

No power without values: Why the EU needs to embrace political leadership if it wants to safeguard democracy

Sophie Porschlegel | Clara Sophie Cramer

INTRODUCTION	2
THE EU MUST FACE ITS FAILURE TO PROTECT DEMOCRACY	2
PROTECTING VALUES MEANS LETTING GO OF PAST BEHAVIOURS	3
MOVING TOWARDS HARD ENFORCEMENT	6
THE EU DESPERATELY NEEDS POLITICAL LEADERSHIP	7
CONCLUSION	7

For too long, the EU has been failing to protect democracy and the rule of law within its own borders. It needs to radically alter its approach: EU institutions must embrace more political leadership and move towards a hard enforcement of values rather than continue to enable autocrats with its course of minimal action.

Autocratic leaders do not care about ‘naming and shaming’ or yet another ‘dialogue’ with Brussels; they only listen up when their countries’ financial means or political influence is threatened. The longer the EU waits to safeguard its core values, the more it will lose credibility in the eyes of its citizens, leading to further anti-European sentiment and loss of power on the global stage.

The European Policy Centre turns 25



For the past 25 years, the EPC has advised European, as well as national decision-makers and delivered high-quality, independent analysis and actionable, evidence-based recommendations.

EPC analysts have helped journalists, civil society, businesses, and the broader public to make sense of the complex world of EU policymaking. The EPC has brought together people from different backgrounds, industries and research fields to be able to view problems from every possible angle and transcend the silo approach.

Introduction

After Russia's invasion of Ukraine on 24 February 2022, the number one priority for EU decision-makers was to ensure a united response towards Russia. This was based on a sensible assessment: divisions within the EU benefit Putin's war of aggression. However, the EU's current unity has come at a very high price of sacrificing European values and readily accepting autocratic methods within our borders, even more so than before the war started. While democratic backsliding took place long before the Russian aggression, the need for a rapid and decisive EU response brought to the forefront the repercussions of the desolate state of democracies within the EU27, and what it means for EU policymaking.

A particular moment of reckoning took place a few months ago, on 7 June, when Commission President von der Leyen announced that Poland – despite systematic value breaches in the past years – would receive €35 billion in recovery money from the Resilience and Recovery Facility (RFF) with almost no strings attached.¹ After all, Poland is on the frontline of the war in Ukraine and has been taking in millions of Ukrainians fleeing Russian bombs. However, it is not because the Polish government is staunchly anti-Russian that it has suddenly become pro-democracy. While the money has not yet been transferred four months later, it sent the wrong signal from Brussels, namely that the institutions do not take values seriously and accept double standards on rule of law breaches depending on one country's positioning in the current war situation. This decision is likely to set a precedent for a further erosion of EU power in the field of rule of law, as member states now know that the right political circumstances suffice for the Commission to stand down on values.

Instead of ignoring the increasingly authoritarian tendencies in several EU member states, the EU should use the current 'watershed moment' to bring its own house in order – and regain its political power when it comes to safeguarding core values. So far, the EU has mostly been a 'toothless tiger' in the field of value protection. The Commission followed a technocratic and legalistic approach, pretending that non-binding tools will bear fruit. EU leaders in the Council do not only hide behind the law (e.g., by the narrow legal scope of Article 7), but they also hide behind closed doors: there is no transparency on any

of the Council hearings on the rule of law. And while its Conclusions repeatedly reiterate the importance of core values, the Council's political decisions make it look as if values were either annoying barriers obstructing effective policymaking or useful bargaining chips in the negotiation game.² While the European Parliament, in contrast, is one of the most active institutions, it seemed to have had little power to stop the democratic backsliding of the past decade. Instead, it mostly expects the Commission to step up its game and hopes that citizens will eventually stop voting for far-right populists.

The EU must face its failure to protect democracy

All in all, the EU's inertia in the field of values has led to a situation which has to be named as it is: an extensive failure to protect democracy in Europe. Hungary is now an electoral autocracy and Prime Minister Viktor Orbán more powerful than ever; Poland has banned abortion, openly discriminates against gender minorities, and has transformed its judiciary into a branch of government under the EU's eyes. Romania and Bulgaria still suffer from ingrained corruption despite the EU's intention to tackle this issue with the Cooperation and Verification Mechanism. In the past years, journalists have been killed in Malta, Slovakia, and Bulgaria simply for doing their jobs; many countries in the EU have used the pandemic to broaden the power of the executive even after the 'state of emergencies' were not necessary anymore. We find ourselves in a situation where many of the EU's 27 members no longer conform to basic democratic principles; and the tendency is clear: further regression.³

The EU has to end the hypocrisy of pretending that it safeguards its values when it constantly fails to do so in reality.

