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Institute for European Studies



20 YEARS OF EU MEMBERSHIP
PAPER SERIES

The Effectiveness of the EU's Post-Accession
Conditionality in the Case of Hungary

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Abstract

It has been more than a decade since Prime Minister Viktor Orbán acquired power in Hungary with a two-thirds majority in Parliament and set up a government that has been openly contradicting EU rules and legislation in more than one policy areas. The freedom of the press, the independence of the judiciary, academic freedom, the fundamental rights of refugees, minority rights and corruption are among those areas where Hungary was vastly criticized by one or more EU institutions in the past years. The EU has several means to address rogue Member State behavior. Some of them, for example infringement proceedings, are regularly used to monitor Member State compliance, whereas others, such as the Article 7 procedure, have been seldom applied and with no tangible results. In April 2022 the rule of law mechanism has been activated against Hungary and resulted in withdrawing EU funds from Hungary. These - rule of law monitoring - procedures are different in nature and would have different consequences if they were carried out entirely, however, should Hungary comply with them, they could have serious impacts on the domestic policy-making mechanisms of the country. This paper evaluates the EU's post-accession conditionality mechanisms through the example of Hungary and tries to find out what are the most effective tools of the Union to address rogue Member State behavior.

Keywords:

Hungary, EU, post-accession conditionality, rule of law, rule of law mechanism

Introduction

The recent crises Europe and the world had to endure re-wrote the international playbook in many areas. The main goals of many countries have shifted within the international political scene: the importance of EU enlargement has been overshadowed by the migration crisis; rule of law considerations have been upstaged by economic recovery after the Covid-19 pandemic. Crises have sometimes been used by Member States as excuses to undermine the EU's democratic values. In Hungary, for example, a state of emergency was declared in relation to the refugee crisis, then during the COVID-19 pandemic and most recently, the government introduced the state of danger due to the Russo-Ukrainian war. These periods were prolonged unnecessarily many times and gave the government the right to govern through decrees for several years.

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This practice has been criticized not only by human rights NGOs, but also by the EU (European Commission 2022d, p.25).

Hungary's path as a rulebreaker, however, has started earlier, so it is not entirely connected to these crises. It has been considered to be a 'rogue' or 'disobedient' Member State in the European Union ever since the right-wing Fidesz party, under the leadership of Prime Minister Viktor Orbán acquired power in 2010 with a 2/3 majority in Parliament (Levy 2010). The new government started to pursue a strategy that was quite different from its predecessors', as it redefined Hungary's role within the EU. The new Hungarian strategy has been openly focusing on the perceived national interests and has been contradicting EU rules and legislation in more than one policy area that has led to several conflicts between the EU and the Central Eastern European country. The Orbán government, taking advantage of its parliamentary majority, gradually started to dismantle checks and balances in the Hungarian political system by weakening the role of judiciary, curbing the freedom and independence of the press and academia (Pogány 2013). Hungary became the most vocal advocate of handling the refugee crisis by simply shutting down the borders, thus violating the fundamental rights of refugees. Moreover, Hungarian public procurement procedures have been infiltrated by persons close to government circles, so corruption has been more and more common in the country (Transparency International 2022). The above-mentioned issues raised concerns from the EU, and Hungary has been vastly criticized by one or more EU institutions in the past years regarding these matters.

During the early years of the Orbán-government Hungary's noncompliance did not manifest itself in blatant violation of EU law. Data coming from documents monitoring the application of EU law, as well as the number and outcome of infringement proceedings launched against Hungary indicate that according to a strict legal interpretation, Hungary is not performing worse than most EU Member States in compliance with EU law (Single Market Scoreboard 2021). The government operates according to what is called 'the peacock dance strategy', a careful balancing between modifying domestic legislation as it best serves national interests and making sure that it accommodates the EU's subsequent concerns sufficiently (Hopkins 2019). However, when it comes to the most recent existential conflicts with the EU, such as the question of the rule of law or the refugee crisis, Hungary has become less accommodating and takes on substantial conflicts with the European Union.

