



EDITORIAL

## From Crisis to Conditionality: Redefining the Rule of Law in Europe

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Today, Europe faces a “crisis of values.” This crisis is related to the numerous challenges the European Union has faced in recent years – such as the sovereign debt crisis, the security crisis linked to the threat of terrorism, and the migration crisis. It has been characterised by a systemic deterioration in certain Member States of the EU’s founding values, such as democracy, the rule of law and the protection of fundamental rights. Several Member States are experiencing a significant decline in the rule of law, which has involved the establishment of electoral autocracies that seek to undermine the limits on the exercise of executive power in order to maintain the dominant political party in power in the long term.

Rule of law is one of the European Union’s fundamental values (Article 2 of the Treaty on European Union) which means that all public powers should always act within the law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. At EU level, this “crisis of the rule of law” that has swept Europe in recent years is generating a real identity crisis, since it is undermining the axiological dimension of the European project, according to which the Member States share both an ideal and common values that are essential conditions for bringing the peoples of Europe ever closer together (Article 1 of the Treaty on European Union). More particularly, this “rule of law crisis” has affected not only the independence of the judiciary, but also the prohibition of discrimination, freedom of the press, academic freedom, and the situation of migrants and refugees.

The EU has attempted to tackle this crisis by mobilising several types of mechanisms. The European institutions have used political mechanisms such as the preventive mechanism for protecting the rule of law, (Article 7 TEU), the Commission’s European framework for the rule of law (pre-Article 7 EU procedure), the Council’s annual dialogue on the rule of law and European Parliament resolutions. For various reasons, these mechanisms were unable to provide an appropriate political solution to the crisis. In a second phase, and partly in parallel, legal action was taken against certain Member States. Unfortunately, these rulings did not really prevent the rule of law from being rolled back. Worse still, these judicial sequences showed the extent of the distrust of certain Member States in the authority of the CJEU and, more generally, in the European project as a whole. Faced with the ineffectiveness of political and judicial mechanisms, the European Union has developed a new strategy consisting of relying on economic and techno-managerial instruments, most of which were not specifically designed to protect the rule of law, such

as the European Semester, the Recovery and Resilience Facility, the European Structural and Investment Funds and the European budget.

This special issue is part of two research projects of a team of researchers from various disciplines to analyse the new strategy of the EU to the rule of law crisis. More specifically, the aim is to identify the notion of the rule of law that this response conveys, and its consequences for the European project. The working hypothesis was that this new strategy resulted in the protection of only certain dimensions of the rule of law, namely those linked to financial stability, growth and competitiveness, to the detriment of others, such as the redistribution of wealth or the fight against inequality. The new EU strategy aiming at compliance with the rule of law remodels in a way the frontiers of EU funding as well as the relationship between budget and rule of law. This relationship can no longer be seen as a set of clear-cut legal obligations to be routinely enforced and has led to a constant arbitrage/trade-off between a value, ie, the rule of law and the economic and fiscal objectives pursued by the Economic and Monetary Union, the cohesion policy and the protection of the EU's financial interests. For example, Hungarian recovery and resilience plans have been approved despite the rule of law issues persisting. Although the release of funds has not been immediately implemented until the corresponding milestones are achieved, the use of conditionality allows for a trade-off between the rule of law and other economic interests. In other words, the budget- and dialogue-based rule of law implies that the new instruments for the protection of the rule of law seek mainly to improve the efficiency of public policies by reducing transactional costs and to a lesser extent protect the rule of law. The balance between economic and rule of law objectives is reflected in the extensive use of performance indicators and benchmarking techniques, resulting in simultaneously incentive, control and evaluation mechanisms.

The six contributions in this special issue are set within this general theoretical framework.

**Roila Mavrouli's** contribution focuses on the linkage of the budget with the value of the rule of law through *various conditionalities* so far suggests that the Commission essentially relies on voluntary compliance by the Member States, leaving the exercise of its enforcement powers as a very last resort. It highlights the EU's strategy to combat rule of law backsliding, offering a mapping and classification of its instruments, which blend enforcement and management methods, such as soft law and infringement proceedings. It further contributes to understanding the design and operation of compliance mechanisms, emphasising the coexistence of monitoring, sanctions, capacity-building, and social pressure. The analysis of synergies and mismatches between these instruments questions the balance between "carrot and stick" approaches. Lastly, it assesses the effects of this strategy, showing its cumulative impact on the EU's constitutional system and the complexities of integrating preventive, dialogic, and enforcement measures for rule of law protection.

