU procedure, the Conditionality Regulation, as well as the national plans under the RRF (including the RoL (super)milestones). At the same time, there is a limited role to play by the EP, which has the right to be informed about steps taken by the Commission, but has no formal decision-making power.[92]

Not surprisingly, the various institutions were (and are) at occasions at odds over the instruments and their use. In general, the Council and the European Council have been much more reluctant than the Commission and the EP in applying conditionality. Such inter-institutional disagreements have particularly come to the fore in the adoption of the RoL Conditionality Regulation. In fact, they were part of the reason why it took two years from the initial Commission's proposal (in 2018) to the adoption of the Regulation (in 2020), and another two years until the Regulation was triggered for the first time (in 2022). It is solid to argue that, compared to the original proposal of the Commission of 2018, the scope of the eventual Regulation was narrowed.

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[90] See for the distinction between output- input- and procedural legitimacy related to the EU's economic governance: Andrea Capati and Thomas Christiansen, "Political Dissensus and EU Economic Governance: The European Semester between Technocratic Rule and Politicisation", forthcoming.

[91] Antonia Baraggia and Matteo Bonelli, "Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges", *German Law Journal*, 2022, 23, pp. 131–156, p. 152.

[92] European Court of Auditors (2024) 'The rule of law in the EU: An improved framework to protect the EU's financial interests, but risks remain', [Special report 03/2024: The rule of law in the EU | European Court of Auditors \(europa.eu\)](#); László Detre, András Jakab, Tamás Lukácsi, 'Comparing Three Financial Conditionality Regimes and their Application to Hungary: The Conditionality Regulation, the Recovery and Resilience Facility Regulation, and the Common Provisions Regulation,' Max Planck Institute, MPIL RESEARCH PAPER SERIES | No. 2023-23, p. 54.

This had been due to the negative opinion on the Commission’s proposal by the Council Legal Service, [93] as well as opposition in the Council and the European Council – mainly from Hungary and Poland. As a reaction to the proposal, both countries threatened to veto the EU budget. Although the Conditionality Regulation could be adopted by Qualified Majority Voting (QMV), approval of the EU budget requires unanimity. This provided Hungary and Poland with considerable political leverage in the negotiations.[94]

During the European Council of December 2020, government leaders agreed on a compromise that would lead to approval in the Council. [95] This was enabled by the move by the German Presidency to link the adoption of the Regulation to the RRF, in order to persuade the dissenting countries. Part of the compromise was a narrowing of the scope of the regulation. Whereas the original proposal would apply to generalized deficiencies that affect or risk affecting the EU budget, government leaders insisted to restrict the application to a closed list of homogenous elements.[96] In addition, the Commission would have to prove that the breach affects the budget “in a sufficiently direct way”. This also followed from the Opinion of the Council Legal Service, which stressed that in order for the Regulation to not circumvent Article 7 TEU, and hence to ensure its compatibility with the Treaties, the direct and provable link to the sound implementation of the EU budget was crucial.[97] Another prerequisite for the Council to adopt the Regulation was a change as to the decision-making procedure. Rather than reversed QMV – meaning that a Commission’s recommendation would be approved by the Council unless rejected by a qualified majority – regular QMV would imply, thereby making it more difficult to effectively trigger the instrument.[98] Finally, the Council insisted that the Commission would first draft guidelines before being able to trigger the Regulation. [99]

In contrast to the European Council and Council, the EP had been a consistent proponent of a more far-reaching application of RoL conditionality.[100] Already in 2019, one year after the Commission’s proposal for the Conditionality Regulation, the EP adopted a (positive) position on the Regulation.[101] The EP furthermore expressed its dissatisfaction with the interventions of the European Council in July and December 2020, when the decision-making procedure was altered from reverse QMV to regular QMV and when the application of the Regulation was significantly narrowed-down. Parliament stressed that European Council overstepped its role as set out in the Treaties and that its conclusions were ‘no more than a political agreement between the Heads of State and Government’, rather than binding, legislative rules.[102]

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[93] Council Legal Service, ‘Opinion of the Legal Service: Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States’, Interinstitutional File: 2018/0136(COD)’.

