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Debate: Conditionality as a rule-of-law instrument—A perspective from Hungary

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Conditionality, in the context of European Union (EU) policies, is a policy instrument linking ‘the granting of certain benefits, especially financial aid, with the implementation of specific policies and reforms or the fulfilment of concrete conditions’ (Becker, 2025, p. 402). This subject has attracted significant academic attention, particularly since the accession wave of the 2000s. Similarly, there is ample and rapidly growing scholarship on the threats to the EU’s fundamental values, including principles of democracy and the rule of law in different EU member states, and the policy responses to these problems. In this context, the term ‘rule of law’ (RoL) refers to such values as legality, legal certainty, prohibition of arbitrariness, independent and impartial courts, and respect for fundamental rights (Beqiraj & Moxham, 2022). In a broader sense, however, it is inseparable from ‘the values of democracy and fundamental rights’ (European Union, 2014, p. 3).

This debate article utilizes the vantage point offered by the unique Hungarian experience in relation to the above problem complexes. Although democratic regression is not a recent or unique occurrence in the EU, Hungary stands out as a particularly noteworthy example. Notably, Hungary is among the earliest and most consolidated cases of illiberal transformation among EU member states, with its democratic decline being ‘the most precipitous ever tracked in Nations in Transit’ (Freedom House, 2020, p. 2). Additionally, Hungary is the first and only EU member state against which the EU’s RoL conditionality mechanism, introduced in 2020 (European Union, 2020), has been initiated. Technically speaking, between 2020 and 2021, the European Commission (EC) adopted three, to some extent overlapping, EU policies involving an element of conditionality in grant allocation aiming at safeguarding and restoring values related to rule of law, democratic quality and human rights. In this debate article I use the term ‘conditionality (mechanism)’ in a broad sense, to refer to all three policies (what Holesch & Portela, 2024, term the ‘funding conditionality mechanism’; for a more detailed description, see, for example, Becker, 2025).

RoL conditionality is one element in a broader repertoire of sanctions-based enforcement instruments to safeguard and restore RoL, democratic principles, and human rights. Article 7 of the Treaty on European Union (Maastricht Treaty) outlines the process for the suspension of key EU membership rights, with the aim of enforcing the respect of core EU values, including democracy and human rights. Infringement procedures are specifically designed to address violations of EU law (for an overview see Holesch & Portela, 2024). These ‘hard’, enforcement-oriented, sanctions-based instruments coexist with another set of ‘softer’ instruments created in response to the worsening RoL conditions in

certain member states throughout the 2010s. The European Commission’s Justice Scoreboard, which is part of the European Semester and was first published in 2013, is an example of one such tool. The Rule of Law Framework, which was initiated one year later, is another. The Rule of Law Mechanism, which produces Annual Reports assessing RoL in member states, was first published in 2020 (for a comparative overview, see Priebus, 2022).

It is evident that the challenges associated with RoL conditionality and the potential implications for the future of European integration and the member states are of paramount importance. However, given the focus of the present *Public Money & Management* theme, I take a narrower and more technical perspective here, focusing on how certain procedural and technical features of the conditionality mechanism play out and create possibly unintended side-effects.

Much of the relevant scholarship understands the creation and use of the RoL conditionality mechanism as the result of an instrumentally rational policy response resulting from a learning process leading from less to more suitable policy instruments in the hands of the EU (Priebus, 2022), offering it more tangible possibilities to effectively respond to the gradually worsening RoL situation in some member states. This body of scholarship generally contends that the implementation and subsequent utilization of instruments that enforce RoL was a necessary, albeit potentially insufficient, measure to address the deliberate and systemic (as opposed to involuntary and sporadic) violations of RoL principles by certain member states, such as Hungary and Poland (Priebus, 2022).

It is understandable that there is significant interest in assessing the effectiveness of the RoL conditionality mechanism, often in comparative terms with other RoL instruments. According to the findings of several researchers, including Holesch and Portela (2024) and Czina (2024), the RoL conditionality mechanism is only partially effective in the case of Hungary.

While interpreting and assessing RoL conditionality from an instrumentally rational perspective is relevant and justified, others examine and reveal a different logic and dynamics underlying the creation and application of RoL conditionality. Hernández and Closa (2024) first posit that, prior to the war in Ukraine, the impediment to the utilization of ‘tough’, enforcement-based RoL instruments, such as infringement procedures, was not the absence of suitable policy instruments but, rather, the absence of political will. Second, in their detailed causal case study, they conclude that it was not so much the RoL violations (which had existed beforehand) but, rather, Hungary’s distinctly pro-Russian and anti-Ukrainian stance on the

matter that played a decisive role in triggering this sharp change in the EC's policy response.