The EU must therefore change its approach, and radically. The EU has to end the hypocrisy of pretending that it safeguards its values when it constantly fails to do so in reality.

There are two explanations for this failure: either the institutions refuse to enforce values, or they do

not have sufficient powers to do so. Both hold some truth, and both can be remedied, if only there was the political will to do so. The usual argument that the consequences of a tough EU stance would cause an uncertain escalation between Brussels and certain EU countries cannot be taken seriously. What further escalation can there be when EU member states do no longer respect the basic foundations of European cooperation?

As we are experiencing the return of conventional warfare to Europe, new migration flows, an economic downturn due to sanctions, inflation, and serious energy security concerns, many might think that values are a secondary subject. However, the idea that one could trade in EU values for unity is a flawed one.

However, the idea that one could trade in EU values for unity is a flawed one.

Cohesion among EU member states will never emerge if certain EU leaders continue to disrespect the foundations of European integration. Many seem to find it acceptable for the EU to sacrifice certain values to ensure that it has the capacity to act – for instance, to decide upon the next sanctions packages against Russia. This means they accept a trade-off on values against power, claiming that this is the EU's reality.

However, such arguments are based on short-term thinking and disregard the long-term consequences of these trade-offs. They are particularly dangerous because they implicitly accept to put basic EU principles – which all members should adhere to in any case – on the negotiating table in the Council, even though there are alternatives. For instance, no EU decision-maker is forced to accept Orbán's blackmailing when it is, in fact, the EU that holds the cards. There is a flawed belief that the EU does not have the 'power' to stand up against Hungary, completely ignoring the reality of the dynamic between Brussels and Budapest. The EU is the stronger party in this 'battle' as it holds the money Orbán so desperately needs.

Believing that the EU will be more powerful on the global stage if it disregards its values at home for the sake of unity is also a short-sided argument.

Believing that the EU will be more powerful on the global stage if it disregards its values at home for the sake of unity is also a short-sided argument.

One can hardly speak of unity when some EU member states openly follow a pro-Russian line. And giving in to their blackmail is hardly a sign of strength. The current situation should create a sense of urgency. Now is the time to put values at the core of the discussion. Russia's aggression against Ukraine is not territorially limited, nor will it be short-lived. It goes much further than that: it is a direct aggression against EU values. If the EU accepts the same autocratic methods that have led to domestic repression and aggressive foreign policies elsewhere, it gives Putin exactly what he wants – the victory of autocracy and hence, division within the EU.

The EU is taking risks if it continues down its current path: disregarding values means actively undermining the EU's credibility, both internally and abroad. Pretending to uphold human rights and democracy when readily accepting autocracy is a level of hypocrisy that citizens are very aware of and that will lead to further anti-EU sentiment. At the same time, the EU reduces its own capacity to act on the global stage. Several foreign governments, often with dubious human rights records, regularly point fingers to the EU's 'double standards'. While this is of course political instrumentalisation, it shows that the EU's lack of enforcement of values weakens its foreign policy agenda.⁴

Protecting values means letting go of past behaviours

If the EU is to finally protect its values, it will have to let go of a set of at least five institutional behaviours that have caused the current situation in the first place. Those include pretending that its power is more limited than it is, putting into question the legality of the instruments at hand to safeguard values, thinking that the measures and instruments available are simply not efficient enough, and accepting that values are now part of the political horse-trading in the European Council.

First, EU institutions should stop arguing that their powers are limited and that they cannot do more. Of course, the European Commission must respect the EU's legal order when acting against systematic

value breaches. However, this argument only goes so far. After all, many ambitious EU initiatives that give the Commission more ‘capacity to act’ are legally contested, mostly because EU member states do not want to ‘lose’ more power to supranational bodies (even if it is in the public interest of all EU citizens and member states). However, once the political decision is taken to move forward with an initiative, the EU and its member states often find a way to ‘make things work’.