[94] Niels Kirst, “[Rule of Law Conditionality: The Long-awaited Step Towards a Solution of the Rule of Law Crisis in the European Union?](#)”, *European Papers*, Vol. 6, 2021, No 1, pp. 101-110.

[95] European Council, “[European Council meeting, 10 and 11 December 2020, Conclusions](#)”, 11 December 2020.

[96] European Council Conclusions: [1011-12-20-euco-conclusions-en.pdf \(europa.eu\)](#)

[97] Council Legal Service, ‘Opinion of the Legal Service: Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States’, Interinstitutional File: 2018/0136(COD)’.

[98] Dora Hegedűs and Thomas Christiansen (2023) ‘The Adoption and Implementation of the “Rule of Law (RoL) Conditionality Regulation’, working paper Red-spinel, in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023, pp. 79-83.

[99] Dora Hegedűs and Thomas Christiansen (2023) ‘The Adoption and Implementation of the “Rule of Law (RoL) Conditionality Regulation’, working paper Red-spinel, in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023, pp. 79-83.

[100] Cristina Fasone (2023) ‘Introduction. Tackling Rule of Law problems in the EU with a growing set of instruments: Which consensus?’, in: Fasone, C., A. Dirri and Y. Guerra (eds.) (2023) “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper.

[101] European Parliament Legislative Resolution of 4 April 2019 on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States: [TA \(europa.eu\)](#).

[102] European Parliament, (2020). ‘European Parliament resolution of 23 July 2020 on the conclusions of the extraordinary. Available [here](#).



In this position, the EP found support from several EU experts, who argued that this state of play indicated an institutional imbalance in favour of the European Council.[103]

Also the Commission has been the target of criticism by the EP on the grounds that it does not provide sufficient clarity and transparency in the application of the RoL framework.[104] In general, the Commission has been criticized for providing too little explanation and information on the use of the various overlapping instruments and too little clarity as to the conditions under which decisions are made (or not made).[105] This has been underscored in a study requested by the budgetary committee of the EP, which stresses that both the CPR and the Commission's guidelines for the use of the Conditionality Regulation provide too much room for interpretation.[106] Others point to the situation that detailed argumentations of decisions (and non-decisions) of the Commission as to the application of the RoL framework are not always publicly available.[107] This overlap and lack of clarity and transparency as to the grounds on which instrument are applied (or not applied) makes it difficult for the EP to scrutinize decisions.[108]

Although friction between the EP and Commission is logical from a democratic perspective, it could be a cause for concern when grounded in criticism over the (democratic) procedures. An example of such criticism is the complaint by the EP vis-à-vis the Commission that the latter did not activate the RoL Conditionality Regulation against Poland, despite several calls from the EP to do so, and despite RoL breaches have been identified under the CPR and RRF.[109] This issue is also echoed by the ECA, who in its evaluation of the RoL framework criticized the Commission for not providing a detailed reasoning of the decision not to trigger the Regulation against Poland, despite identification of potential breaches of the RoL.[110]

Another criticism voiced by Parliament regarding the procedures as applied by the Commission is related to the Commission's decision in December 2023 to unblock roughly 10 billion euro of cohesion funds for Hungary (which was blocked under the CPR). This even led to an EP lawsuit against the Commission filed in March 2024. This lawsuit followed from a resolution of January 2024, in which the EP argued that the Commission's decision 'politically contradicts the decision to prolong the measures adopted under the Conditionality Regulation' and regretted that 'Parliament was not adequately informed during the process'. [111] Moreover, it stressed that it would 'use any of the legal and political measures at its disposal' and reminded the Commission that the latter is 'politically accountable to Parliament'. [112]

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[103] Kim Lane Scheppele, Laurent Pech & Sébastien Platon, Compromising the Rule of Law while Compromising on the Rule of Law, VERFBLOG (DEC. 13, 2020), <https://verfassungsblog.de/compromising-the-rule-of-law-while-compromising-on-the-rule-of-law/>.

[104] European Parliament, "Motion for a resolution on the situation in Hungary and frozen EU funds", 16 January 2024.

