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Who is Afraid of Viktor Orbán?
**Intergovernmental logics and the European
Commission's Rule of Law Policy**

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Why should I read this?

For over a decade, the growing erosion of the rule of law occurring in certain member states has posed a persistent threat to the fundamental values of the European Union, with Hungary emerging as a focal point. Despite the European Commission endeavors to implement budgetary conditionalities against the country since 2022, leading to funding suspension on rule of law grounds, Viktor Orbán's strategic maneuvers in the European Council have challenged EU governance structures and the protection of the rule of law.

At the time of writing, the European Parliament is initiating legal proceedings against the European Commission¹, condemning its controversial decision on December 11, 2023, to reimburse €10.2 billion of cohesion funds towards Hungary, which had been previously withheld through rule of law conditionality clauses (Liboreiro, 2024).

This thesis seeks to understand how the intergovernmental structures within the European Union facilitate Viktor Orbán's issue-linkage strategy, thereby restricting the enforcement of budgetary conditionalities by the European Commission. Hungary's veto power use to obstruct key EU policies during the revision of the Multiannual Financial Framework aimed to pressure the Commission to undermine its leverage, by compromising the conditionality measures. Zooming into the intergovernmental negotiations during European Council Summits of December and February can thus provide valuable insights regarding the promotion of supranational rule of law policies at the EU level.

The central inquiry of the research revolves around the question of how the dynamic interplay between the supranational and the intergovernmental features of EU governance impact the Commission's efforts to uphold democratic and rule of law principles within its member states, by implementing budgetary conditionalities. By highlighting these institutional logics and the Hungarian strategy of issue-linkage, the analysis addresses the significant challenges posed by divergent preferences and tactics among member states.

¹ See C-225/24 - European Parliament vs. European Commission

1. Introduction

The decade of 2010s signified a period characterized as “polycrisis” for the European Union (Brack, Coman and Crespy, 2019a, p.22), encompassing the present energy and security crisis stemming from Russian aggression towards Ukraine, to the previous economic and refugee crises, Brexit, and the Covid-19 pandemic. However, the rule of law crisis is regarded as the most serious one, constituting an existential issue with “far-reaching implications for the European project” (Pech and Scheppele, 2017, p.6), as it touches upon the legitimacy and the identity of the Union, given its intertwined nature with the EU core values (Södersten, 2023, p.56). Democratic backsliding has manifested in various forms across EU member states, with Hungary serving as the most prominent example. Lacking an expulsion mechanism, the EU had to come up with novel policies to defend its values, given the obsolescence of the Article 7 procedure due to the unanimity hurdle in the European Council.

Notwithstanding widespread criticism for its inaction by constantly creating new instruments to confront countries that deliberately backslide, the Union introduced the Conditionality Regulation² in the MFF for 2021-2027, which connects the EU budget to the rule of law. This regulation has hailed as a step towards what Priebus and Anders (2024) have called “effective supranationalization” of rule of law protection, due to its binding outcomes, the European Commission’s central role in triggering the mechanism, and lastly, Qualified Majority Voting (QMV) as the process of decision-making. The shift towards supranational mode of governance aimed to overtake obstacles such as the unanimity hurdle in the sanctioning mechanism of Article 7 TEU, since no member state can solely veto the triggering of the regulation. In December 2022, the European Commission adopted financial sanctions of around €28 billion against Hungary, through three different tools; the Conditionality Regulation (CR), applied jointly with the Council, and the Common Provisions Regulation (CPR) and the Recovery and Resilience Facility Regulation (RRFR) solely. These instruments basically condition EU funding to the compliance with the EU values.

However, this progress in terms of EU policy has not tamed pessimistic views on the future of the Union in overcoming its “autocracy trap” (Kelemen, 2024) and protecting the rule of law at home. The unequal negotiating power established by the budgetary conditionalities, with the enhanced discretion of the Commission in triggering them and the lower decision threshold, were overcome by Viktor Orbán, by deploying issue-linkage to impede decision-making in intergovernmental arenas. Indeed, in the European Council Summit of December 2023 for the revision of the EU annual budget among others, the Hungarian Prime Minister effectively vetoed the Ukraine aid package, having previously linked it with the funds withheld from Hungary (Sánchez Nicolás, 2023). His former signaling of veto intention on the initiation of Ukraine’s EU accession negotiations did not materialize due to Olaf Scholz’s “toilet diplomacy”, as Viktor Orbán reportedly leaved the room so that EU leaders could unanimously vote in favor (Camut, Barigazzi and Dallison, 2024). This “historic decision” would not have been made possible, with the European Commission’s controversial decision to reimburse €10.2 billion towards Hungary, one day before the European Council negotiations. This move created strong backlash in the European Parliament as well as the press and academia, which

² Regulation 2020/2092

condemned this decision as “appeasement” (Kelemen, 2024, p.14) and giving in to extortion tactics (Pavone, 2023; Pech, 2023).

