

What future for rule of law protection? Towards a more effective use of the EU's toolbox under the vdL 2.0 Commission

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INTRODUCTION

Strengthening the rule of law is crucial for the functioning, legitimacy and survival of the European Union. Institutional stability and legal certainty serve as cornerstones of security, especially in times of geopolitical turbulence like today. Given the potential for further EU enlargement, the community of 30-plus members needs mechanisms that can strengthen its resilience in the face of political volatility and democratic backsliding. Hence, rule of law erosion in individual member states is not only a matter of domestic concern; it is a threat to European integration and the EU's legal order.

For more than a decade now, the EU has been grappling with [autocratic legalism](#) within some of its member states. Hungary, labelled an “[electoral autocracy](#)” in a report adopted by the European Parliament in 2022, remains the most problematic case of rule of law erosion in the EU. In Poland, the process of rule of law repair has stalled for good due to [constitutional gridlock](#) following the election of the Law and Justice Party-backed president Karol Nawrocki. The rise of illiberal Eurosceptic political forces in these two countries, as well as the electoral success of other illiberal parties elsewhere in Europe—in Germany, Italy, Portugal and Slovakia—presents a problem for the future.

Responding to repetitive rule of law breaches, European institutions developed a rule of law toolbox, to which they recently added financial conditionality: suspension of payments or financial corrections applied to protect the EU budget against rule of law breaches. However, the measures delivered mixed results. Their effectiveness was limited by treaty competences of the European Union in this area as well as a [lack of political will among European leaders](#) to apply these measures to other member states. Actions such as [the triggering of Article 7](#) (suspending EU membership rights, otherwise known as ‘[the nuclear option](#)’) or [of the Rule of Law Conditionality Regulation](#) were taken, but only after delays. The initial impunity encouraged ‘rule breakers’, leading to regulatory, institutional, and personnel changes that were difficult to reverse in the member states affected.

Because of dire developments in the above-mentioned member states, the first von der Leyen Commission (2019-2024) placed the rule of law in the spotlight, accelerating actions to protect and strengthen it. The second von der Leyen Commission (2024-2029) has made the strategic decision to continue tackling rule of law erosion within the EU through financial and techno-managerial instruments for protecting the EU budget. In the current politico-institutional cycle, momentum is building for the Commission to make protecting and strengthening rule of law in member states a standard practice, as opposed to a reactive one, whereby rule of law breaches are dealt with after the event on a case-by-case basis. Further coordination and integration of monitoring and corrective tools can deliver the best synergies.

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BACKGROUND: RULE OF LAW EROSION AND REPAIR IN THE EU

[Article 2 of the Treaty on European Union \(TEU\)](#) spells out the founding principles of the EU, among which is the rule of law. [Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget](#) defines the rule of law as requiring “that all public powers act within the constraints set out by law, in accordance with the values of democracy and respect for fundamental rights” and “under the control of independent and impartial courts”. It demands principles of legality, legal certainty, prohibition of arbitrariness, judicial protection and separation of powers.

After the Fidesz party came to power in 2010, Hungary became the first member state to undertake deliberate and persistent rule of law breaches. With the victory of the Law and Justice (PiS) party in 2015, the malaise spread to Poland. This ‘contamination’ made democratic backsliding is not only a political, but also a systemic problem for the EU.

Initially, the EU attempted to tackle rule of law breaches using ‘soft’ means, such as dialogue, that sought to exert political pressure on rule breakers. But repeated rule of law breaches in Hungary and Poland eventually compelled European institutions to resort to more decisive measures. For example, [Article 7\(1\)](#)—the first step towards suspending EU membership rights in instances of a serious breach by a member state of the values referred to in Article 2 TEU—was triggered [against Poland in December 2017](#) following a motion by the European Commission. It was then triggered [against Hungary in September 2018](#) at the urging of the European Parliament. Article 7(2), getting closer to suspending voting rights, [was also considered in 2024 by the European Parliament](#) when Hungary blocked EU support for Ukraine; in the end, [the topic was dropped](#).

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Another, initially popular practice used by the Commission to tackle rule of law breaches involved [infringement procedures](#) and, in cases of noncompliance, referral of the member state to the Court of Justice of the European Union (CJEU), which could impose financial sanctions. In 2021, Poland was hit [with a record €1 million daily penalty payment](#) for failing to address the areas of jurisdiction of the Disciplinary Chamber of the Supreme Court, [nicknamed “muzzle law”](#) as it aimed at

restricting the right of Polish judges to voice criticism against government’s actions. Yet it wasn’t effective: the Polish government did not fully comply, despite [losing approximately €320 million](#) in penalty payments.