Consequentially, 2022 was a 'pivotal year' in the EU regarding its effort to protect the rule of law from breaches committed by Member States (Maurice 2023, p. 1) due to the fact that budget-related conditionalities were imposed for the first time in EU history. The EU has several means to address rogue Member State behavior. Some of them, for example infringement proceedings, are regularly used to monitor Member State compliance, whereas others have never been applied. Its most powerful tool, for instance, the Article 7 procedure has not been tested until recently, and it has not shown any tangible results so far. In April 2022 the rule of law conditionality mechanism (or budget conditionality mechanism) was activated against Hungary, restricting Hungary's access to EU funds. These two procedures are different in nature and would have different consequences if they were carried out entirely, however, should Hungary comply with them, they could have serious impacts on domestic policy-making mechanisms of the country. This paper aims to evaluate the effectiveness of the EU's post-accession conditionality tools through the example of Hungary, namely the rule of law conditionality mechanism, and tries to assess whether these are effective tools for the Union to address rogue Member State behavior

and prevent a Member State from carrying out continuous rule of law violations.

This starts with a short theoretical review on conditionality and Member State compliance. This will give us the opportunity to evaluate the Commission's rule of law protecting instruments on the axis of enforcement-management. Then the existing methods of the EU to regulate rule of law violations are presented with a special focus on the latest method, the rule of law conditionality mechanism. Lastly, the conclusion defines whether this mechanism brings new impetus to the EU's rule of law regulatory framework and if not, what possibilities lie ahead for the EU in this regard. This article argues that *by withholding funds from Member States through various different channels, the EU is on the right path towards strengthening its post-accession conditionality. However, the hardest task for EU institutions will be to monitor the remedies introduced by the affected Member States and only pay the money if the reforms are able to ensure compliance and the protection of the rule of law in practice.*

Theoretical background

This article defines rule of law violations as follows. Rule of law violations include certain activities of Member State governments that have “damaged the independence and impartiality of the judiciary in their countries, reduced the independence of universities and civil society, and curtailed media freedom.” These government practices “have facilitated widespread corruption, limited opposition parties’ ability to act politically, and violated human rights” (Södersten 2023, p.8). These changes gradually undermined the rule of law, and democratic values, the observation of which should be a primary obligation of all Member States according to EU law. In fact, Article 2 TEU and its commitment to the rule of law have a legally binding quality (Court of Justice of the European Union 2022a, p.264) and the rule of law is an integral part of the EU's identity (Court of Justice of the European Union 2022b, p.127) as the Court of Justice of the EU made it clear in its recent decisions.

Navigating between sovereign Member State decisions and legal obligations outlined by the EU is a regular feature of any EU government. The nature of non-compliance, however, should carefully be taken into consideration: occasional noncompliance is not the same as systemic noncompliance (Kochenov & Bárd 2018). While the former is usually involuntary and can be a consequence of domestic administrative constraints, the latter is a deliberate and an ideological choice, therefore it should be treated differently (Jakab & Kochenov 2017).

The primary aim of the EU's rule of law tools is to restore compliance with democratic norms and the rule of law in backsliding Member States and to prevent similar developments in other Member States. There are two dominant approaches in compliance studies on how to influence noncompliant behavior, meaning to make rule of law violators comply (Börzel & Cichowski 2003). The management approach assumes that noncompliance is not deliberate, but rather accidental, because fulfilling commitments is in the primary interest of states (Chayes & Chayes 1993). According to this view, the factors behind violations are imprecise treaty language or limited administrative capacities. (Downs et al. 1996). According to the enforcement approach, however, a voluntary noncompliance by a state occurs when governments decide to disregard legal commitments based on cost-benefit calculations (Priebus 2022, p.5). While the management approach believes that noncompliance can be addressed through prevention and dialogue, the enforcement approach argues that sanctions are the way to address such state behaviour (Priebus 2022, p.5).

Over the years, the European Union and its institutions, mainly the European Commission as guardian of the treaties, have developed many different tools, to address noncompliant Member State behavior. Priebus argues that there is only one tool in the Commission's hands that follows the logic of enforcement and thus considers sanctions to be the adequate response to rule violations and that is the rule of law conditionality method. All the others follow the logic of management, which explains the ineffectiveness of these instruments as there is a 'mismatch between the sources of rule violations and the remedies chosen'(Priebus 2022, p.6). These tools do not sanction voluntary noncompliance, but they rely on soft measures, which are appropriate to handle involuntary noncompliance, but ineffective in cases of deliberate noncompliance (Priebus 2022, p.1). Previous research shows that the Commission's approach towards the protection of the rule of law from Member State violations mainly falls into the category of managing and not enforcing the fundamental values of the EU because the Commission is still focused on prevention through early detection and dialogue (Priebus 2022, p.10). The effectiveness of the rule of law conditionality mechanism, however, still raises doubts, therefore this contribution will analyze the procedure in the case of Hungary and evaluate its results. The question to be answered is *whether the rule of law conditionality mechanism means a step towards enforcement* in the hitherto very cautious rule of law protection tool kit of the European Commission.