[105] Joint committee on Budgets and committee on Budgetary Control - Multimedia Centre ([europa.eu](https://europa.eu))

[106] Eulalia Rubio, Tamás Kiss-Gálfalvi, Thu Nguyen, Tomás Ruiz de la Ossa, Francesco Corti, Alba Fornis Gómez, 'The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context', 2023, [IPOL STU\(2023\)747469 EN.pdf](https://www.ipol.eu/ipol_content/publications/studies/2023/STU(2023)747469_EN.pdf) ([europa.eu](https://europa.eu))

[107] Laurent Pech, Anna Wójcik and Patryk Wachowiec, "The case for activating the rule of law conditionality regulation in respect of Poland", [rule\\_of\\_law\\_v2.1.pdf](https://www.greens-efa.eu/publications/rule_of_law_v2.1.pdf) ([greens-efa.eu](https://www.greens-efa.eu))

[108] Idem. See also, Kim Lane Scheppele and John Morijn, "What Price Rule of Law" in A. Södersten and E. Hercock (eds), *The Rule of Law in the EU: Crisis and Solutions*, SIEPS, April 2023:1, 29, p. 34.

[109] See: European Parliament, "Poland: MEPs call for the primacy of EU law to be upheld", 19 October 2021; European Parliament, "European Parliament resolution of 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary", 5 May 2022; and European Parliament, "European Parliament resolution of 19 May 2022 on the Commission's 2021 Rule of Law Report", 19 May 2022.

[110] European Court of Auditors (2024) 'The rule of law in the EU: An improved framework to protect the EU's financial interests, but risks remain', Special report 03/2024: The rule of law in the EU | European Court of Auditors ([europa.eu](https://europa.eu))

[111] European Parliament, "Motion for a resolution on the situation in Hungary and frozen EU funds", 16 January 2024.

[112] Ibid.

Days after the resolution, the EP's Joint Committee on Budget and on Budgetary Control questioned three Commissioners (for Budget, Social Rights and Justice) in a hearing.[113] During this hearing, MEP's reiterated that there is too little procedural clarity as to which RoL violations are covered by the various budgetary conditionality instruments, which makes it difficult to establish under which conditions funds are being unblocked. Moreover, MEP's stressed that due to the overlap, decisions taken under the CPR, the Conditionality Regulation and the RRF should be treated as a 'single, integral package', and that no funds should be released when progress is made on one RoL-area, but deficiencies still remain on other areas.[114] This position is supported by several EU experts, arguing that 'access to EU funds can only be provided when systematic deficiencies in a Member State have been completely rectified — a compromise in the form of partial corrections, on the contrary, does not represent a feasible solution to the problem safeguarding adherence to the rule of law in the EU, but is rather a defeat'.[115] Indeed, when funds are released on the basis of progress on specific issues and not on all shortcomings, countries may cherry-pick between conditionalities – and, for instance, not implementing reforms on financially less costly but politically sensitive issues.[116] Moreover, MEP's question the timing of the decision to unlock part of the blocked funds – namely a day before the European Council of 14-15 December 2023, when crucial decisions regarding EU-Ukraine relations were to be made. The decision by the Commission was framed as a 'backroom deal with Orbán' to ensure that the latter would lift its veto on starting accession talks with Ukraine.[117]

The question is whether Parliament will be vindicated by the court. In its reaction, the Commission stressed that it 'acted in full compliance with EU law and will defend its decision before the EU court'. [118] Yet, as argued above, the EP does not stand alone its criticism. The procedural ambiguity of instruments for budgetary conditionality has also been addressed by several EU experts,[119] as well as the Court of Auditors, which furthermore stressed that absence of clarity may hamper the consistent application of available instruments.[120] Moreover, such ambiguity gives ammunition to question decisions, as was done by Poland and Hungary in particular, which could undermine confidence in and effectiveness of the RoL framework.

### Dissensus between Member States

Indeed, the use of these budgetary instruments to tackle RoL violations has already strained relations between targeted Member States and Brussels. This is not surprising, since these instruments centralize EU powers in fields on which it has only limited competences, namely the organization of the national judiciaries and democratic polities.[121] Of course, adherence to the RoL is a prerequisite for the proper functioning of the single market, and hence, the EU's (geo-)economic capacity to act. Moreover, the RoL, fundamental rights and democratic principles are enshrined in the EU treaties, and hence, should be complied with by each Member States. At the same time, the use of budgetary conditionality to enforce these principles inhabits the fundamental question of whether the EU should interfere in national democracies and judiciaries.