The failure to prevent rule of law breaches in Hungary and Poland pushed the first von der Leyen Commission to prioritise the safeguarding of European values. In the 2019-2024 cycle, the function of the [Vice-President of the European Commission for Values and Transparency](#) was established, alongside the commitment to [defend democracy and promote the rule of law](#).

The EU’s rule of law toolbox also expanded during that period, incorporating the idea of using financial pressure in a more structured and institutionalised manner. In 2020, [the general regime of conditionality](#) was developed by connecting support for the rule of law with the EU’s financial interests. The ensuing mechanism aimed to curb rule of law breaches by resorting to measures that protect the EU budget.

In addition, the [Recovery and Resilience Facility \(RRF\)](#), established in 2021 as part of the NextGenerationEU plan, included a financial conditionality mechanism that made funds dependent on the recipients’ implementation of set milestones of qualitative character such as reforms or policies, and quantitative targets, some of them directly referring to the rule of law.

Finally, [Regulation 2021/1060, which enacted common provisions](#) for specific European funds, spells out the requirement for member states to comply with the EU Charter of Fundamental Rights. It mentions the general regime of conditionality for the protection of the Union budget, and sets conditions that enable the reimbursement of expenditures related to particular funding objectives.

The conditionality mechanism was tested on cohesion policy funds allocated to Hungary in late 2022. It was triggered in reaction to [persistent infringements of public procurement rules](#), and intended to secure transparency and fight corruption in that country. The disbursement of RRF funds to Poland and Hungary was also blocked. The European Commission had [approved their country-specific Recovery Plans by the end of 2022](#), but none of the countries initially met the milestones required to disburse the funds.

[In the case of Poland](#), the EU’s ‘money for rule of law’ tactic was a response to the Polish government’s systemic undermining of the independence of the judiciary and of the proper functioning of the Supreme Audit Office and prosecution. The change of government in Poland in 2023 and the subsequent commitment demonstrated by Prime Minister Donald Tusk and Justice Minister Adam Bodnar to rectify the situation eventually persuaded the European Commission to [release the frozen RRF funds](#) in February 2024 and [close Article 7\(1\)](#) in May 2024.

For Hungary, funds were withheld due to the inefficient remedial measures adopted by the government to improve the effectiveness of the newly established Integrity Authority and the procedure for the judicial review of prosecutorial decisions. Despite implementing measures to combat corruption, strengthen judicial independence, standard audit and control measures, their impact was considered [insufficient by the European Commission](#). Financial sanctions against Hungary were sustained, resulting in the blocking of [€9.7 billion in Cohesion Funds and €9.6 billion in RRF and REPowerEU](#).

To date, mere monitoring and dialogue have not proven efficient in the face of deliberate efforts by national governments to undermine European principles. It has also become clear that member states' political calculations make them reluctant to fully apply Article 7. Only financial sanctions helped to put pressure on problematic member states, although the Conditionality Regulation was not designed to prevent rule of law breaches per se, but to protect the Union's economic interests and budget. The different ways in which the European Commission handled Hungary and Poland also exposed it to accusations of double standards.

STATE OF PLAY: THE VON DER LEYEN 2.0 COMMISSION AND STRENGTHENING THE RULE OF LAW

The EU today has a broad portfolio of [preventative and corrective tools](#) at its disposal to establish whether there is a risk of rule of law breaches and to stop them from (re)occurring.

Monitoring tools include the [Rule of Law Report](#) as part of the broader [Annual Rule of Law Cycle](#) launched to stimulate inter-institutional exchange between, on the one hand, member states, and on the other, the European Commission, the European Council, and the European Parliament. Moreover, the [European Semester](#) provides an annual review of the efficiency, quality, and independence of justice systems through the [EU Justice Scoreboard](#), which formulates country-specific recommendations linked to rule of law. In addition, the [Rule of Law Framework](#) allows the Commission to conduct assessments and issue recommendations for member states that are showing signs of democratic backsliding.

Dialogue-based instruments include the [Rule of Law Peer Review](#) within the General Affairs Council, and the Council's [annual Rule of Law Dialogue](#). Imposing fines through [infringement procedures](#) and withholding payments or applying the [general regime of conditionality](#) serve as the corrective arm of the EU's rule of law toolbox. Finally, the voting rights of a member state that fails to comply with rule of law standards may be suspended through the triggering of Article 7(3).