Existing rule of law protecting methods of the EU – the rule of law conditionality mechanism as a step towards enforcement?

The Justice Scoreboard was introduced in 2013 as part of the European Semester. It falls into the category of early warning and prevention as it provides comparative data on the independence, quality and efficiency of national justice systems (European Commission 2013).

Infringement procedures, although not designed by the Commission, are the oldest and most effective tools of monitoring Member State compliance with EU law. However, they are not directly linked to the protection of democracy or the fundamental values of the EU. This tool has the potential of dealing with systemic problems in EU law (see the idea of systemic infringement procedures by Scheppele, 2013), but the Commission has not been eager so far to evolve in this direction. In fact, some Member States, such as Poland and Hungary, refuse to heed the rulings of the CJEU that are the outcome of these proceedings, so it is safe to say that the Commission has 'reached the limits of their logic' when it comes to infringements. (Maurice 2023, p. 1)

The EU's Article 7 procedure has been considered to be the most aggressive tool to address rogue Member State behavior. The possibility of launching this procedure has been around in the past decade with respect to some Member States, especially Hungary. The launching of the procedure had long been overdue, but finally the rule of law framework introduced in 2014 gave new impetus to the process itself with its early warning mechanism and dialogue to prevent systemic threats to the rule of law in the EU. It was the Commission that took the initiative and launched the procedure against Poland in 2017, but in the case of Hungary, it was the European Parliament that triggered the process in 2018. The procedure had been nicknamed the 'nuclear option' before it became activated in relation to these two countries (Barroso 2012), but since then it has become clear that it is far from being as dangerous as initially thought for the Member States in question. The main problem turned out to be the incapacity of the European Council to proceed with any of the cases. The ineffectiveness of the tool is proven by the fact that only the first paragraph of Article 7 has been activated which does not allow sanctions. Paragraph 2 would

have to be activated (i.e. the determination of the existence of a serious and persistent breach of Article 2 values) for the possibility of imposing sanctions, but that would require unanimity from the European Council which will not be granted in either case because the two Member States would support each other in voting against. Therefore, it is evident that the procedure is halted in both cases and the outcome is unclear.

The Annual Report on the Rule of Law was introduced in 2019 as part of the Annual Rule of Law Review Cycle. It is a relatively new tool with the purpose of regular monitoring. The first Report under this framework was issued by the Commission in 2020 (European Commission 2020). Although it gives an assessment of all EU Member States' rule of law situations, this tool is still ineffective against deliberate, systemic noncompliance and autocratic regimes. The Report nevertheless has the capacity to shape certain Member State practices: Hungary's Recovery and Resilience Plan (RRP) which was submitted in May 2021 was only accepted by the Commission in December 2022 as its acceptance was tied to the conditions outlined to Hungary in the 2019 and 2020 country-specific reports (reforms in the areas of EU budget protection and rule of law).

The COVID-19 pandemic gave the EU an opportunity to tie rule of law concerns to the budget: the EU set up the €750 billion NextGenerationEU plan, which was implemented from the spring of 2021 with the purpose of supporting and helping Member States to revive their economies. The Recovery and Resilience Facility (RRF), endowed with €672.5 billion, is integrated into this plan. Under the RRF, each Member State must draw up a national plan which contains milestones and targets. The achievement of these plans is evaluated by the Commission and the Council, and the payment of EU grants or loans, which run until 2026, are tied to them (European Council 2023). The Recovery and Resilience Plans are especially useful because they contain the element of conditionality, and the amount of money at stake makes for strong leverage in forcing governments to act in line with EU law. In fact, it has been argued by some members of the academic community that the RRFs have become the EU's main instrument to act in safeguarding the rule of law (Maurice 2023, p.4).