EU institutions should stop arguing that their powers are limited and that they cannot do more.

When the NextGenerationEU recovery package was put on the table, the legality of this type of instrument had been disputed among experts for decades.⁵ However, because there was a political will to move forward together, the Commission and the Council were able to find a way that fitted the political needs. The same cannot be said for the rule of law. EU institutions and experts did question the legality of the new conditionality mechanism, but despite the full endorsement of the European Court of Justice (ECJ), the instrument did not get any political backing. Instead, its scope was reduced, and its application delayed.⁶ This is proof that the Commission seems adamant to pretend that its hands are tied rather than pursue its role as ‘Guardian of the Treaties’.

The Commission’s hesitant approach is unfounded, as values are very clearly part of the EU Treaties and other foundational principles. The core values of the EU are clearly set out in Article 2 TEU, which stipulates that the “values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights” are common to all member states.⁷ The Copenhagen criteria also detail the essential conditions candidate countries need to fulfil prior to joining the EU. With the decision on the *Repubblika* case in April 2021,⁸ which concerned the system of judge appointment in Malta, the ECJ even introduced a ‘non-regression clause’. It means that EU member states must not regress behind the rule-of-law standards set at the time of accession.

Second, the EU’s lack of action is often attributed to the claim that the EU’s instruments to safeguard

values are not efficient enough. While it is true that many of the instruments fail to live up to the current needs, this should not be used as an excuse to shift the responsibility to other EU institutions. Only a comprehensive approach in which all the institutions use their arsenal to the fullest extent will allow the EU to combat value breaches. Nor have the EU institutions been forceful enough in using those instruments to fight democratic backsliding. The Commission has, for far too long, downplayed the systemic and repeated nature of breaches of the rule of law, only looking at individual provisions or values in its infringement procedures. In this respect, the Commission has – whether intentionally or unintentionally – missed several opportunities to act.⁹

The Commission has – whether intentionally or unintentionally – missed several opportunities to act.

Little has been done to make the existing tools more efficient. Take the Article 7 procedure as an example: it is true that an in-built fallacy prohibits it from being effective when two countries backslide simultaneously. Case in point: Poland and Hungary, who are covering for each other to keep the procedure from moving forward, as the article requires a decision by unanimity (minus the country for which the procedure has been triggered for). And yet, the procedure was rendered even more useless than it already was: discussions took place behind closed doors; the approach chosen for the hearings was one of ‘consensual dialogue’; and Council Presidencies constantly delay the topic as none of them wants to put it on their agenda.¹⁰ It is therefore the Council of the EU, its legal service, as well as the member states who have held the various Council Presidencies since the start of the two procedures in 2017 and 2018, who are responsible for the lack of effort and therefore overall uselessness of the procedure.

Third, the institutions limit their own capacity to safeguard values by deciding to keep things as they are instead of enhancing the EU’s enforcement powers. However, there is a clear consequence of non-action: the consolidation of autocratic governments across the EU, while the EU institutions watch and do little to nothing. Of course, countering authoritarianism is not an easy task, and the EU’s current decision-making procedures make it difficult to introduce new

instruments. Poland and Hungary are likely to veto anything that might be directed at them.

That being said, the EU does not even need the opposition of authoritarian governments to become ‘toothless’ – it has managed to impede efficient mechanisms by itself. For instance, after the so-called rule of law conditionality mechanism was finally established by the end of 2020, the Commission and the Council played their parts in watering down the regulation. While the institutions had to respect the political compromise found with Warsaw and Budapest – against whom the procedure was most likely to be triggered – both the Commission and Council accepted the unnecessary delay of the procedure and waited for the ECJ’s ruling. The European Parliament, in response, almost sued the Commission for failure to implement the regulation.¹¹

The reversal of the usual legislative procedure was also highly unorthodox – no court needs to approve the work of legislators in the first place. The fact that the Council asked the Commission to develop guidelines to explain the scope of the regulation was also highly unusual and was heavily criticised by the European Parliament. In the end, the Commission narrowed the scope of the mechanism in the guidelines, which were published in March 2022.¹²

Non-binding tools are solely a preventive measure with very limited, if not non-existent, impact on member states.