The European Union is filled with what Scharpf (1988) has described as “Joint Decision Traps”, where the combination of the *de facto* unanimity in decision-making with the member states governments’ direct participation eventually resulting in sub-optimal solutions (Scharpf, 1988, p.239). By deliberately linking issues to bypass majority rule decisions and shift decision-making mode in arenas where the *de facto* veto can be revoked, Viktor Orbán engages in intergovernmental bargaining by blocking important EU policies. For this reason, I will stress that there are two modes of governance operating in tandem, supranationalism in the decision-making process of the financial conditionalities, and intergovernmentalism in the European Council’s negotiations, highlighting the evolution of the EU as a “unique system of multi-level governance” (Marks, Hooghe and Blank, 1996, cited in Brack, Coman and Crespy, 2019a, p.7).

Nevertheless, the MFF revision and the assistance towards Ukraine were delivered at the end of the day, being the outcome of the Special European Council in February 2024. According to Winzen (2023), a veto position can be legitimized when two conditions are met: firstly, the urgency of a decision, and secondly, and if the stance of the objector is common among several governments (Winzen, 2023, p.8). Given the time pressure taking a decision to deliver aid towards Ukraine, as well as Viktor Orbán’s isolation during the intergovernmental negotiations, Hungary’s claims justifying its veto position were not perceived as legitimate by the rest of the EU leaders, leading to the effectively bypassing his veto without further concessions being made.

In analyzing the recent events of December 2023, I will go further and argue that the intergovernmental institutional structures in the European Council’s negotiations provide backsliding member states with leverage to constrain the sanctioning capacity of the European Commission’s budgetary conditionality measures, by deploying the strategy of issue-linkage. in the European Council negotiations on the revision of the MFF. The relevance of such project is to provide an examination of the interinstitutional dynamics within the European Union, particularly in the context of rule of law promotion and financial conditionalities, overshadowed by challenges posed by member states’ divergent interests and veto powers.

In the next sections, I will provide an examination of the interdisciplinary state of knowledge concerning the rule of law promotion in the European Union (Section 2), I will outline my research question, my working hypothesis and methodology (Section 3), before delving into the analysis and findings (Section 4), followed by conclusions and recommendations (Section 5).

2. Interdisciplinary State of Knowledge

Navigating the Rule of Law Crisis: Interdisciplinary Perspectives

The rule of law is indisputably regarded as both a fundamental element of the European Union's identity and a guiding principle, grounded upon the common assumption of mutual trust among member states to fully comply with the fundamental values enshrined in Article 2 TEU. However, over the past decade, a prevailing consensus among scholars from both political and legal disciplines discussing democratic backsliding within the Union suggests that the European Union is experiencing a risky situation due to the deterioration of its founding principles of democracy and the rule of law, in some of its member states (Gora and de Wilde, 2022, p.342), especially in Hungary since 2010 (Bozóki and Hegedűs, 2018) and Poland since 2015 (Sadurski, 2018) as well as beyond (Cianetti, Dawson and Hanley, 2018). The argument is extended by some scholars by deliberately contending that there is a broader "autocracy crisis" in the Union (Kelemen, 2023, p.224), where its proclaimed commitment to safeguard its liberal democratic values collides with the backsliding of governments towards authoritarianism, a situation described as the "authoritarian equilibrium" of the EU (Kelemen, 2020, p.482). The academic scholarship is rich in notions to describe the EU's predicament, spanning from constitutional capture (Müller, 2015), illiberalism (Pech and Scheppele, 2017), and democratic backsliding (Bakke and Sitter, 2020) to rule of law backsliding (Pech and Scheppele, 2017), and rule of law crisis (Södersten, 2023). Within the legal discipline, there is concurrence of opinions regarding the difficulty in defining rule of law, with most scholars resting upon existing definitions by only distinguishing between "thin" and "thick" conceptualizations (Ovádek, 2018, p.496).

The variety of perspectives for the evaluation of democratic backsliding can be grouped based on the selection of the normative and conceptual elements to define the meaning of democracy (Gora and de Wilde, 2022, p.344). The most common conceptualizations of democratic and rule of law decline, include the legal-institutional approach focusing on rule of law backsliding; the cultural discursive approach examining the deterioration of public discourse; and lastly the participatory approach, highlighting the reduction in civic engagement (Gora and de Wilde, 2022). However, the lack of more systematic efforts to provide a thorough analysis of the essential features of backsliding within member states is hampering any progress in defining the most appropriate measures to reverse it. There are various attempts to explain why the current crisis has been framed in terms of rule of law, interpreting it as a Commission's exercise of bureaucratic politics to strengthen its position vis-à-vis other institutions (Magen, 2016, p.1058), while others have rightfully argued that this inclination stems from the fact that lawyers were traditionally responsible for drawing the EU Treaties (Gora and de Wilde, 2022, p.358).