The operation of the facility introduces a kind of conditionality that is not specific to the rule of law. The above mentioned tools, the European Semester and the annual report, had not shown any tangible results in the past, however, the Commission gave new power to these mechanisms because the recommendations used in these two define the objectives to be met in the post-COVID recovery plans and their implementation is conditional for the release of funds to the Member States (Maurice 2023, p.3). In these mechanisms, however, the bias is towards economic efficiency rather than values (that are inherently tied to the rule of law), but this is based on the assumption that a more efficient justice system or an effective fight against corruption is more favorable to business and growth. The fact that the RRF is integrated into the EU budget means that the budget conditionality mechanism can be applied if a certain rule of law condition jeopardizes the EU's financial interests. This gives the EU an opportunity to pursue a new type of rule of law protection strategy and combine different tools to control Member State behaviour.

Tying the rule of law requirements to the budget was further reinforced by the rule of law conditionality mechanism introduced by Regulation 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 (Official Journal of the European Union, 2020). According to the original idea, the Commission could propose different measures in case it detected 'generalized deficiencies as regards the rule of law'. The regulation that was ultimately adopted replaced the phrase

'generalized deficiencies as regards the rule of law' with 'breaches of the principles of the rule of law in a Member State [which] affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way' in a Member State (Priebus 2022, p.9). This change in the wording basically transformed the original mechanism that served the protection of the rule of law into a mechanism for protecting the EU budget. This means that the mechanism cannot be activated in case general rule of law violations are detected, but only if the violations directly affect implementation of the EU budget or the spending of EU money (Priebus 2022, p.9). This tool is still the one with the most effects on a country's spending because the measures that can be taken if the country doesn't comply with the Commission's requirements include the suspension of payments and of commitments, the suspension of the disbursement of instalments or the early repayment of loans, a reduction of funding under existing commitments, and a prohibition on entering into new commitments with recipients or to enter into new agreements on loans or other instruments guaranteed by the Union budget. The following section will present the budget conditionality dialogue between the Commission and Hungary and show whether this rule of law protecting tool has the potential of enforcement or is still rather a tool of management.

Hungary and its current affair with the Commission on rule of law matters: focusing on the budget conditionality mechanism

The following pages will evaluate the effectiveness of the budget conditionality mechanism by presenting the dialogue between the Commission and Hungary. The instrument itself was introduced in December 2020, but the procedure against Hungary was not started until November 2021 when the Commission sent a request for information to Hungary pursuant to Article 6(4) of the Conditionality Regulation. In January 2022 Hungary replied to the request, but on 27 April 2022 the Commission officially triggered the conditionality mechanism. Budapest received a written notification from the Commission which raised alarming issues concerning 'the public procurement system in Hungary, including systemic irregularities, deficiencies and weaknesses in public procurement procedures; a high rate of single bidding procedures and low intensity of competition in procurement procedures; issues related to the use of framework agreements; issues in the detection, prevention and correction of conflicts of interest; concerns related to the use of Union funds by public interest trusts' (Council of the European Union 2022a).

On 27 June 2022 Hungary replied to the notification. The reply was amended by two letters, one written in June and another one in July by the Hungarian Minister of Justice Judit Varga. Moreover, on 19 July 2022, Hungary also sent an additional letter proposing several remedial measures (seventeen exactly) to address the points raised in the notification. Later in July, the Commission sent a letter to Hungary informing the Member State of its assessment, and of the proposed measures Hungary should take. Budapest was given the opportunity to submit its observations which it did in August 2022. Despite contesting the findings of the Commission, and criticizing the proportionality of the measures, Hungary promised further remedies to address the Commission's concerns (Council of the European Union 2022a). The seventeen Hungarian remedial measures focused on correcting the illegalities and irregularities surrounding the implementation of EU funds by establishing several institutions focusing on decreasing fraud and corruption. Moreover, several measures were introduced with the purpose of strengthening audit and control mechanisms and making the public procurement system more transparent and

effective (Council of the European Union 2022a).²

On 13 September 2022 Hungary sent the Commission a letter which included clarifications and further commitments under the remedial measures proposed. On 18 September the Commission replied to Hungary's efforts in its 'Proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary' (European Commission 2022a). The Commission found that the remedial measures proposed by Hungary were not fully adequate to address the demands set out in the Commission's notification of 27 April 2022. The Commission also proposed the suspension of 65% of funds for three Cohesion Funds programs (€7.5 billion) under the Multiannual Financial Framework 2021-2027. Moreover, it also entailed a prohibition to enter into legal commitments with the public interest trusts for programs implemented in direct and indirect management. The proposal gave two months for Budapest, to effectively implement the measures it promised in order for the suspension to be released or softened.

