

Rule of Law Conditionalities in the EU – from the Cooperation and Verification Mechanism (CVM) to the new monitoring mechanisms in the European Union

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On 31 October 2019, the Bingham Centre, in collaboration with the Bucharest University of Economic Studies (ASE), RECONNECT (2020), and the Romanian Centre for European Policies (CRPE), co-organized a [panel](#) during the annual Future of Europe International Conference in Bucharest. The panel mainly focussed on Rule of Law conditionalities and the future of RoL in Eastern Europe.

This comment piece was prepared by [Clara Volintiru](#), Associate Professor at the Bucharest University of Economic Studies (ASE), who also chaired the panel.

In Central and Eastern Europe (CEE), Rule of Law (RoL) has become one of the most politically charged topics. With growth and economic development seemingly stalling in the region, questions abound about the most suitable instruments to strengthen RoL across Europe.

RoL is a fundamental good governance principle which all Member States must comply with and endorse, and which also touches national sovereignty. This, in turn, raises an important question: where should the line be drawn between domestic and European issues when it comes to RoL implementation? Many of the CEE Member States that found themselves chided by the EU for RoL abuses—most notably Poland and Hungary — have challenged the authority of the EU to interfere in what they deem to be domestic political issues.

However, recent developments on the side of the European Commission point to the fact that there is no domestic space of interpretation when it comes to the RoL. Indeed, the Rule of Law, integrity, and anti-corruption compliance are all key European values, as mentioned in the European Commission [Communication](#) in July.

There are, however, domestic challenges that affect how the RoL is essentially implemented in practice. Romania and Bulgaria have been struggling to contain corruption and organised crime. As a result, upon accession by both countries to the EU, the Commission introduced a 'Cooperation and Verification Mechanism (CVM)' to monitor implementation of the RoL in these countries. Both of these countries have repeatedly pleaded for a lift of the CVM mechanism. More recently, broader backsliding on the quality of democracy and the justice system have led to the launch of the Art. 7 procedures against Hungary and Poland, which means that the EU can suspend certain rights of a member state that has been identified as persistently breaching the EU's founding values.

So, even if RoL sits at the heart of the European project, the way these values are attacked and undermined can vary from case to case. In some countries, it is the poor institutionalisation of the administrative system that gives way to corrupt practices, in others it is the efficient politicisation of a centralised apparatus that erodes the necessary checks and balances. Also, the same institutional arrangements — which are more or less controlled politically — can yield vastly different results from country to

country, depending on informal practices in the judicial system. Nevertheless, this concern applies to many EU states.

Now, the European Commission (EC) supports a [set of instruments](#) that are specifically designed to develop a three-pronged approach: prevent abuses, enforce compliance and promote a general culture of RoL. Amongst the newly proposed instruments, there is the EU Justice Scoreboard, and the inclusion of RoL monitorization in the European Semester process.

Before launching this new toolbox, the EC can look back to 2014, when a single version of the EU Anti-corruption Report was published analysing the situation in all Member States. It was supposed to be an annual exercise, but proved to be unsustainable from a political point of view as many Member States disliked it. Still, experts considered it a very useful instrument, as it highlighted both positive as well as negative elements in national practice and gave the opportunity for learning and building on the experience of others.

It is clear that the best way forward is a pan-European approach to RoL monitorization, but there are certain issues that have to be considered for this to take hold:

1. Instrumentalization. Building on the CVM experience, there is always a risk that RoL monitorization is instrumentalised within domestic political debates. According to the [experts](#), much of the recent praise for Bulgaria, or the delayed sanctions against Hungary, are linked to political affiliations in the European political families. This hurts the legitimacy of the instruments and defeats their purpose, as local politicians invoke such preferential or discriminatory treatment in their efforts to thwart any compliance and enforcement structures.
2. Enforcement. Monitorization is a straightforward action, while enforcement is much less so. To what extent can the EU effectively sanction Member States for not complying with RoL is an open question. The Commission's proposal for a regulation linking EU subsidies with systemic breaches of the Rule of Law can provide ammunition for nationalist or Eurosceptic politicians. Persistent disparities of development can only prevent the harmonization of institutional practices, including the RoL.
3. Oversight by the EU. As the new European Commission allocates oversight of the RoL to different commissioners, there is a clear question concerning coherence. In order for the Blueprint to be effectively implemented across the EU, EC representatives, as well as national politicians have to be aligned in what they consider the acceptable RoL objectives and reforms.

It remains to be seen whether and how the [Conference on the Future of Europe](#), which the new Commission has announced, will help to address these issues.

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