Fourthly, the European Commission likes to come up with new non-binding tools that are supposed to improve the ‘dialogue’ between Brussels and capitals, such as its rule of law reports. This annual report helps draw a clear picture of the rule-of-law situation in the 27 member states, countering the usual populist accusation that the EU only looks at Hungary and Poland. Since 2022 the report also includes country-specific recommendations, thus increasing the value of the report. However, in reality, non-binding tools are solely a preventive measure with very limited, if not non-existent, impact on member states.

In addition to not having any direct impact on the enforcement side, these tools require a considerable amount of time and resources from the few civil servants at the European Commission working

on the issue. This time could instead be spent on working on infringement procedures and other enforcement actions rather than on the preventive arm.

The European Council seems to have readily accepted values as a political trade-off.

While a dialogue is generally a useful tool to discuss policy differences, in this field, it is synonymous to a ‘laissez-faire’ approach towards autocratic governments: focusing on dialogue when you need enforcement comes down to gifting populists precious time to consolidate their power. The Commission is well-aware that autocratic governments care little about the EU’s ‘naming and shaming’, if they do at all. Mostly they simply instrumentalise it by portraying themselves as ‘victims of Brussels’ technocrats’. The EU therefore needs to focus on instruments that have a real impact – i.e., the loss of political influence or access to EU money. Finally, and most importantly, the European Council seems to have readily accepted values as a political trade-off.

With negotiations taking place behind closed doors, this is difficult to prove, but the actions taken after summits often suggest that values are part of the negotiation mass. This means that heads of state and government from democratic countries bear a responsibility in accepting values being used as bargaining chips. In 2022 alone, Hungary held the EU hostage for weeks concerning the planned embargo on Russian oil, while Poland refused to comply with corporate tax deal proposal until, suddenly, the Commission agreed to give Poland the recovery money. But then Hungary decided to block the legislation with its veto.¹³ Hungary also opposed an EU proposal to ask the UN Human Rights Council for a special rapporteur on Russian human rights violations, following reports of war crimes in Izyum in Ukraine.¹⁴ The EU – and its leaders in the Council – cannot continue to sacrifice the basic rights of citizens for the sake of a short-term ability to act.

The EU – and its leaders in the Council – cannot continue to sacrifice the basic rights of citizens for the sake of a short term ability to act.

Moving towards hard enforcement

In the future, the EU should use its powers to the full potential to protect its core values and flesh out a comprehensive strategy to respond to value breaches more efficiently. This would include being quicker on infringement actions, reviewing the way the procedure has been set out for Article 7 hearings, and linking the misuse of EU funds to systemic rule of law violations, including the independency of the judiciary. It will require a ‘hard enforcement’ of values and a focus on the most effective mechanisms for safeguarding the rule of law.

Firstly, the European Commission should prop up the infringement procedures and the ECJ should accelerate the rate at which it processes them. It would also be important for the Commission to recognise the systemic nature of the violations.¹⁵ Even if infringement procedures had limited effects until now, at least they have had clear consequences for member states: either interim measures or financial penalties. Poland, for instance, was imposed a daily €1 million fine in October 2021 for refusing to comply with two important ECJ decisions on the independence of Polish courts.¹⁶

Secondly, the EU has considerable financial power, which it has so far not used to the fullest extent. The rule of law conditionality mechanism should be applied rapidly and more broadly.¹⁷ After almost 18 months of delay, the Commission finally triggered the mechanism against Hungary in April 2022. On 17 September, the Commission proposed to suspend 15% of all EU funds going to Hungary (65% from three cohesion programmes, amounting to €7,5 bn). This is still a moderate approach: agricultural subsidies are not included, nor is it clear whether the Commission will release the money from the Covid-19 recovery plan in the coming months.

The European Commission has the power to hold back the release of new funds from the Resilience and Recovery Facility (RRF), depending on member states’ compliance with the targets set out in the national recovery and resilience plans (NRRP). However, it seemed ready to give up this tool in early June 2022 in the case of Poland, despite the latter’s clear failure to re-establish an independent judiciary. The Commission also failed to include strong conditionalities attached to the disbursement of the funds in the NRRP

milestones agreed with the Polish government.¹⁸ While Poland has not yet received RRF money at the time of finalising this paper, the Commission seems inclined to take a rather permissive approach.

Thirdly, the EU should combat authoritarian tendencies not only through enforcement approaches once breaches occur, but also through an active support of democracy within its own borders.