Multiple Strategies to address backsliding: Exploring EU's toolbox approach

Building upon the discussion on instances of democratic backsliding in Hungary and Poland, there have been multiple suggestions for EU policies when it comes to rule of law and democratic deficiencies. Confronted with the first cases of rule of law breaches in Hungary and Romania from 2010 to 2012, it soon became evident among EU circles that the mechanisms led out in Article 7 TEU and the infringement proceedings of Article 258 TFEU, designed to ensure EU law enforcement by the European Union, were inadequate (Priebus, 2022, p.1684).

Indeed, the President of the European Commission at the time, Manuel Barroso, called for the development of more appropriate instruments (Barroso, 2012, cited in Priebus, 2022, p.1684). The primary enforcement mechanism available to the EU concerning domestic breaches of democratic values and the rule of law is the option of Article 7 TEU, which allows the European Council to revoke certain membership rights from violating member states (Sedelmeier, 2017, pp.338-339). However, there are significant barriers to triggering the sanctioning mechanism under Article 7(2), including the institutional requirement of unanimity in the Council, member states' reluctance to use material sanctions against their fellows, and lastly, party politics in the European Parliament (Sedelmeier, 2017, p.339). Earlier instances of domestic backsliding can be traced back to 2000 with the 'Haider affair', which prompted several member states to impose bilateral sanctions vis-à-vis Austria (Ovádek, 2018, p.500). This highlighted the Union's struggles and limitations in effectively responding to these internal developments, as the sanctioning measures were perceived as a failure, ultimately leading to increased public support for the ruling coalition including Haider's radical right Freedom Party (FPÖ) (Kelemen and Blauburger, 2017, p.318).

Given this precedent, some authors have pointed to the precarity of these punitive measures regarding EU legitimacy, as they can lead to a domestic fallout in the form of the "rally-around-the-flag" phenomenon, by allowing illiberal actors to shift the blame towards Brussels (Schlipphak and Treib, 2017). Recent accounts suggest that governmental strategies of blame-shifting can indeed influence public perceptions of intervention policies, demonstrating higher efficiency in case of sanctions imposed by the EU, and less effectiveness in case of interventions by independent expert organizations (Schlipphak et al., 2023, pp.1730-1732). Initial suggestions for responses involved the establishment of a "Copenhagen Commission" (Müller, 2015), or a "democracy watchdog" as an independent supervisory institution assigned with the monitoring of member states' compliance with democratic principles, human rights, and the rule of law, combined with the valuable input of civil society and other domestic actors (Schlipphak and Treib, 2017, p.362). Another set of institutional arrangements proposed is a more extensive use of judicial instruments by the European Commission and the Court of Justice to defend democratic values, backed with political interventions (Blauberger and Kelemen, 2017). Pech and Scheppele (2017) introduced the concept of "systemic infringement proceedings", allowing the Commission to bundle separate violations into a single infringement action. However, granting these supranational institutions with the power to define very broad and contested principles such as democracy and rule of law could spark significant controversy and legitimacy concerns (Schlipphak and Treib, 2017, p.362). Concerning the factors that influence the perceived legitimacy of the rule of law enforcement actions undertaken by the EU to tackle backsliding, a study by Toshkov et al. (2024) concluded that material sanctions have a limited capacity to galvanize public pressure and support for rule of law and democratic reforms (Toshkov *et al.*, 2024, p.22). Sedelmeier (2017) points to the leveraging of social pressure and persuasion through soft political measures as solution to reverse illiberal tendencies among member states. In contrast, other authors have advocated for enforcement measures (Mader, 2019), with some suggesting the implementation of financial sanctions against illiberal governments (Pech and Scheppele, 2017), or even considering the possibility of expelling a member state deviating from rule of law compliance (Müller, 2015, p.150).

The European Union faces a significant disjunction: either tolerate illiberal tendencies within its member states, and implicitly disregard violations of its core values, or adopt a more assertive and rigorous approach against backsliders. Given the various constitutional breakdowns in Hungary and Poland, EU institutions have introduced several institutional innovations, whose soft and procedural nature has been met with skepticism by scholars (Pech, 2020; Kelemen, 2023). According to Laurent Pech (2020), EU leaders perpetuated a cycle of constantly creating new instruments instead of fully utilizing those available, often deeming the latter as insufficient and thereby justifying their underutilization or timid deployment. This toolbox approach to rule of law has been criticized for failing to adequately confront backsliders (Pech, 2020, p.32), and for aiming to deflect allegations for EU inaction (Kelemen, 2023, p. 228). Some scholars have also accused EU leaders of resorting to a “rhetoric of inaction”, with plenty of discussions and assurances for action, yet zero substantive change on the ground (Emmons and Pavone, 2021).