[113] European Parliament, "[Joint committee on Budgets and committee on Budgetary Control](#)", 24 January 2024.

[114] European Parliament, "[Motion for a resolution on the situation in Hungary and frozen EU funds](#)", 16 January 2024.

[115] Xavier Groussot and Anna Zemskova, "[Using Financial Tools to Protect the Rule of Law: Internal and External Challenges](#)", SIEPS, Report No. 10 June 2023, p. 54.

[116] László Detre, András Jakab, Tamás Lukácsi, 'Comparing Three Financial Conditionality Regimes and their Application to Hungary: The Conditionality Regulation, the Recovery and Resilience Facility Regulation, and the Common Provisions Regulation,' Max Planck Institute, MPIL RESEARCH PAPER SERIES | No. 2023-23, p. 55.

[117] Jorge Liboreiro, "[European Parliament sues Commission over the release of €10.2 billion in frozen funds to Hungary](#)", Euronews, 14 March 2024.

[118] Ibid.

[119] See for this debate example: Xavier Groussot and Anna Zemskova, "[Using Financial Tools to Protect the Rule of Law: Internal and External Challenges](#)", SIEPS, Report No. 10p June 2023, p. 54.

[120] European Court of Auditors, 'The rule of law in the EU: An improved framework to protect the EU's financial interests, but risks remain', Special report 03/2024: The rule of law in the EU | European Court of Auditors (europa.eu)

[121] Antonia Baraggia and Matteo Bonelli, "Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges", German Law Journal (2022), 23, pp. 131–156.

In any case, the use of the instruments for budgetary conditionality marks an important deviation from the EU's traditional mode of enforcement through voluntary compliance and court proceedings. [122] Not surprisingly, the use of the tools has led to resistance, especially from the countries against whom they were triggered.

Indeed, both Hungary and Poland have framed the Commission's actions concerning the RoL as unwanted interference from Brussels, given the national primacy to organize the own legal and democratic order.[123] In fact, after the adoption of the Regulation by the EP and Council in December 2020, Hungary and Poland brought an action before the Court of Justice (ECJ) claiming that the Regulation lacks a legal basis in the Treaties, that it circumvents Article 7 TEU, that it implies a breach of the principles of legal certainty and legislative clarity, and an exceeding of the Union's powers.[124] These claims were partly based on the earlier Opinion of the Council Legal Service on the Commission's original proposal of 2018, which highlighted the risk of overlap with Article 7 TEU and which called for more precision.[125] Although the complementary to Article 7 TEU was established in the eventual Regulation of 2020 – which narrowed the applicability to RoL violations that affect the sound implementation of the EU budget – the two countries attempted to get the Regulation annulled on the basis of this exact argument. Nevertheless, the claims of Hungary and Poland to annul the Regulation were dismissed by the ECJ in February 2022.[126]

In Poland, the election results of October 2023 and the forming of a new government led by Donald Tusk, has induced a renewed relationship between Warsaw and Brussels. In contrast, the Hungarian government seems to have become more radical in its opposition against Brussels. Moreover, Viktor Orbán is trying to reclaim EU funds by threatening to block other decisions, notable related to Ukraine. For example, when the RoL Conditionality Regulation was triggered against Hungary, the Commission initially asked for the suspension of a bigger amount of funds, amounting to €7.5 billion (65% of the commitment under cohesion policy). This was subsequently lowered by the Council to 55%, when Hungary threatened to block both an aid package to Ukraine as well as the minimal global corporate tax rate.[127] In addition, although this is not the formal reading, also the decision to unblock Hungarian funds under the CPR in December 2023, was a likely result of a Hungarian veto-threat of the opening of the accession talks with Ukraine and a financial aid package for Ukraine. The use of vetoes in order to reclaim funds – or better, the threats to use them – diminishes the effectiveness of the RoL instruments, and – above all – puts further pressure on the already strained relationship between Hungary and the other EU Member States (and EU institutions). Moreover, it underscores the importance of using budgetary conditionality in a 'proportionate, and non-arbitrary manner'. [128]

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[122] Viorica Viță, "The reinforced conditionality approach of the 2021-27 MFF", in: Brigid Laffan and Alfredo de Feo, 'EU Financing for Next Decade: Beyond the MFF 2021-27 and the Next Generation EU', European University Institute, 2020, pp. 101-113, p. 105-106.

