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The Conditionality Regulation: A true European means to face a rule of law crisis in wider Europe and foster media freedom

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Policy Recommendations

1. To avoid an institutional crisis, and restore its internal and external credibility the EU needs to foster member states' and candidate countries' compliance with its rule of law standards.
2. The Rule of Law Conditionality Regulation needs to be applied in order to push member states to act in the respect of the rule of law.
3. The respect of the rule of law has a direct impact on many aspects of functioning democracies, such as media freedom, and will allow the EU to control the spread of fake news.

Abstract

The respect of the rule of law is central to the functioning of democracies within the European institutional settings and has become even more relevant in the aftermath of COVID-19, to counter, for instance, an unprecedented diffusion of disinformation registered during the pandemic. While disinformation does not affect rule of law per se, the lack of guarantees for media freedom and independence is a clear symptom of rule of law breaching, as it perpetuates an uncontrolled circulation of disinformation with negative effects on democratic political systems.

When it comes to EU member states but also Western Balkan countries, it is important for the EU to set the bar high and make governments acting in compliance with its fundamental values. The Rule of Law Conditionality Regulation introduced in December 2020 by the European Parliament and the Council of the European Union is a first step towards a more credible Union, and will certainly allow the EU to tackle different violations of citizens' rights such as the limitation of media freedom in many European countries.



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Introduction

When it comes to European integration and democratisation, the COVID-19 pandemic had mainly the positive outcome of pushing the European Union (EU) to an even closer integration. Plans such as the NextGenerationEU (NGEU), however, have urged member states to pay more attention to the need to effectively harmonise many policy areas, and in particular, to the respect of the rule of law standards, even at the cost of sanctioning countries acting in disregard of such principles. For this very reason, the European Council Conclusions of July 2020 highlighted the need for a so-called conditionality mechanism to link the Multiannual Financial Framework, (MFF) and the NGEU to the principles of the rule of law. By December 2020 the Rule of Law Conditionality Regulation was finally passed.

Facing a rule of law crisis in wider Europe

The respect of the rule of law is central to the functioning of democracies within the European institutional settings and has become even more relevant to counter the unprecedented diffusion of disinformation registered in the last years. While [disinformation does not affect rule of law](#) per se, the lack of guarantees for media freedom and independence, which favour the diffusion of misleading information, is a clear symptom of rule of law breaching, which negatively reflects on human rights and democracy itself.

Rule of law tackles a variety of individual fundamental rights. It is the set of regulations, institutions, entities, and general conditions that allow citizens to live in a safe and prosperous environment, where human rights' norms, transparency, and fairness at the very basis of a functioning democracy are protected and enforced. Since when the EU was mainly a utopian idea created by some intellectuals

to avoid any other future continental war, the rule of law has become central to the development of the Union and to its integration process. For instance, when it comes to enlargement, the strengthening of the rule of law is the cornerstone of the EU Western Balkans strategy of 2018 and of the new accession talks [framework \(new methodology\) of 2020](#).

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Rule of law represents one of the hardest conditions to comply with. There are two negotiating chapters dedicated to assist enlargement countries to develop institutions in line with specific democracy and human rights principles: Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security. Compared to the previous enlargement rounds, the EU has been placing greater emphasis on the quality of the rule of law reforms developed by candidate countries and it has been closely monitoring the achieved results. Yet, the situation of the rule of law in some EU member states is not euphemistically in its best shape. In 2020, the introduction of the NGEU plan to provide an unprecedented financial assistance to EU countries in facing the economic recession generated by the COVID-19 crisis, has resulted in Poland and Hungary attempting to block it, because of the conditionality issues that many member states wanted to introduce. Although a rule of law mechanism that ties respect for the rule of law with EU funding has been finally approved, it is difficult to implement. Indeed, Hungary and Poland have filed a complaint with the Court of Justice of the European Union on 11 March 2021 over such a mechanism, which necessarily has resulted in a delay of its implementation. According to the [V-Dem's rule of law index](#), which measures the level of transparency



and impartiality of Eastern European Countries, from 2000 to 2019, Hungary and Poland have been the two countries standing out for worsening their rule of law standards, with their scores on the rule of law index decreasing respectively from 0.89 to 0.71 and from 0.96 to 0.83. Certainly, the lack of internal compliance of rule law standards by some member states affects the credibility of the EU externally. It might well push candidate countries to question the rigidity of the rule of law chapters for their accession process. Yet, precisely because of the [democratic backsliding](#) registered in Hungary and in Poland the EU is putting so much more emphasis on the rule of law when it comes to its enlargement policy. Indeed, the lack of respect by a single member country to the rule of law standards affects indirectly all European citizens as it hampers the exercise of individuals' rights EU-wide. Moreover, it might encourage other countries (EU members or candidates) to follow the same path, so that rule of law violations become contagious. Rule of law is not only a value per se; it serves the purpose of keeping liberal democracy alive. Indeed, the deterioration of judicial powers has the potential to lead to unrestrained political control over different areas, which are vital for democracies to be functioning and not just to be [dictatorships of the majority](#).