Most scholarship discourse until the mid-2010s revolved around the question of the Union’s willingness and ability to effectively defend its core values, creating wide discrepancies on the types of tools it should deploy to address instances of democratic backsliding within its member states (Kelemen and Blauburger, 2017). Olsen (2023) has followed a cautious argumentation in favor of an active EU stance in rule of law issues, highlighting the need to operate in a distinct framework without overstepping its bounds. However, there are limits to the sovereigntist arguments, with Kelemen and Pech (2019) pointing to the inherent risks and potential misuse of constitutional pluralism, allowing for multiple legal authorities in the EU against the principle of supremacy of EU law. The literature offers diverse explanations for the EU institutions’ inertia towards backsliding, identifying obstacles from institutional gridlock and partisan politics to intergovernmental opposition and reluctance to intervene. The European Commission has been at the forefront of criticism, with accusations of committing to dialogue-style measures towards illiberal governments instead of confrontation (Closa, 2019), for hesitating to make use of sanctioning tools available (Kelemen, 2017; Pech and Scheppele, 2017), without the approval of member states in the Council (Sedelmeier, 2014; Kelemen, 2017; Closa, 2019). Some writers have described this as phenomenon as “supranational forbearance” (Kelemen and Pavone, 2023), blaming the Commission for becoming “servant of the European Council”, leaving aside its role to guard the Treaties (Kelemen, 2023, p.233). Intergovernmental opposition in the Council to enact the sanctioning mechanism under Article 7 has been construed by the deliberate avoidance of interference in fellow member states (Closa, 2019; Closa, 2021). The European Parliament, despite of standing for both utilizing existing tools and creating new ones (Blauburger and Van Hüllen, 2021), institutional gridlock and party politics have hampered any substantial efforts to curb democratic backsliding (Kelemen, 2017; Kelemen, 2020).

Budgetary Conditionalities: A paradigmatic shift in Rule of Law Policies?

As it was showcased in previous sections, the mechanisms deployed by the EU to address backsliding have been widely criticized in the literature because of their procedural character. However, recent developments in EU policies have marked a substantial shift in the Union’s

strategy of ensuring adherence to democratic and rule of law standards, with the adoption and implementation of budgetary conditionalities since 2020. Both the Council and the Commission actively pursued enforcement policies, ultimately withholding EU funds on rule of law accounts from Hungary and Poland (Blauberger and Sedelmeier, 2024, p.13). In the case of Hungary, it has applied three different budgetary conditionality instruments, the Conditionality Regulation, the Common Provisions Regulation and the Recovery and Resilience Facility Regulation.

The potential of using financial sanctioning measures has been a long-awaited step in both political and legal branches in the academic literature (Pech and Scheppele, 2017; Kelemen, 2020; Blauberger and Van Hüllen, 2021; Kirst, 2021), with various scholars pointing to the conditions the Conditionality Regulation needs to consider for its effectiveness in restoring rule of law (Blauberger and Van Hüllen, 2021; Fisičaro, 2020). The final version of the Regulation, however, has encountered criticism of running the risk to become just another useless set of rules like the Stability and Growth Pact (Łacny, 2021, p.103). In contrast, Baraggia and Bonelli (2022) have stressed the significance of the amendments outlined in the final version of the Regulation to guarantee the legality of the instrument, whereas Priebus and Anders (2024) have depicted the creation of the Conditionality Regulation as a case of “effective supranationalization” in terms of decision-making with plausible consequences.

Nevertheless, funding suspensions aid the European Union to limit its support towards the survival of authoritarian member states (Kelemen, 2020), and it could also yield significant results given that the illiberal states are the biggest beneficiaries of EU funding (Fisičaro, 2020, p.706). Potential side effects of the Union’s sanctioning capacity became evident with the emergence of a Hungarian-Polish coalition aiming to block the implementation of budgetary conditionalities in the Council, by taking advantage of its institutional setup, and by threatening to exercise their veto power (Holesch and Kyriazi, 2021, p.14). In addition, Winzen (2023) has showcased the different tactics of backsliding governments aiming to prevent rule of law action in the EU, and thus, to continue their backsliding projects, by capitalizing on the practice of accommodation in EU decision-making. As Kelemen (2023) has correctly highlighted, it is highly likely that autocratic member states resort to extortion tactics of their fellows than democracies, whereas EU leaders are more prone to yield to their blackmailing (Kelemen, 2023, pp.233-234). It is nevertheless difficult to determine the appropriate policy mix to address rule of law deterioration within the EU, with a more balanced approach that combines both management and enforcement methods being advocated as the most prominent way of reversing backsliding (Priebus, 2022).

What drives policy change in EU Rule of Law Protection?

Most studies on EU responses to restore the rule of law within member states have been focused on the obstacles to EU’s sanctioning capacity and the evaluation of the several instruments that can be deployed. Only recent accounts, however, have explored the confluence of factors that have contributed to the policy change on rule of law protection within the European Union since 2020 with the activation of the Conditionality Regulation against Hungary. The analysis by Hernandez and Closa (2024) claimed that exogenous events like the Ukraine war triggered the enforcement of the Commission’s rule of law conditionality, given the shared policy priorities between EU institutions and national governments, failing however to explain the shift in EU

policy before the Russian invasion in Ukraine. Blauberger and Sedelmeier (2024) on the other hand, argued that the increasing public salience of backsliding among EU countries and the disruptive strategies deployed by backsliding governments in the Council to block EU policies provoked a more assertive EU response.