[123] Eric Maurice, "[Protecting the checks and balances to save the Rule of Law](#)", *Fondation Robert Schuman*, 6 April 2021).

[124] Action brought on 11 March 2021 — Hungary v European Parliament and Council of the European Union (Case C-156/21); (2021/C 138/31); *EUR-Lex - 62021CNo156 - EN - EUR-Lex (europa.eu)*;

[125] Council Legal Service, 'Opinion of the Legal Service: Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States', Interinstitutional File: 2018/0136(COD)'.

[126] Court of Justice of the European Union, "[Judgments in Cases C-156/21 Hungary v Parliament and Council and C-157/21 Poland v Parliament and Council](#)", Press release, No 28/22, 16 February 2022.

[127] Paola Tamma, "[EU strikes deal with Hungary, reducing funding freeze to get Ukraine aid approved](#)", *POLITICO*, 12 December 2022.

[128] Xavier Groussot and Anna Zemskova, "[Using Financial Tools to Protect the Rule of Law: Internal and External Challenges](#)", SIEPS, Report No. 10p June 2023, p. 53.

## 6. CONCLUSION: AREAS FOR A POLICY-RESEARCH AGENDA

In the past decade, the EU has extended its RoL framework to better address and tackle breaches of the RoL and protect the EU's overall financial interests. Increasingly, budgetary conditionality has been applied to enforce RoL reforms, notably in Hungary and Poland. In a way, the use of these instruments – i.e. the CPR, the Conditionality Regulation and the RRF – has become key to place rule of law concerns at the top of national political agendas without having to use the more complex and nuclear Article 7 TEU procedure. Because these instruments are relatively new, the effectiveness of the instruments in pursuing sustainable RoL reforms needs to be extensively researched in the coming years.

Moreover, as these instruments have large political (and economic) implications in the targeted countries, and are directed at an area on which the EU has only limited competences – i.e. the organization of the national judiciary and democratic polity – research is needed as to their impact on inter-institutional relations, as well as on polarization between Member States. By way of conclusion, this paper proposes three concrete policy-research agendas:

### **A research agenda on the output legitimacy of budgetary conditionality**

An important area for research will be to extensively analyse the effectiveness of the budgetary conditionality instruments in effectuating long-term RoL reforms and, thereby, protecting the EU's budget and financial interests. This report's state-of-play analysis suggests that applying budgetary conditionality through the CPR (Hungary and Poland), the Conditionality Regulation (Hungary), and the RRF (in particular Hungary and Poland, but essentially all Member States) at least effectuated some reforms. However, given the novelty of the instruments, it will be necessary to examine long-term impact and assess whether the reforms as announced by Hungary and Poland to reclaim funds, are not just reforms on paper.

Another area of research will be the effects of recent decisions to unblock funds in light of other (geo-)political aims. In their current form and use, the instruments overlap and it is not overall clear which instruments are used under which conditions. As a consequence, the instruments are sensitive to political maneuver, which could ultimately affect their effectiveness.

Also important would be to examine the preventive effects of budgetary conditionality. As part of the entire RoL framework, the Commission screens all Member States as to potential breaches of the RoL. For several Member States, the forecast of not receiving funds under the RRF, for example, provided an incentive for reforms identified by the Commission, even before identified issues turned into serious RoL violations. Yet, at the same time, the RRF was an instrument implemented in times of crises – and hence, with high financial stakes for those Member States. The question is to what extent budgetary conditionality would work structurally, and what its value is compared to soft tools, for example dialogue and civil society support.

Examining these effects of budgetary conditionality is especially important in view of current EU (treaty and budget) reform debates. In view of future EU-enlargement, proposals have been developed for extending and reforming the RoL framework, for example by the Franco-German working group of experts on institutional reform.<sup>[129]</sup> This working group stresses that to be truly effective, the scope of the RoL Conditionality Regulation should be broadened to not only include RoL violations that affect the EU budget, but also structural breaches of the RoL. However, based on the advice of the Council Legal Service and rulings of the ECJ, it can be stressed that if the direct link with the EU budget is abandoned, the Regulation loses its legal basis and complementarity to Article 7 TEU. Rather than extending the scope of current instruments, it could be more viable to await analyses on the longer-term effects, and to provide the procedural conditions for a more effective use of the current instruments (such as addressed by the ECA for example).