The notion that issues unrelated to RoL problems might play a role in the creation and subsequent application of the RoL conditionality instruments triggers, naturally, further questions. For my current purposes, it is particularly important to understand how member state behaviour influences the allocation of the European Structural and Investment Funds (ESIF) before and during the application of the RoL conditionality mechanism.

In their study, Blauburger and van Hüllen (2021) examine the 'black box' of the RoL conditionality instrument, focusing on what they term the determinacy of conditionality as a key factor influencing policy outcomes. The term 'indeterminacy' is used to refer to the clarity and formality of the RoL norms to be enforced, including their behavioural implications for the violator. Blauburger and van Hüllen's (2021) conclusion is that the conditionality mechanism lacks sufficient determinacy. An assessment of Hungary's actual experience with the application of the RoL conditionality mechanism reveals that this indeterminacy is a significant factor hindering the effectiveness of the conditionality mechanism (Czina, 2024, p. 181): 'It is entirely up to the EU institutions to define whether the given country has done enough in a certain policy area'.

Detre et al. (2023) elaborate on this argument in their detailed legal analysis of conditionality, stating that 'during the monitoring phase, it is ... difficult to determine where decisions are made and who makes them, which creates room for political considerations by the Commission' (p. 53). Hegedűs (2023, p. 2) similarly emphasizes the lack of transparency in the monitoring and verification of compliance and the release of frozen funds, stating that it 'decreases the efficiency and robustness of conditionality and increases the tendency for inter-institutional conflicts'.

On the one hand, most of the existing criticisms, such as those cited above, are rather generic and point to potential, rather than actual, downsides of RoL conditionality. They do so at a high level of abstraction and generality, not specifying precisely how those limitations would limit the effectiveness or legitimacy of the RoL conditionality mechanism. On the other hand, it could be argued that this uncertainty could provide the EC with a degree of leverage over the violating member state. This would allow the EC to exercise flexibility and maneuverability in monitoring, negotiating, and enforcing the application of RoL principles. Although this latter element may, or may not, be present in the real-life application of RoL conditionality, interviews conducted for the present contribution with informants who have key insights into Hungary's recent ESIF grant management experience provide specific indications of the negative effects of indeterminacy. (Note that the interviewees talked under the condition of anonymity.)

Two mechanisms appear to be particularly relevant in this regard, as they facilitate the occurrence of negative side-effects stemming from indeterminacy. First, the absence of relatively precise criteria and standards to be met, and the lack of a pre-defined process for monitoring compliance (including the information sources to be used, the applicable deadlines, and the existence of forums for settling debates) fosters a positive feedback loop of tit-for-tat actions. Consequently, decisions swiftly extend beyond the scope of RoL to other critical domains, such as foreign

policy, security and enlargement policies. In line with this proposition, Holesch and Portela (2024) mention that the conditionality procedures led to vetoes by the Hungarian government in policy domains unrelated to the RoL problem complex, such as the EU's foreign policy in particular.

The second mechanism is more psychological in nature. The intended policy outcome of the RoL conditionality mechanism is to trigger convergence, part of which is strengthening (or at least not weakening further) the sense of a common value core among the EC and the violator member state. However, the rapidly escalating 'strikes' and 'counter-strikes' may have psychological consequences that create a distance between the two parties—in this case, Hungary and the EC. This could potentially push Hungary further away from the very European values that are supposed to be safeguarded and restored.

By proposing the above two deficiencies distilled from Hungary's experience, I do not mean to say that, in this particular case, these causal mechanisms made an actual difference in the policy outcome, which can be assessed as 'partially effective' at best (Holesch & Portela, 2024; Czina, 2024) or, possibly, even less than that. As Priebus (2022, p. 1695) puts it, 'governments will not adopt EU rules if they perceive the adoption costs as being exceedingly high and the rules themselves as detrimental to their own power bases... Moreover, sanctions are less effective the more authoritarian the targeted state is'. These conditions appear to be applicable to Hungary. Nevertheless, the lessons learned from Hungary's experience, albeit anecdotal, may offer valuable insights orienting the further fine-tuning of the RoL conditionality mechanism.

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