There is overall pessimism regarding the future of rule of law protection in the EU given the recent developments in December 2023. The controversial decision taken by the European Commission to reimburse €10.2 billion of EU funds previously withheld from Hungary, one day before the negotiations for the Ukraine aid and EU accession in the European Council, with Viktor Orbán's veto threats at play were subject to a hail of criticism (Pavone, 2023; Pech, 2023; Kelemen, 2024; Blauberger and Sedelmeier, 2024). Despite the unprecedented steps taken so far by the EU leaders to counter illiberal governments' backsliding projects, the underlying conditions that have sustained the EU's authoritarian equilibrium are still present, with past appeasement strategies setting a dangerous precedent (Kelemen, 2024, p.18). The bypassing, however, of the Hungarian vetoes in the European Council without any further concessions could signify the trivialization of the Hungarian tactics in the future (Blauberger and Sedelmeier, 2024, pp. 22-23). However, an important limitation to the existing literature is related to the understudied impact of underlying dynamics and power struggles among institutional actors and member states that influence decision-making processes. This study will attempt to address these limitations, by identifying avenues for Viktor Orbán, provided by the EU's intergovernmental structures, for exerting influence during the European Council negotiations, thus limiting the effective enforcement of financial conditionalities.

In conclusion, the literature reviewed highlighted the "existential" rule of law crisis within the European Union, it pointed out to the various conceptualizations of backsliding, and the multiple instruments designed and implemented to address it. The critical assessment of the procrastination characterized EU action, followed by the policy change of introducing financial conditionalities helped to untangle the complex interplay of factors shaping EU responses, as well as the ongoing struggles to defend democratic values within the Union.

3. Methodology, Data and Sources

This research paper aims to delve into the complexities of the European Union's decision-making system by analyzing the interplay between EU institutions that affect the capacity of the European Commission to enforce budgetary conditions in Hungary. Specifically, it examines how the strategic use of veto power by Viktor Orbán in the context of the European Council negotiations on the revision of the Multiannual Financial Framework (MFF) influences this dynamic, via issue-linkage tactics. Therefore, the research question guiding this project is the following "what are the inter-institutional logics that constrain the European Commission in effectively implementing budgetary conditionalities with Hungary's veto threat at play?", with the research hypothesis positing that intergovernmental structures in the EU provide Viktor Orbán with leverage to hinder the effectiveness of Commission's budgetary instruments, through issue-linkage. The scope of the study focuses on the period between December 2023 and February 2024, covering the key decision of the Commission to release funds towards Hungary, and the MFF revision negotiations in the European Council.

The research methodology follows a multimethod approach encompassing in-depth qualitative content analysis of secondary literature, EU documents, media articles and semi-structured elite interviews, drawing upon three different sources of evidence. Given the specific scope of the study, the documents examined include official EU documents and legislative and non-legislative texts within the EU's institutional framework, as well as media articles covering developments on the topic. The selection was made upon their direct relevance to the research topic, whereas they contributed to the research process in various ways, from the provision of data on the background and context, to the formation of the questions integrated into the interview protocol (see Appendix 1), the provision of additional data and, for the verification of findings obtained through interviews (Bowen, 2009, p.29-30). The content analysis of the interview data consisted of the following steps: (1) division of the interview data into meaning units, (2) labelling of the meaning units with codes, (3) organizing the codes in categories, and finally (4) creating themes from these categories (Erlingsson and Brysiewicz, 2017). This process was conducted manually, given the small size of the interviews conducted.

The interviews consisted of open-ended questions and prompts (Leech, 2002) engaging high-level diplomats, legal advisors and EU budget counselors working at Permanent Representations of EU member states in Brussels (see Appendix 1). Contact with the interviewees was initiated via email, utilizing the formal email addresses provided by the Permanent Representations on their official websites. Due to geographical limitations, the interviews were conducted remotely using the Zoom platform. To ensure the credibility of the interview material, the method of triangulation was followed to cross-reference and cross-check the insights obtained from the interviews with data from the EU documents and academic literature. Moreover, communicating the general topic and purpose of the research, without giving away the research question and hypothesis to avoid biased answers, as well as ensuring confidentiality and anonymity of responses, were essential for establishing rapport with the interviewees.

In total nine interviews were conducted, each involving a single participant, maintaining a one-on-one ratio. However, there was one instance of two individuals being interviewed concurrently due to scheduling and time constraints. Furthermore, the interview sample consisted of representatives from eight different European Union countries, including two

respondents from the same country, but who hold distinct roles within the Permanent Representation. A standardized interview grid was utilized for all participants (see Appendix 2), with most of questions being recurring, some being tailored to the respondent following the flow of the conversation, with regular shifts in the sequence of the questions. Finally, given the sensitive and contentious subject of this research project, the researcher specifically stated before the data collection as well as at the beginning of the interview, that the responses and statements are anonymized, with no name or country mentioned in the thesis, thus aiming to avoid biased answers.