### **A research agenda on the democratic legitimacy of budgetary conditionality**

Secondly, profound research is needed on the (democratic) procedures by which the instruments are used. As pointed out by scholars and policy experts discussed in this paper, the lack of procedural clarity as to the technical application of the RoL framework, with overlapping instruments and measures, comes at the expense of democratic scrutinization by the EP. Although it is its technocratic nature from which the RoL framework derives its strength and legitimacy, it is also precisely this element that encounters opposition from the EP, since decisions are made in a highly (geo-)political context. Critics point for example to the guidelines of the RoL Conditionality Regulation, which, allegedly, provide too much room for (political) interpretation. In addition, a lack of clarity and transparency in decisions (and non-decisions) on budgetary conditionality, such as for example identified by the ECA, could well be undermining the democratic legitimacy of the framework in general as well as its effectiveness. It is therefore important to examine the role of various institutions (European Council, Council, Commission, EP and national parliaments) in applying the instruments for budgetary conditionality, in order to properly assess the institutional balance and lines of accountability.

### **A research agenda on the impact of intra-EU relations**

A final research area entails the broader political consequences of RoL budgetary conditionality in terms of intra-EU relations. In a community of values, adherence to the RoL and fundamental rights is non-negotiable; it is crucial for the political and economic stability within the Union, and for guaranteeing mutual trust between Member States, between citizens and their governments and between citizens themselves. At the same time, the organization of the judiciary and democratic polity is essentially a matter of national sovereignty on which the EU only has limited competences. For that reason, it is important that EU institutions act with care when applying the RoL framework, since ambiguity could well undermine the very values on which the Union is built.

The Hungarian and Polish cases have illustrated that the use of budgetary conditionality strains intra-EU relations, and has implications on broader political decision-making within the EU. Moreover, the economization of the RoL makes RoL conditions de facto negotiable, as evidenced by recent decisions to be lenient towards Hungary, allegedly in exchange for support on other dossiers, such as aid and EU accession prospects for Ukraine. It is crucial that future assessments on the effectiveness of budgetary conditionality take into account such broader political implications.

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[129] Franco-German Working Group on EU Reforms, "[Sailing on High Seas – Reforming and Enlarging the EU for the 21st Century](#)", 18 September 2023, p. 16-17.

# BIBLIOGRAPHY

Anders, L.H. and S. Priebus (2021) “Does It Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary”. In: Lorenz, A. & Anders, L.H., (eds.) (2021). *Illiberal Trends and Anti-EU Politics in East Central Europe*. Palgrave, Cham, 235-262.

Bárd, P. and A. Śledzińska-Simon (2019) “[Rule of law infringement procedures](#)  
[A proposal to extend the EU’s rule of law toolbox](#)”, CEPS paper in Liberty and Security, No. 2019-09, May 2019.

Baraggia, A. and M. Bonelli (2022) “Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges”, *German Law Journal*, 23, pp. 131–156.

Bonelli, M. (2022) “[Infringement Actions 2.0: How to Protect EU Values before the Court of Justice](#)”, *European Constitutional Law Review*, 18: 30–58.

Capati, A. and T. Christiansen (2023) “The European Semester: EU Rule of Law Guidance, Monitoring and Enforcement Through Economic Governance Mechanisms”, in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023, pp. 69-72.

Capati, A. and T. Christiansen (forthcoming) “Political Dissensus and EU Economic Governance: The European Semester between Technocratic Rule and Politicisation”.

Citino, Y.M. (2023) “The Rule of Law Reports“, in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023, pp. 63-68.

Coman. R. (2022) “The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges“, 2022, Palgrave MacMillan.

Detre, L., A. Jakab, and T. Lukácsi (2023) “Comparing Three Financial Conditionality Regimes and their Application to Hungary: The Conditionality Regulation, the Recovery and Resilience Facility Regulation, and the Common Provisions Regulation”, Max Planck Institute, Mpil research paper series, no. 2023-23.