While the EU is spending billions to support civil society and democracy abroad, support at home does not match. For now, even if the funds for civil society support (e.g., the Citizens, Equality, Rights and Values programme) has been increased in the 2021-27 EU budget, it remains too little to effectively defend democratic values in the EU. Moreover, the bureaucratic hurdles to applying for the funding are often too high for many organisations. However, von der Leyen seemed to have recognised that the EU should support media pluralism and anti-corruption efforts in the coming years. She proposed a revision of the legislative framework to fight corruption in her latest State of the Union speech of the Union speech and the Commission presented the EU Media Freedom Act in September 2022.

The EU should combat authoritarian tendencies not only through enforcement approaches once breaches occur, but also through an active support of democracy within its own borders.

Many EU funds are also administered exclusively by national governments, which means they can appropriate those funds for themselves without mentioning that it comes from the EU or preventing them from reaching those who need it the most. The EU should, therefore, develop a comprehensive strategy for democracy support that encompasses several areas, such as supporting media pluralism, fair election campaigns and funding, independent civil society organisations and the independence of the judiciary. While the ‘EU Democracy Action Plan’ is a step in the right direction, it is not ambitious enough and lacks several aspects relevant to a resilient democracy.²⁰

The EU desperately needs political leadership

Above everything, the EU should embrace political leadership. The Council of the EU should not shy away from pressuring autocrats, instead of following a soft approach of dialogue and ‘peer pressure’ that has produced zero results so far.

The Council of the EU should not shy away from pressuring autocrats, instead of following a soft approach of dialogue and ‘peer pressure’ that has produced zero results so far.

The European Commission will have to shift its political culture away from legalistic technocracy – like the widespread belief that the rule of law dossier is simply a matter of individual breaches and not related to systemic democratic backsliding –, take a much tougher approach towards autocrats and invest time and money in a more comprehensive strategy for democracy support within EU borders.

Lately, many EU citizens, Eurosceptic political parties and anti-European governments are questioning the EU’s legitimacy, with flawed narratives around national sovereignty and ‘constitutional identity’. While most of those Eurosceptic narratives are based on factually wrong claims, they bring to light the difficult issue of the EU’s ‘democratic deficit’ and the often-unclear distribution of competences between Brussels and national capitals – a complex topic which is fuelled by many national politicians’ and citizens’ lack of knowledge and interest. The most obvious confrontation, so far, came from the illegitimate Polish Constitutional Tribunal through its infamous K3/2021²¹ decision. It called into question the primacy of EU law, which also means calling into question the EU’s existence. However, while the EU should not give in to populist narratives, it should also stop brushing aside the growing discontent of citizens – for instance by accepting errors more honestly; claiming credit where credit is due; and being clear about what the EU can and cannot do according to its competences.²²

Most importantly, the EU should start believing in its own power. Simply put, it should start standing up for itself, as no one else will. For now, only the European

Parliament has had the courage to respond to attacks. The European Commission seems afraid of its own political and financial power, thereby readily accepting the attacks of autocrats and the destruction of European democracies. Democratic, supposedly pro-European leaders in national governments, sitting in the European Council, should stop being silent when their neighbours openly start using fascist, racist, homophobic, and antisemitic slurs, and definitely when their policies begin to follow suit.²³ They also need to take the appropriate political decisions to safeguard values in other EU member states rather than letting themselves be blackmailed. The Netherlands, for instance, has been one of the most vocal and active countries so far, while heavyweights France and Germany remained comparatively – and worryingly – quiet.²⁴

Conclusion

EU institutions themselves are not immune to the authoritarian threat; right-wing extremists are already in their midst.

Viktor Orbán increasingly causes divides within the European Council; national governments – many of which are backsliding on democracy – nominate Commissioners every five years; and openly anti-European parties like Alternative for Germany, the French National Rally, or the Italian Lega continue to fill the seats of the European Parliament. A much more forceful effort from democrats across the board – in Brussels and national capitals – will prove indispensable if the EU wishes to keep, or rather revive, its legitimacy and capacity to act in the years to come.

In the same way that Brussels must adapt to the renewed dominance of Realpolitik on the international stage, it must also adapt its approach to this not-so-new reality within its borders.