Interviewees were selected based on the level of their involvement in the Permanent Representatives Committee II (COREPER II) in charge of the preparation of the work of the General Affairs Council (GAC), responsible for the Multiannual Financial Framework and the preparation of the European Council meetings³. An explanation for adopting this strategy is the null possibilities of contacting Heads of State or Government, participating in the European Council meetings of past December and February. The initial objective was to conduct interviews with ambassadors from the Permanent Representations of member states in Brussels, which directly participate in the COREPER II. Given the demanding timetables of high-level officials and the sensitive and controversial nature of the issues under examination, only one high-level diplomat agreed to an interview. Therefore, it was imperative to demonstrate some flexibility and conduct interviews with people involved in the Multiannual Financial Framework negotiations or dealing with the budgetary conditionalities. The qualitative data gathered from interviews with individuals serving in different posts within the Permanent Representations captures the diversity of perspectives and interpretation of events. Overall, the basic aim was not statistical representativeness, but rather to present a diverse range of views and to uncover valuable insights from people with distinct roles and different countries of origin.

Limitations

A main limitation of this study is the limited coverage of respondents. The preliminary objective was to encompass a broad spectrum of respondents from all the three main European Union institutions. However, given the time constraints and the length of this research project, the focus shifted solely towards the Permanent Representations to gain insights regarding the application of the financial conditionalities against Hungary as well as the interpretation of the intergovernmental negotiations in the European Council meetings. Approaching European Commission officials and staff proved to be a challenging task, whereas the Members of the European Parliament (MEPs) were unavailable due to their campaigning activities for the upcoming European elections. This limitation suggests that perspectives from MEPs and Commission officials are not sufficiently represented, thus impacting the representativeness and comprehensiveness of this research.

Needless to say, the negotiations among Heads of State and Governments in the European Council are carried out behind closed doors and given the high level of controversy of the issues examined, there are certain limitations to the knowledge that can be utilized to draw conclusions

³ see Council of the European Union website: <https://www.consilium.europa.eu/en/council-eu/configurations/gac/>

on the actual motivation behind the Commission's decision to reimburse funding as well as its contribution to the final bargaining outcome, or to the effectiveness of budgetary conditionality measures. This secretive nature of these negotiations and thus, without direct access to the exact deliberations and negotiations among Heads of state and government, poses challenges on the reliability of the findings.

The relatively small sample size is another limitation of the study. While efforts were made to select interview participants from various Permanent Representations of EU member states in Brussels, in the interviews only eight countries are represented out of the twenty-seven, impacting the diversity of perspectives illustrated. Concerning bias mitigation, while the responses and statements of the interviewees were anonymized to prevent biased answers and to build rapport, the elimination of biased answers cannot be completely guaranteed, given the contentious character of the research topic.

Overall, these limitations pose several challenges on the generalizability and reliability of the research findings, due to the limited variety and depth of perspectives and insights obtained. Potential avenues for future research on EU governance dynamics and rule of law enforcement within the EU should consider expanding the sample size by including a larger number of participants from a broader selection of institutions and stakeholders, such as Members of the European Parliament, Commission officials, and civil society organizations, to represent more diverse insights.

4. Analysis and Findings

4.1. Budgetary Conditionalities: A case of Effective Supranationalism?

For more than a decade, Hungary has topped global indexes as one of the fastest nations experiencing democratic regression, casting doubts on the EU's status as a Union of democratic states. Whether the EU has done its homework to intercept authoritarian tendencies remains elusive, with mixed responses by both academics and commentators. In this section, by utilizing the "effective supranationalization" concept of Priebus and Anders (2024) on the Conditionality Regulation, and by extending it to cover Common Provisions Regulation and the Recovery and Resilience Facility, we will argue that the implementation of budgetary conditionalities to penalize rule of law violators signifies a supranational shift in EU rule of law policies, in terms of decision-making and enforcement.