At this point, reactions to the dialogue (both the Commission's role and the Hungarian remedies) grew both from other EU bodies, and the academic community. On 17 November a press conference (European Parliament 2022b) was held by co-rapporteur MEPs who were part of the team negotiating the rule of law conditionality regulation with the Member States. The MEPs argued that the Hungarian remedies were insufficient, thus they expected the Commission to reiterate its September proposal to the Council to suspend the funds. Specific criticism arose concerning the remedial measures offered by Hungary. Mészáros and Scheppele criticized the Integrity Authority for being a structurally not independent body of political appointees with no real investigatory capacity (Scheppele and Mészáros 2022a). They also analyzed the prospects of the Anti-corruption Task Force and predicted that it will only be able to do very little because its tasks are underdefined (Scheppele and Mészáros 2022b). The joint report of the Hungarian Helsinki Committee, Transparency International Hungary and K-monitor evaluated the proposed Hungarian remedies as follows: 'The absolute lack of transparency, public consultations and published impact assessments in the process that preceded the adoption of what was supposed to be the largest anti-corruption legislative package in Hungary in over a decade foreshadowed the contents of the changes. While in some of the above areas it is possible to identify steps in the direction suggested by the European Union, the Government, when formulating remedial measures, was careful not to introduce changes that would shake the institutional and procedural

2 The seventeen remedial measures are the following: reinforcing prevention, detection and correction of illegalities and irregularities concerning the implementation of Union funds through a newly established Integrity Authority; creating an Anti-Corruption Task Force; (by December 2022); strengthening the Anti-Corruption Framework; ensuring the transparency of the use of Union support by public interest asset management foundations; introducing a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property; strengthening audit and control mechanisms to guarantee the sound use of EU support; reducing the share of tender procedures with single bids financed from Union funds; reducing the share of tender procedures with single bids financed from the national budget; development of a single-bid reporting tool to monitor and report on public procurements closed with single-bids; developing the Electronic Public Procurement System (EPS) to increase transparency; developing a performance measurement framework assessing the efficiency and cost effectiveness of public procurements; adopting an action plan to increase the level of competition in public procurement; training to be provided for micro, small and medium-sized enterprises on public procurement practices; setting up a support scheme for compensating the costs associated with participating in public procurement of micro, small and medium-sized enterprises; applying ARACHNE; strengthening cooperation with OLAF; and adopting a legislative act ensuring enhanced transparency of public spending.

foundations of the captured, illiberal state (Hungarian Helsinki Committee et al. 2022).'

Some MEPs were largely disappointed by the restrictive approach of the Commission in its September recommendation. In a debate in a plenary session on 4 October 2022, the EPP, Greens, S&D, Renew and GUE/NGL groups articulated the view that the Commission had not fulfilled its role as guardian of the Treaties. They warned the Commission not to compromise with Hungary because the principles of the rule of law were not negotiable. Thus a stricter catalogue of measures towards Hungary would have been desirable, according to the MEPs. (European Parliament 2022c)

On 21 November MEPs from the PPE group, S&D, Renew, Verts/ALE Group, the Left group issued a motion for a resolution on the assessment of Hungary's compliance with the rule of law conditions under the Conditionality Regulation and state of play of the Hungarian RRP. The motion argued that the seventeen measures were not enough to address the existing systemic risk to the EU's financial interests, therefore it called on the Commission to confirm its September proposal and state that the remedies were insufficient. Moreover, the MEPs called on the Council to adopt the measures under the Conditionality Regulation, as proposed by the Commission on 18 September 2022, and collect evidence on the effective implementation of the Hungarian remedies before lifting the adopted measures. It also called out the systemic abuse of the unanimity rule by the Hungarian authorities through blocking crucial decisions (for example Ukrainian aid package and the global minimum corporate tax rate that will be mentioned below) and called on the Council and Commission to ensure that this pressure does not affect their decision regarding the RRF and the rule of law conditionality. Lastly, the MEPs also highlighted the importance of the fact that final recipients and beneficiaries of EU funds should not be deprived of their money by deficiencies in the operation of the rule of law in Hungary. (European Parliament 2022a)