Based on the Recovery and Resilience Facility and in Regulation 2020/2092 and in the light of the Polish and Hungarian examples, **Louise Fromont** offers a global assessment of this *conditionality mechanism*. Moreover, she tests the hypothesis of economisation of the concept of the rule of law and analyses the consequences for the concept of the rule of law. The study demonstrates that EU funding is now systematically linked to respect for the rule of law through the mechanism of spending conditionality and that this "economisation" leads to "the minimisation of factors that have contributed to the rule of law crisis, such as the lack of a social dimension and of the legitimacy of the Union." This situation could paradoxically exacerbate the very crisis it is designed to resolve.

In the same vein, in her joint contribution with **Arnaud Van Waeyenberge**, they explore the evolution of the *European Semester* – initially conceived as a tool for the European Union to monitor and coordinate national economic policies – into a mechanism addressing rule of law risks within Member States. Their analysis highlights how the

Semester contributes to enforcing rule of law standards, while also raising critical concerns regarding democratic accountability, the balance of powers, and neglect of broader societal issues

**Pauline Thinus** explores how the *Recovery and Resilience Facility* (RRF) incorporates rule of law protection through a performance-based approach of spending conditionality. By linking the disbursement of EU recovery funds to the fulfilment of specific milestones and targets on judicial independence, anti-corruption frameworks, and audit systems, the European Commission seeks to incentivize compliance in Member States at risk of rule of law backsliding, such as Hungary, Poland and Slovakia. The analysis shows that while the RRF offers a powerful tool to promote reforms, its effectiveness depends heavily on national political contexts and the willingness of governments to cooperate. The study highlights the balance the Commission must strike between enforcing strict performance criteria and ensuring the success of the recovery plans through constructive dialogue.

**Anita Kovács** examines the European Union's *regulatory response to the rule of law crisis*, highlighting the limitations of its current approach, which is largely reactive and focused on crisis management rather than risk prevention. She demonstrates that while existing mechanisms are effective in addressing ongoing rule of law breaches, they lack the capacity to anticipate and prevent undesirable events. The paper identifies weaknesses in the EU's evaluation, reaction, and conditionality frameworks and proposes ways to improve their performance through a more integrated and systemic approach, which would enhance their efficiency and promote a proactive stance in safeguarding the rule of law.

Taking a step back to analyse the situation, **Ramona Coman** and **Leonardo Puleo** examine the evolution of the European Union into a *regulatory polity 3.0*, shifting from market regulation to the governance of core values such as the rule of law, in response to institutional crises in Poland and Hungary. It highlights how the EU has developed new monitoring and enforcement tools, linking compliance with rule of law standards to financial conditionality. While these mechanisms aim to depoliticise relations between the EU and Member States, they have led to increased politicisation both at the national and supranational levels. The article shows that the rule of law has become a contentious issue in bilateral relations between the European Commission and national governments, influencing domestic political debates and electoral dynamics in affected countries.

**In conclusion** – this special issue sheds light on the limitations of the EU's current approach to safeguarding the rule of law and emphasise the urgent need for more robust and comprehensive strategies. While the recent shift towards financial conditionality and performance-based mechanisms has brought some progress, these tools remain imperfect and risk undermining the very values they aim to protect. The reliance on economic incentives and managerial approaches, while pragmatic, can lead to a fragmented understanding of the rule of law – one that prioritises fiscal stability over broader democratic principles.

The new European legislature must seize the opportunity to strengthen the EU's rule of law framework by addressing its shortcomings and moving beyond the current reactive, crisis-driven approach. A more proactive and preventive stance is essential to anticipate risks before they escalate into full-blown crises. Additionally, it is crucial to strike a better balance between the EU's economic and democratic objectives, ensuring that financial stability does not come at the expense of fundamental rights and freedoms. In other words, by incorporating risk regulation principles – this includes developing tools to better anticipate potential threats to the rule of law and creating frameworks that prioritize resilience and adaptability – the EU can strengthen its governance mechanisms, ensuring that they are not only effective in addressing immediate challenges but also sustainable in safeguarding democratic values over the long term.

Safeguarding the rule of law is not merely a legal obligation – it is a moral imperative that lies at the heart of the European project. It is essential for restoring trust between

Member States, enhancing the EU's social legitimacy, and ensuring that the Union remains a beacon of democracy in an increasingly polarised world. Establishing a clear link between democracy, fundamental rights, and the rule of law will help rejuvenate the values that shaped the EU's inception, characterised by a strong commitment to liberty, human dignity and the rejection of authoritarianism.

The current challenge for the EU is to preserve its reputation for economic prosperity and competitiveness while decisively addressing the rise of illiberalism. This requires political courage and leadership, particularly as Europe is facing mounting external pressures and internal divisions. The success of the European project hinges on its ability to defend its core values while promoting a model of governance that remains efficient, resilient and inclusive.

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