In the same way that Brussels must adapt to the renewed dominance of *Realpolitik* on the international stage, it must also adapt its approach to this not-so-new reality within its borders. Right-wing populist and autocratic governments think in terms of power: they care mostly about money flowing into their (national) pockets with little to no strings attached, which also ensures that they remain in office.

Instead of peer-pressure and friendly nudges, strict measures and financial penalties are the only mechanisms to which they will respond. It is about time that the EU not only understands this, but also starts radically changing its approach to protect its values – with less naivety as to the intentions of autocrats, and a more forceful approach to safeguard its basic principles. Fear of escalation and political cowardice are the wrong strategies to adopt, especially when dealing with authoritarian leaders who have no scruples in instrumentalising every political situation for their own self-interest. European values must be treated and recognised as non-negotiables by all EU institutions and the Union’s remaining democratic governments if the EU wants a future beyond the short-term crisis management.

Since Russia’s invasion of Ukraine, the EU has broken multiple ‘taboos,’ from the imposition of unprecedented sanctions against Russia to granting EU candidate status to a country at war. It is now time to break another one – for an EU which uses its power to defend democracy.

About the authors

Sophie Pornschlegel is Senior Policy Analyst at the European Policy Centre and Project Lead for Connecting Europe.

Clara Sophie Cramer was a Project Assistant for the Connecting Europe project at the European Policy Centre.