4.1.1. The Hungarian case of Backsliding

Throughout the 2010s, Hungary witnessed a notable regression in adherence to the rule of law, as consecutive Fidesz administrations undermined a decade-long period of democratic governance and reforms aligned with EU standards, prompting significant concerns among EU circles regarding the country's democratic credentials (Miklóssy, 2023, p.174). The first warning signs became apparent when the European Parliament scrutinized the implementation of a Hungarian law that curtailed media freedom in 2011 (Miklóssy, 2023, p.174). However, the turning point in the Hungarian illiberal turn came with the introduction by a two-thirds supermajority of a new constitution in 2011 called the Fundamental Law of Hungary (Bozóki, 2015). By leveraging its supermajority in parliament, Viktor Orbán's administration introduced amendments followed by the total replacement of the existing constitution, supported by a set of laws commonly referred to as "Cardinal Laws", in a context of limited involvement of opposition parties (Kelemen, 2017, pp.221-222). The new constitution, alongside the Cardinal Laws, dismantled previous constitutional checks and balances, leading to the ultimate consolidation of power within the Fidesz administration (Kelemen, 2017, p.222). Subsequently, backsliding attempts extended to the exercise of authority over previously independent public bodies such as the National Election Commission, as well as the targeting of civil society organizations that criticized the government (Kelemen, 2017, p.222). This trend continued with the adoption of several stringent policies by Viktor Orbán's government that compromised the freedoms and rights of minority groups such as migrants, LGBTQIA+ individuals, academics, and civil society, among others (Petit, 2022, p.4). These developments were facilitated by the erosion of judicial independence, accomplished through the deliberate elimination of the authority of various actors such as the Constitutional Court, alongside the Supreme Court (the Kúria) among others (Miklóssy, 2023, p.174). Finally, a culture of clientelism was embedded in the Orbán administration, with several incidents of misuse of EU funds, after an organizational reform in 2020 granting the Prime Minister full authority over their usage (Miklóssy, 2023, pp.178-179).

This course of democratic backsliding was validated by Viktor Orbán's public declaration back in 2014, where he confirmed his intention to construct an "illiberal state" that diverges from

liberal principles (Kelemen, 2017, p.223), followed by the degradation of Hungary to a non-democratic regime in several indexes including the Freedom House, V-Dem, and the Economist Intelligence Unit. These developments were criticized in the Sargentini Report, issued by the European Parliament in 2018, leading to the enactment of the preventive stage of Article 7(1) TEU against Hungary (Kelemen, 2020, p.482). There were several European Parliament resolutions during the years to come and multiple infringement proceedings brought before the European Court of Justice by the Commission, whereas the EU policy trajectory was directed towards the creation of soft policy instruments, such as the Commission's Rule of Law Framework and the Council's Rule of Law Dialogue (Closa, 2021, p.506). Regarding the sanctioning capacity of the European Union, most discussions revolved around Article 7, which served as a protective measure ensuring democratic safeguards within member states. This Article traces its roots to the Amsterdam Treaty in 1997 and it was established to prevent backsliding after the upcoming Eastern enlargement, while maintaining the exclusive authority of member states to decide on sanctions (Hooghe and Marks, 2019, p.1125). Despite several hearings with Hungary, as well as Poland, the transition from the preventive to the corrective stage of the procedure has reached an impasse, due to the intergovernmental structure of Article 7(2). Given that unanimity minus one as the decision-making mode in the European Council for imposing sanctions against a member state, both the Polish and Hungarian governments are expected to veto sanctions against each other, technically nullifying the mechanism (Hooghe and Marks, p.1125). Moreover, the various scrutinizing efforts by EU institutions on rule of law issues led the Hungarian government to adopt a tactic of using a double language strategy, holding referenda on controversial topics, and exploiting legal loopholes to challenge EU disciplinary procedures and criticism (Miklóssy, 2023, pp.175-176). This confrontational approach, coupled with Hungary's coalition with its fellow backslider, Poland, as well as the Visegrad group on the migration issue, and the impossibility of triggering sanctions through Article 7, led to the emergence of Viktor Orbán as a serious critic of liberalism within the Union (Miklóssy, 2023, p.177).

4.1.2. The Challenge of Supranationalization

The illiberal turn within EU member states, and predominantly Hungary and Poland, is considered as the major ongoing challenge to the Union's legitimacy (Hooghe and Marks, 2019, p.1125). However, given the high salience of rule of law intersecting with traditional state powers, the longstanding resistance towards allocating monitoring competences to EU bodies is the consequence of member states' sovereignty positions (Brack, Coman and Crespy, 2019b, p.829). The Article 7 TEU procedure serves as a primary example of the general reluctance among EU member states to allow supranational intervention in domestic affairs (Hooghe and Marks, 2019, p.1125). In essence, the dual logic of Article 7 TEU expands the Union's authority into domestic law, while also preserving the principle of national sovereignty by making sanctions conditional on a unanimous vote by all member states except the offender (Hooghe and Marks, p.1125). This intergovernmental feature of paragraph 2, coupled with the lack of secondary legislation reinforcement, which would allow the Commission and the ECJ to address infringements of EU fundamental values, reflect the overall tension between further EU integration and national sovereignty (Hooghe and Marks, 2019, p.1125). Moreover, the stipulation of a four-fifth majority in the Council, as outlined in Article 7 (1), to determine any

contraventions to EU values can still hamper any decisions from materializing (Priebus and Anders, 2024, p.229). All in all, despite the dominant role of supranational actors such as the European Parliament and the Commission in triggering the initial stage of the Article 7 procedure, the dominant role in both the preventive⁴ and the sanctioning⁵ stage is held by the Council and the European Council consecutively (Priebus and Anders, 2024, pp.228-229).