European Court of Auditors, “[The Commission’s rule of law reporting](#)”, Review 02/2024.

Groussot, X. and A. Zemskova, “[Using Financial Tools to Protect the Rule of Law: Internal and External Challenges](#)”, SIEPS, Report No. 10p June 2023, p. 54.

Guerra, Y. (2023) “The EU Justice Scoreboard,“ in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), “State-of-the-art working paper on ‘established EU rule of law instruments’”, Red-spinel working paper, 2023, pp. 58-62.

Hegedűs, D. and T. Christiansen (2023) 'The Adoption and Implementation of the "Rule of Law (RoL) Conditionality Regulation', in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 79-83.

Fasone, C., A. Dirri and Y. Guerra (eds.) (2023) "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper.

Cristina Fasone (2023) 'Introduction. Tackling Rule of Law problems in the EU with a growing set of instruments: Which consensus?', in: Fasone, C., A. Dirri and Y. Guerra (eds.) (2023) "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper.c

Fiscaro, M. (2022) "Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union's Values, European Papers, 2022, Vol. 7, No. 2, pp. 697-719.

Fromont, L. and A. Van Waeyenberge (2022) 'Trading rule of law for recovery? The new EU strategy in the post-Covid era,' European Law Journal, 27: 132-147.

Jenne, E.K. and Cas Mudde (2012) "Hungary's Illiberal Turn: Can Outsiders Help?", Journal of Democracy, 23 (3): 147-155.

Kirst, N. (2021) "[Rule of Law Conditionality: The Long-awaited Step Towards a Solution of the Rule of Law Crisis in the European Union?](#)", European Papers , Vol. 6, No 1, pp. 101-110.

Lupo, N. (2023) "The Recovery and Resilience Facility and its effects on the rule of law", in: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), "State-of-the-art working paper on 'established EU rule of law instruments'", Red-spinel working paper, 2023, pp. 84-89.

Maurice, E. (2023) "The Rule of Law: the uncertain gamble on conditionality", Fondation Robert Schuman, 13 March 2023.

Molthof, L. N. van Heukelingen and G. Cretti (2021) "[Exploring avenues in the EU's rule of law crisis: What role for the Netherlands?](#)," Clingendael Institute, August 2021.

Pech, L. (2020) "Article 7 TEU: From 'Nuclear Option' to 'Sisyphean Procedure'?", in Belavusau, U., & Gliszczynska-Grabias, A., (eds.) (2020). Constitutionalism under Stress. Oxford, Oxford University Press, 157-174.

Pech, L. (2021) 'The Rule of Law', in Craig, P. De Búrca G. (eds.), "The Evolution of EU Law", Third edition, Oxford, Oxford University Press, 2021, 307-338.

Pech, L. A. Wójcik and P. Wachowiec, "The case for activating the rule of law conditionality regulation in respect of Poland", [rule\\_of\\_law\\_v2.1.pdf\(greens-efa.eu\)](#).

Rubio, E., T. Kiss-Gálfalvi, T. Nguyen, T. Ruiz de la Ossa, F. Corti, A. Gómez (2023) 'The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context', [IPOL STU\(2023\)747469\\_EN.pdf\(europa.eu\)](#), p. 40.

Scheppele, K.L., L. Pech & S. Platon (2020) “Compromising the Rule of Law while Compromising on the Rule of Law“, VERFBLOG (DEC. 13, 2020), <https://verfassungsblog.de/compromising-the-rule-of-law-while-compromising-on-the-rule-of-law/>.

Scheppele, K.L. and J. Morijn (2023) “What Price Rule of Law” in A. Södersten and E. Hercock (eds), *The Rule of Law in the EU: Crisis and Solutions*, SIEPS, April 2023:1, 29, p. 34.

Strelkov, A. (2019) “EU Justice Scoreboard: a new policy tool for “deepening” European integration?”, *Journal of Contemporary European Studies*, 27:1, 15–27.

Zeitlin, J. and B. Vanhercke (2018) “Socializing the European Semester: EU Social and Economic Policy Co-ordination in Crisis and Beyond”, *Journal of European Public Policy*, 25:2, 149-174;





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