- ¹ European Commission, "[NextGenerationEU: European Commission endorses Poland's €35.4 billion recovery and resilience plan](#)" (accessed 5 July 2022)
- ² In the context of the EU's 2021-27 budget negotiations in December 2020, for instance, the European Council committed to a 'deal' that postponed the enforcement of the then-new rule of law conditionality mechanism to prevent Hungary and Poland from vetoing the adoption of the EU's long-term budget. See Bayer, Lili. "[EU Budget Plan Lets Hungary, Poland off the Rule-of-Law Hook \(for Now\)](#)". POLITICO, 9 December 2020, or Scheppele, Kim Lane, Laurent Pech; and Sébastien Platon., "[Compromising the Rule of Law while Compromising on the Rule of Law](#)". Verfassungsblog, 13 December 2020.
- ³ See e.g., World Justice Project, "[WJP Rule of Law Index 2021](#)" (accessed 1 August 2022); Smeltzer, Mike, and Noah Buyon (2022), "[Nations in Transit 2022: From Democratic Decline to Authoritarian Aggression](#)", Washington DC: Freedom House; Boese, Vanessa A; Nazifa Alizada; Martin Lundstedt; Kelly Morrison; Natalia Natsika; Yuko Sato; Hugo Tai; and Staffan I. Lindberg (2022), "[Democracy Report 2022: Autocratization Changing Nature?](#)", Gotherburg: Varieties of Democracy Institute.
- ⁴ See Chadwick, Vince, "[Erdoğan slams 'hypocritical' EU over human rights criticism](#)", POLITICO Europe, 21 March 2021, The Economist, "[China goes on the offensive over human rights](#)", 13 April 2022.
- ⁵ Tordoir, Sander (2021), "[Everything will be different: How the pandemic is changing EU economic governance](#)", Jacques Delors Centre, Policy Brief: "Whether the Union could do so legally was disputed for decades. Even amongst many EU experts, the misguided opinion that the EU could not take on any debt in any circumstances prevailed."
- ⁶ See, Gros, Daniel; Steven Blockmans; and Francesco Corti (2020), "[Rule of Law and the Next Generation EU Recovery](#)", Centre for European Policy Studies, 15 October 2020. They claim that linking rule of law to the release of EU funds through a conditionality mechanism was problematic – a claim that has been found to be unsubstantiated by the ruling of the European Court of Justice on 18 February 2022, [Judgments in Cases C-156/21 Hungary v Parliament and Council and C-157/21 Poland v Parliament and Council](#)
- ⁷ [Consolidated Version of the Treaty of the European Union](#) (2008) Art.2.
- ⁸ Kochenov, Dimitry Vladimirovich and Aleksejs Dimitrovs, "[Solving the Copenhagen Dilemma – The Repubblica Decision of the European Court of Justice](#)", Verfassungsblog, 28 April 2021.
- ⁹ Scheppele, Kim Lane; Dimitry Vladimirovich Kochenov and Barbara Grabowska-Moroz (2020), "[EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union](#)". Yearbook of European Law, Volume 39, pp. 3–121.
- ¹⁰ For a critical assessment, see Pech, Laurent (2019), "[From "Nuclear Option" to Damp Squib? – A Critical Assessment of the Four Article 7\(1\) TEU Hearings to Date](#)". RECONNECT.
- ¹¹ European Parliament. "[Rule of Law: Parliament prepares to sue Commission for failure to act](#)," 10 June 2021.
- ¹² European Parliament. "[Rule of Law Conditionality: Parliament Wants Investigations Launched Immediately](#)," 8 July 2021.
- ¹³ Fleming, Sam, et al. "[Poland Ready to Drop Objection to Minimum Corporate Tax Deal](#)", Financial Times, 15 June 2022.
- ¹⁴ POLITICO Europe, "[Brussels Playbook: Hungary can-kicking – Michel's nuclear warning – Russia's Madonna vs. the war](#)", 19 September 2022
- ¹⁵ Laurent Pech (2020), "[Doing more harm than good? A critical assessment of the European Commission's first Rule of Law Report](#)": "The problem of the Guardian of the Treaties being reluctant to guard the Treaties is not, however, new. Indeed, the Commission has referred just eight Article 2 TEU-related infringement actions against Hungary to the Court of Justice in ten years. Furthermore, only five judgments have been issued to date (C-286/12; C-288/12; C-718/17; C-66/18; C-78/18). Looking beyond Hungary, in 2019, there was only one infringement case to defend judicial independence (now pending Case C-791/19) out of 797 new infringement procedures against EU countries."
- ¹⁶ Wanand, Zasia. "[Poland Hit with Record €1M Daily Fine in EU Rule-of-Law Dispute](#)", POLITICO Europe, 27 October 2021.
- ¹⁷ Thu Nguyen (2022), "[The proof of the pudding: Imposing financial measures for rule of law breaches](#)" Berlin: Jacques Delors Centre.
- ¹⁸ Nguyen, Thu (2022), op.cit.
- ¹⁹ Distributed across multiple thematic programs, the EU's 2021-27 budget allocates over €12 billion to supporting democracy and defending human rights worldwide. See Youngs, Richard.; Ken Godfrey; Ruth-Marie Henckes; Erin Jones; Elisa Lledó; and Kinga Brudzinska (2022), "[European Democracy Support Annual Review 2021](#)", Carnegie Europe.
- ²⁰ In her analysis of the European Democracy Action Plan, Professor Lorna Woods raises some doubts about the plan, given the EU's limited legislative competence in the area and the relatively few novelties. See Woods, Lorna, "EU Law Analysis: European Democracy Action Plan – an Overview", EU Law Analysis, 15 December 2020.
- ²¹ See Jaraczewski, Jakub. "[Gazing into the Abyss: The K3/21 decision of the Polish Constitutional Tribunal](#)". Verfassungsblog, 12 October 2021.
- ²² See Guttenberg, Lucas, "[It's problematic that the @EU_Commission pretends that it can grant RFF money](#)", Twitter, 16 June 2021, @lucasguttenberg.
- ²³ While EU member states like Luxembourg and Finland did immediately criticize Hungarian Prime Minister Orbán's recent speech in which he stated that he would not want Hungary to be a "mixed race" country, German Chancellor Olaf Scholz barely reacted. It took Commission President von der Leyen almost a week to remind Orbán that race-based discrimination is forbidden under EU law, while not even directly referring to the speech. See Hanke Vela, Jakob, "[Brussels Playbook: Sec-Gen Deadline Looms – Germany Clashes with Turkey – Brussels Sets July Weather Record](#)", POLITICO Europe, 1 August 2022.
- ²⁴ For a comprehensive overview of EU member states' positions on and approaches to protecting the rule of law, see Busse, Claire; Ulrike Franke; Rafael Loss; Jana Puglierin; Marlene Riedel; and Pawel Zerka (2020), "[Policy Intentions Mapping – Rule of Law](#)", European Council on Foreign Relations. Further, in her November 2020 commentary, Caroline de Gruyter described the Dutch, Swedish, Danish, and Austrian commitment to defending the rule of law as "admirable." See de Gruyter, Caroline (2020), "[A fundamental fight: The frugal four and the rule of law](#)", European Council on Foreign Relations.