On 30 November the Commission decided that Hungary had not progressed enough in its reforms and must meet essential milestones for its Recovery and Resilience funds. 'While a number of reforms have been undertaken or were underway, Hungary failed to adequately implement central aspects of the necessary seventeen remedial measures agreed under the general conditionality mechanism by the deadline of 19 November, as it had committed to. These relate, in particular, to the effectiveness of the newly established Integrity Authority and the procedure for the judicial review of prosecutorial decisions.' The body reaffirmed its initial proposal about suspending 65% of Hungary's EU funds (€7.5 billion), but it endorsed Hungary's Recovery and Resilience Plan (RRP), provided the full and effective implementation of the required milestones. These are the twenty-seven so-called super-milestones, which include the original seventeen remedial measures and ten additional pledges that mainly concern strengthening judicial independence, standard audit and control measures by: 'increasing the powers of the independent National Judicial Council, limiting undue influence and discretionary decisions, and ensuring a more objective and transparent administration of courts; reforming the functioning of the Supreme Court to limit risks of political influence; removing the role of the Constitutional Court in reviewing final decisions by judges on request of public authorities; and removing the possibility for the Supreme Court to review questions that judges intend to refer to the European Court of Justice. Moreover, a fully functioning national system for monitoring the implementation of the plan and a strategy setting out how the Hungarian audit authority will audit RRF funds, in line with international audit standards is necessary.' (European Commission 2022b)

The Economic and Financial Affairs Council (ECOFIN) scheduled for 6 December 2022 was a highly anticipated event because of several votes that had to be taken on that day. The Council

had to decide on a proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary. Moreover, the implementing decision of the Hungarian Recovery and Resilience Plan (if the Commission were to put forward a proposal) was also expected to be made that day. There was a legislative package on financial support to Ukraine, as well as a vote on the introduction of a global minimum level of taxation. This 'voting package' already suggests that the final outcome of the budget conditionality mechanism was subjected to a political bargaining where Hungary was hoping for concessions if it did not halt important Council objectives: i.e. the Hungarian Recovery and Resilience Plan would receive approval, the amount of the suspended funds would be decreased, but in return Hungary would have to support the legislative package to help Ukraine and the introduction of a global minimum level of taxation (Allenbach-Amman 2022). Hungary was vocally unsupportive of the latter two initiatives in the weeks preceding the vote.

The ECOFIN Council of 6 December 2022 indeed had a political importance in the sense that Hungary vetoed the financial aid for Ukraine, and as a result, the RRP was cancelled from the agenda. Then, at the last COREPER meeting of 12 December 2022 the budget conditionality negotiations came to an end. A mega-deal was reached where Hungary supported both the financial aid for Ukraine and the global minimum corporate tax, and in return only €6.3 billion in EU funds were frozen and the country's RRP (worth €5.8 billion) got a formal greenlight, although the money remains frozen until the twenty-seven super-milestones are completed. (Council of the European Union 2022b) In addition to the super milestones, several 'ordinary' milestones connected to the rule of law were defined, a significant part of which coincide with the seventeen measures required under the conditionality mechanism (Amnesty International et al. 2023, p.2).

The budget cuts for Hungary did not stop in the December. Just before Christmas 2022, the Commission added more conditionalities through the Partnership Agreements that it negotiates with all Member States at the start of each EU budget cycle, specifying how funds from the EU budget should be spent. This process is specified by the new Common Provisions Regulation (CPR), enacted in 2021 which introduced the horizontal enabling condition of the 'Effective application and implementation of the Charter of Fundamental Rights.' The Commission found in its assessment of the Implementing Decision of the Partnership Agreement with Hungary (European Commission 2022c), that in relation to several operational programs, Hungary did not comply with the effective application and implementation of the Charter of Fundamental Rights' due to the lack of judicial independence, the violation of academic freedom, the weaknesses in the Hungarian asylum system and the failure to implement related CJEU judgements, and the anti-LGBTQI+ law (Amnesty International et al. 2023, pp. 2-3).