Due to Russia's war of aggression against Ukraine and the return of US President Donald Trump to the White House, the EU has had to urgently focus on resetting its security architecture and defence potential to achieve strategic

autonomy. In the context of security and prosperity, the focus lies on defending democracy and making it more resilient to hybrid threats. The [Commission's work programme for 2025](#) gives more space to Democracy Shield—a non-legislative initiative to counter foreign interference—as well as the Commission's efforts to support civil society. The document only mentions continued engagement with the member states on the rule of law by adding a single market dimension to monitoring; however, strengthening the rule of law is not completely off the table.

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The incumbent European Commission took office on 1 December 2024 and placed "[Protecting our democracy, upholding our values](#)" among seven priorities. A new [Commissioner for Democracy, Justice, the Rule of Law and Consumer Protection](#) was appointed. Rule of law will also become part of the portfolio of the [Commissioner for Budget](#), with the aim of protecting the EU's financial interests through the implementation of the conditionality mechanism. Protecting democracy is separately [included in the portfolio of the Executive Vice-President for Tech Sovereignty, Security and Democracy](#), with an emphasis on fair elections, media freedom, and countering disinformation.

In February 2025, [the Commission's communication on the next multiannual financial framework](#) pledged to further protect the rule of law by applying the general regime of conditionality to all funds. The document recognised the positive effects of financial pressure to promote rule of law in member states but also confirmed the insufficient causal link between failing to implement recommendations of the Rule of Law Report and applying financial conditionality. In other words, decisions to apply financial conditionality were not directly responding to the observations and conclusions included in the report. The lasting commitment to integrating rule of law as a non-negotiable condition for disbursing EU funds was repeated in [the speech by President von der Leyen at the Annual EU Budget Conference](#) in May 2025.

This crystallised the dual approach of the Commission. On the one hand, democracy was to be protected through a combination of strategies, legislation (such as the [European Media Freedom Act](#)), and non-legislative initiatives (such as [Democracy Shield](#)), as well as dedicated funding (for instance, [CERV](#)); on the other, rule of law would be strengthened via financial measures—penalties, conditionality, withholding other funds, and so on—and techno-managerial instruments, such indicators, scoreboards, reviews.

Whereas both the Regulation on a general regime of conditionality and the RRF rely on the [conception of rule of law](#) as sound economic governance, their vector differs. The former can be described as ‘negative conditionality’ for its strategy of withholding funds (imposing sanctions) in case of rule of law breaches. Conversely, the latter was conceived as ‘positive conditionality’ because it releases funds to incentivise countries to improve and uphold the rule of law.

In practice, attacks on democracy and the rule of law tend to coincide. But the variety of available approaches gives the Commission a tactical choice as to how to tackle emerging problems, whether through positive incentives or negative sanctions. Moreover, these paradigms are mutually reinforcing. While inward-oriented democracy promotion can increase rule of law resilience in member states over the long term—by, for instance, strengthening democratic institutions, procedures, and stakeholders—financial conditionality is designed to immediately address rule of law breaches and contain their devastating effect on the functioning of democratic systems.

According to the [Eurobarometer survey from May 2024](#), 72% of Europeans believe that the EU plays an important role in helping to uphold the rule of law in their country, and 89% think that member states should respect the core values of the EU, including rule of law. The EU therefore has public approval to get involved in rule of law matters.

PROSPECTS: CONDITIONALITY, COORDINATION, COMBINATION, CONSISTENCY

Halting rule of law erosion in Poland brought relief but did not solve the problem. The recent victory of Karol Nawrocki, the candidate supported by the PiS party in the 2025 presidential election, presents a rather grim outlook in terms of rule of law repair in the country. Other examples of recent setbacks include [controversial laws in Slovakia](#) and a [draft bill in Hungary](#) targeting foreign-funded NGOs. But threats to rule of law persist in other member states, like Germany, Italy and Portugal, where illiberal Eurosceptics are gaining traction. With their rise comes the risk of informal coalitions being created that will rally against corrective efforts by the EU.

Threats to rule of law persist in other member states, like Germany, Italy and Portugal, where illiberal Eurosceptics are on the rise.

