



#IEE60

CARTE BLANCHE

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En 2024, l'Institut d'études européennes de l'ULB (IEE-ULB) a soixante ans ! Pour scander cette année anniversaire et très « européenne », il convie ses membres à réfléchir à des questions fondatrices de l'intégration européenne en 1964 et toujours d'actualité en 2024. Dans une forme courte et accessible, nos chercheurs proposent un portrait en mosaïque de l'Europe, entre continuités et mutations. Les auteurs sont libres de leurs propos qui ne représentent pas une position officielle de l'IEE-ULB.

Integrating European values: Still a bumpy road ahead for rule of law protection

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Rule of law protection within Member States remains a major challenge for the European Union (EU). In crisis since the 2010s, the EU institutions did not solve the situation despite the availability of a toolkit. In addition, politico-institutional perspectives are contrasted regarding a settlement in the near future.

La protection de l'État de droit dans les États-membres est un enjeu majeur de l'UE. En crise depuis les années 2010, les institutions n'ont pas rétabli la situation malgré l'arsenal d'instruments disponible. Les perspectives politico-institutionnelles sont mitigées concernant une résolution future.

European Member States waited for two decades before referring for the first time to the rule of law as a foundation of the European Communities. The 1973 Copenhagen Declaration stated their determination to defend what they considered as one fundamental element of the European identity. Respect for the rule of law also became a pre-condition for membership when the European Council adopted the Copenhagen criteria in 1993 to ensure that the biggest enlargement wave to Central and Eastern European countries would not endanger the political Union in the making. It was then recognized as a principle on which the Union is based and common to all members by the 1997 Amsterdam Treaty, as well as a European value by the 2007 Lisbon Treaty. It is now central to EU primary law, enshrined in Article 2 of the Treaty on the European Union (TEU).

Although European integration was first and foremost an economic project, the protection of political values is considered as a core pillar of the EU. Yet, despite such status, the rule of law has been challenged throughout the process. The application of the Copenhagen criteria was found to lack strictness. In addition, as illustrated by multiple rulings of the European Court of Justice, rule of law breaches happen regularly within almost all Member States. Yet it is only in the 2010s that the rule of law debate emerged because of the systemic threat caused by the dismantlement of the pillars of the rule of law by the PiS and Fidesz governments in Poland and Hungary, respectively.

The slow and long-awaited reaction of EU institutions illustrates the unforeseen nature of the situation, which turned into a rule of law crisis. As a precondition for membership, it was expected that respect for the rule of law would be safeguarded within the Union. European legislators did not envisage that rule of law backsliding could take place within their own Member States years after their accession. This way of thinking was manifested in the inadequate toolbox for the protection of European values. Infringement proceedings can only tackle single violations of the rule of law, not systemic ones. Article 7 TEU, on the contrary, is the flagship instrument since 1997 to attest the (risk of) serious and persistent breach of European values. This instrument may lead to the adoption of sanctions, but the high voting thresholds make it inapplicable in practice. Despite its activation against Poland and Hungary in 2017 and 2018, respectively, Article 7(1) TEU was complemented by other mechanisms in the rule of law toolkit, such as the Rule of Law Framework, Rule of Law Dialogue, EU Justice Scoreboard, and the Rule of Law Annual Report.



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Given their lack of results or the unwillingness of European actors to use them, the EU turned to the leverage of spending conditionality since the 2020s. The “Conditionality Regulation” (CR) allows for the adoption of financial measures against the threat caused by rule of law breaches to the Union’s budget and financial interests. In addition, some national plans of the Recovery and Resilience Facility (RRF) condition the disbursement of funds to the fulfilment of milestones and targets on rule of law protection. Lastly, the Common Provisions Regulation (CPR) sets the rules for a large amount of European funds (such as cohesion funds) and makes reimbursement of expenditure throughout the 2021-2027 budgetary cycle conditional upon respect for the Charter of Fundamental Rights, whose Article 47 focuses on the rights to an effective remedy and a fair trial. So far, specific amounts of European funds are suspended for Hungary under all three instruments, while some have been blocked for Poland via the RRF and the CPR because of rule of law provisions. The power of the purse is considered as a more effective tool to counter national reforms against the rule of law, but this remains to be assessed in the near future.

Future prospects for rule of law protection within the Union differ depending on the Member State concerned. In Poland, the recent parliamentary elections in October 2023 resulted in a success for the opposition, since the PiS party lost its majority in the Sejm. This change will most likely ease the dialogue between national and European officials and help move forward with the disbursement of funds related to rule of law protection. However, some draw a grim picture regarding the Hungarian and Slovak cases. After the 2022 elections, Fidesz maintained a majority in the parliament and Viktor Orbán secured a fourth mandate, maintaining Hungary on the path towards “illiberal democracy”. Recently, the Slovak elections in September 2023 led to the return of Robert Fico as the head of government. The ties between the Slovak and Hungarian leaders have been seen as a threat to the future of the rule of law within the EU.

From an institutional perspective, these political events are significant given the powers of European leaders in the European Council and the Council of the EU via the rule of law toolkit. They have voting rights when it comes to Article 7 TEU, impact the outcome of the Rule of Law Dialogue, and have a say on CR measures as well as RRF payments. Politically, the issue is that national leaders do not hesitate to use their veto powers on other files to gain leverage on the EU’s rule of law policy, as Hungary does in relation to the EU’s support to Ukraine. As this year will be marked by the Hungarian Council Presidency in the second half of 2024, followed by Poland, the road ahead to end rule of law backsliding will be a bumpy one.