To sum up this chaotic situation, the EU blocked money from Hungary on three accounts - the rule of law conditionality mechanism, the RRP and the CPR - which cannot be completely separated from each other, and the aspect of the protection of the rule of law is present in all of them. In fact, Scheppele and Morijn (2023) argue that the CPR was more successful in withdrawing funds from Hungary than the rule of law mechanism. "The Agreement covers €22 billion and includes 11 national programmes. While the Conditionality Regulation procedure against Hungary withheld €6.3 billion from three of the Cohesion Fund programmes (...), the Partnership Agreement seems to authorize withholding all the funds covered by the Agreement. As a result, Hungary is facing the suspension of at least an additional €16.2 under the Partnership Agreement, more than the total withholdings under the Conditionality Regulation and Recovery Regulation combined,

until it strengthens judicial independence.” (Scheppelle & Morijn 2023. p.43.) Thus, taking into account money withheld under the NGEU funds (€5.8 billion), the Conditionality Regulation (€6.3 billion) and Partnership Agreement, Hungary was facing the suspension of at least €28.7 billion at the beginning of 2023.

Since then, the situation has slightly changed due to the comprehensive judicial reform that was conducted in Hungary in mid-2023. In December 2023 the Commission declared that the judicial reform meets the horizontal enabling conditions, therefore around €10 billion will be released under the Cohesion Fund, but as the Hungarian government has not fully complied with the rule of law mechanism, €6.3 billion is still suspended and Hungary cannot yet access recovery funds, except for a small advance. As a result, the Commission’s Communication stated that around €21 billion remains blocked for Hungary, in addition to the €10.2 billion that has now been unblocked. (European Commission 2023)

Conclusion: Is the budget conditionality mechanism efficient in the field of enforcement?

Do the Commission’s requirements really address rule of law violations in Hungary? Do the Hungarian remedies work properly? Even if they work properly, do they actually improve the situation of rule of law in Hungary? Can these institutions even work in autocracies? It is still too early to thoroughly answer all these questions but it is already clear that the rule of law mechanism enables the targeted Member State in question to quickly react by introducing new institutions and mechanisms that might not work properly or have no tangible effect on rule of law. Although the rule of law mechanism requires certain modifications within the Hungarian legal system that might decrease corruption or make the public procurement system more transparent, there are still other very important areas of rule of law that are not touched by the procedure. The rule of law conditionality mechanism itself has the potential to fulfill the requirements of enforcement, but the Commission still tends to focus too much on monitoring and dialogue and the procedure is subject to political bargaining.

However, this mechanism might still have the most enforcement potential among all the other measures. Moreover, 2022 might have initiated a new practice on the Commission’s part: using financial tools as a leverage to achieve results in the area of the rule of law. The conditionality regulation might not be very effective alone, but amended by other financial instruments, it could be a strong tool for the EU to protect the rule of law. For instance, as mentioned earlier, the Commission’s Partnership Agreement with Hungary for Cohesion Policy 2021-2027 amounts to almost €22 billion. This agreement, includes judicial independence as a requirement for the disbursement of funds, and the implementation of the twenty-seven super-milestones required under the RRP are set as conditions (Maurice, 2023, p. 3). Hungary thus represents a certain kind of ‘textbook case’ of the EU employing different types of conditionalities at its disposal in an encompassing and complementary way. (Maurice, 2023, p. 4).

This complementary way of applying different conditionality methods could mean a way towards effective enforcement, however, rogue governments still have their ways on how to disregard certain EU commitments that do not fall under the scope of these ongoing procedures. The way forward for the Commission could be to find a balance between the economic and legal dimensions in the area of conditionality. The budget conditionality mechanism, the cohesion

programmes, and the milestones in the Recovery and Resilience Plans will not be effective on their own (Maurice, 2023). The Commission has to step away from its management-oriented, preventive dialogue and should apply a firmer way to make enforcement more effective. This new approach to conditionality should not stop at the stage of withholding money, but the reforms of Member States should be closely monitored by EU institutions to ensure that they comply with EU law and respect the rule of law. Moreover, the Article 7 procedure against Hungary should also be revived and at least the first paragraph should be concluded in order to send a clear message to all Member States: disrespecting the fundamental values of the European Union will not be tolerated.

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