The first von der Leyen Commission placed the rule of law in the spotlight, accelerating EU actions aimed at strengthening it. Signals sent by the incumbent Commission, again led by von der Leyen, imply not only a continuous commitment to upholding the rule of law but also a firm choice of strategy—that of protecting the EU budget. If the rule of law is to be protected and strengthened in the next political-institutional cycle, the following recommendations should be adopted:

- 1. Conditionality:** In the past, deliberate rule of law breaches in member states caught the EU unprepared. As such, countermeasures were applied reactively, like the infringement procedures against Poland or the failed attempt to trigger Article 7(2) against Hungary. To overcome this impasse, a toolbox offering a more systemic approach has been gradually developed. Financial conditionality in its diverse forms (‘positive’ to incentivise reforms and ‘negative’ by imposing sanctions) should become the standard paradigm, integrated into various financing mechanisms related to the use of EU funds and automatically applied if conditions are met. Protecting and strengthening the rule of law should become a horizontal principle of the EU by applying the general regime of conditionality to all funds. This will strengthen resilience against the autocratic tide in member states, which may potentially obstruct the application of the EU’s rule of law toolbox.
- 2. Coordination:** Conditionality as a tool of macro-economic governance puts a price tag on the rule of law, whereas more focus on its democratic legitimacy is needed beyond fighting fraud and corruption. Until now, member states could ignore the recommendations of the Rule of Law Report without being sanctioned. Meanwhile, the findings of the Rule of Law Report and the Justice Scoreboard should serve as evidence for the application of the general regime of conditionality. Conditionality should follow objective methodology and equal treatment of all member states. Demonstrating a direct causal link between recorded rule of law breaches and the decision to withhold funds can help prove to the public and member states in question that the use of financial conditionality is not politically motivated, but merit based. Connecting a qualitative analysis with financial sanctions in a cyclical annual review would also improve the timely implementation of the regulation. Hence, the monitoring and corrective functions contained within the rule of law toolbox must be tightly knit together. To synchronise the application of these different types of tools, close cooperation will be required between the two commissioners sharing the rule of law portfolio.
- 3. Combination:** Although their objectives and procedural rules differ, corrective tools serve the common purpose of protecting the rule of law in the EU. In 2019, before the EU had developed its conditionality mechanism, [experts argued for making better use of infringement procedures](#), for example by automatically prioritising and accelerating

cases involving a rule of law element. Enshrined in EU treaties, the [infringement procedure](#) gives the Commission the ability to take legal action against an EU country that fails to implement EU law. Nevertheless, the [average time to close an infringement or refer it to the court is 1.5 years](#), and [infringement proceedings on average last 40 months](#). The expanding rule of law toolbox provides a means to tackle rule of law breaches from a different angle, and possibly faster. [The case of Hungary](#) offers a blueprint for the future: a combined application of the conditionality regulation and the common provisions regulation (referring to respect for fundamental rights and the targets and milestones relating to the identified rule of law deficiencies as part of temporary/special funding instruments). Combining different tools can maximise their impact and increase the chance of curbing deliberate rule of law breaches. Due to the inevitability and severity of sanctions, the rule of law toolbox should reach beyond its preventive and corrective functions and serve also as a deterrent to potential rule of law breaches in the future.

4. **Consistency:** In the past, European institutions did too little, too late in response to deliberate rule of law breaches. For example, [leading experts](#) were critical of the Commission approving the Polish National Recovery Plan (NRP) in 2022. Instead, they called not only for the Commission to withhold funds from the RRF, but also to [activate the Rule of Law Conditionality Regulation](#) and refer to the court the infringement actions linked to Poland ignoring the ECJ rulings.

The change of government in Poland in 2023 reduced the risk of severe rule of law breaches. After finally meeting the [two rule of law 'super milestones'](#) (strengthening the independence of the Polish judiciary and using *Arachne* IT tool for preventing fraud and irregularities), the country was given access to the funds. Upon [presenting the Polish Action Plan for restoring the rule of law](#) at a meeting of the EU General Affairs Council, the Article 7(1) procedure was closed. Yet fundamental problems, such as the [disciplinary regime for judges](#) and the [defective procedure of judicial appointments](#), were never solved and, most probably, will not be anytime soon, given the outcome of the 2025 Polish presidential election. This twist of events provides a valuable lesson. Protecting and strengthening the rule of law in member states should not be delayed; sanctions should be duly applied. Just as importantly, they should only be lifted when remedial measures are firmly in place to directly tackle deficiencies. Failing to react to rule of law breaches negates the possibility of justice being served. Lack of consistency sabotages the EU's commitment to upholding the rule of law.

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