“Rule of law is not only a value per se; it serves the purpose of keeping liberal democracy alive.”

Media freedom under pressure

A perfect indicator of a functioning democracy and rule of law is freedom of media, which is a fundamental tool to counter disinformation and the diffusion of fake news. In the last years, disinformation and the spread of fake news have been often attributed to an uncontrolled flow of misinformation wrongly linked to the freedom provided by traditional and online media channels, exploited then by third actors. As defined by the [European Parliament](#), disinformation is a conscious dissemination of

verifiably false or misleading information created, presented and spread to deceive the public for economic or political gains but it is not correlated to media freedom. On the contrary, the more freedom of media is guaranteed, the less disinformation becomes a powerful weapon to disrupt traditional policy making processes.

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While much of the attention on disinformation campaigns both in the EU member states and in the Western Balkans has been linked to third countries, such as Russia or China, the reality is that the latter are often minority players in the disinformation game, which is frequently led by internal media systems or domestic actors and it is consequently related to an issue of media independence. For instance, in the Western Balkans, as highlighted by Freedom House and Reporters Without Borders in 2021, Serbia's status changed from 'Free' to 'Partly Free' due to the constant attempts by the Serbian government to jeopardize independent journalists through legal harassments and smear campaigns. The attack on investigative journalism is of particular concern; journalists working for investigative portals experience threats, intimidations and inflammatory rhetoric increasingly coming from governmental actors, often unanswered by authorities. Similarly, in Kosovo some media have banned their reporters from publishing investigative reports that are critical of the government or not aligned with the political narratives of the government. More generally, within the Western Balkans there are signs of continuous political interferences, direct and indirect, aimed at censoring independent media content; such interferences cannot be attributed only to pressures exerted by external actors.

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How to avoid a wider rule of law crisis and foster media freedom?

“A stronger rule of law within the EU will result in better democratic standards reflected by quality information and more open political debates.”

Toxic media environments are mostly a symptom of weak rule of law standards, rather than the cause. Indeed, in the case of Hungary and Poland, where the rule of law has been put under stress, data on media freedom are negative and have gradually worsened over the past years; both countries' governments are censoring journalists or accusing independent or private media outlet to spread fake news. The two countries are the most problematic within the EU, ranking respectively 64 and 92 out of 180 countries taken in consideration by the [2021 World Press Freedom Index](#). While the use of social media platforms to spread disinformation is unfortunately diffused also in the rest of the EU, media freedom is of fundamental importance to keep the bar high when it comes to effective and vibrant democratic standards. Before accusing the internet or third parties to conspire against the stability of its political systems, to foster its democracy and be a credible model for candidate countries, the EU needs to tackle the rule of law issue internally, pushing member countries to be accountable and respect the standard they agreed upon their membership. A stronger rule of law within the EU will result in better democratic standards reflected by quality information and more open political debates. This will certainly reinforce the EU model externally, making Western Balkan countries and citizens more willing to support and perform the reform needed and thus to become full EU members. The EU already has the instrument to do that. Under current treaty law, violations of the rule of law can be tackled by initiating infringement proceedings (Article 258 *Treaty on the Functioning of the European Union* (TFEU)) or by taking political actions relying on Article 7 *Treaty on European Union* (TEU) to address a 'serious' or a 'serious and persistent' breach of values. Both [instruments](#),

however, have had limited effects so far. Against this backdrop, the Conditionality Regulation introduced in 2020, which links the EU funding to the respect of rule of law, might be an effective deterrent. It still needs to be reviewed by the Court of Justice of the European Union; however, such ongoing legal actions should not have any suspensory effect or delay its implementation.

“Against this backdrop, the Conditionality Regulation introduced in 2020, which links the EU funding to the respect of rule of law, might be an effective deterrent.”

The Conditionality Regulation certainly represents the first step for avoiding a wider rule of law crisis, at the time the EU seems to have just weathered the storms, by overcoming Brexit, an economic and financial crisis, a migration crisis, and lastly the pandemic. The fact that the rule of law is at the basis of EU values is not just rhetoric. The respect of the rule of law indeed, impacts European citizens at large in so many aspects, not at least by granting them the chance to live in an environment where their right to be informed and media freedom is honoured should be guaranteed. This is the basis for functioning democracies upon which the EU has been built and should continue to develop.



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