However, Priebus and Anders (2024) describe the evolution of EU rule of law instruments as a trend from pure intergovernmentalism towards increasingly constrained, and ultimately effective supranational tools. This process is evaluated upon the following dimensions: the decisive involvement of supranational actors, the role of individual member states, and the potential effect of the decisions (Priebus and Anders, 2024, pp.227-228). Supranationalism here entails delegating decision-making power to supranational entities, with the authority to make binding decisions against the wish of national states (Nugent, 2010, p.428 cited in Priebus and Anders, 2024, p.227). Therefore, the journey towards more supranational instruments to reverse rule of law backsliding started with the European Commission introducing the Rule of Law Framework and the Annual Rule of Law Report since 2010 (Priebus and Anders, 2024, p.229). Both instruments are characterized as a case of “constrained supranationalism”, since they are enacted solely by the European Commission, although they lead to non-binding results for the member states (Priebus and Anders, 2024, p.229). The Rule of Law Framework, technically serving as a precursor to the Article 7 procedure by establishing a dialogue between the Commission and the member state concerned, has been criticized for the creation of a dialogue cycle without the possibility of any binding sanctions at the end of the process (Kelemen, 2023, pp. 227-228). The Commission Annual Report for the rule of law has also been deemed as ineffective, due to its soft language and its failure to recognize systemic rule of law breaches (Kelemen, 2023, p.229). In conclusion, the ongoing threat of illiberalism within the Union underscores a complex interplay between supranationalization efforts in rule of law policies and state sovereignty, with the initial EU responses with soft instruments facing criticism for their ineffectiveness and non-binding effects for backsliders. However, the establishment of the new Conditionality Regulation, and its activation alongside two other budgetary conditionalities against Hungary, mark a significant development in the Union’s endeavors to protect its values, affirming the common assumption that the rule of law constitutes a core value responsible for the functioning of the Union.

4.1.3. The History of Conditionality as an EU Governance Instrument

The notion of conditionality is not a novel policy instrument, as it finds its roots in the conditions introduced by the International Monetary Fund (IMF), and it generally refers to the practice of tying the provision of several benefits to the fulfillment of certain criteria or reforms, with the objective to influence the behavior of aid recipients, either by providing incentives through rewards or by imposing negative measures, via reducing or withdrawing the funding (Becker, 2024, p.1). The European Union has extensive experience with conditionality instruments in several external EU policies, encompassing international trade agreements, development, neighborhood as well as enlargement policy (Fisicaro, 2020, p.702). These EU

⁴ Article 7 (1) TEU

⁵ Article 7 (2) TEU

conditionalities have evolved into a versatile governance tool, extended to internal policy dimensions such as financial assistance conditionalities in the Economic and Monetary Union, spending conditionalities in the context of the EU budget (Fiscaro, 2020, p.703), to the recent Recovery and Resilience Facility in the aftermath of the Covid-19 pandemic (Hodson and Howarth, 2023). Hence, conditionality as a form of public power relying on financial leverage rather than traditional legal coercion reflects a shift in governance models amidst the evolving notion of state sovereignty and growing supranational influence on national constitutions (Baraggia and Bonelli, 2022, p.142). This phenomenon has been characterized as a trend towards building a “conditionality-based culture” in EU internal policies (Viță, 2017, p.116), with the most recent contribution being the rule of law conditionality regulation. While conditionalizing EU funds has been a long-standing practice in European public policy in the context of the previous Multiannual Financial Frameworks of the Union budget, the introduction of Conditionality Regulation, which ties EU values to shared funds, signals the strengthening of the EU budget, without deviating from its primary objectives (Kölling, 2022, pp.2-3).

4.1.4. *The Contested 2018 Proposal on a Rule of Law Conditionality*

The Conditionality Regulation is one component of a wider array of policy instruments designed to safeguard the financial interests of the EU (Rubio *et al.*, 2023). The origins of the idea to penalize rule of law culprits with budgetary measures can be traced back to a 2013 letter written by several foreign ministers, urging the Commission to fulfill its duties as the “Guardian of the Treaties”, by considering withholding EU funds as a last resort option (Scheppele and Morijn, 2023a, p.39). With most discussions surrounding the EU’s sanctioning capacity for ensuring democratic safeguards within its member states reaching a deadlock due to their sole focus on Article 7, alongside the widespread failure of soft tools to address backsliding errors, the necessity of a more assertive approach in EU rule of law policies led to the conditionality regulation. Alongside its proposal for the 2021-2027 Multiannual Financial Framework, the European Commission presented a regulation to safeguard the common budget in case of “general rule of law deficiencies” (Kölling, 2022, p.2).

The proposed regulation underwent a contentious legislative process until its final adoption, including heated debates, prolonged negotiations as well as compromises (for a detailed analysis see Coman, 2022). The bone of contention of the proposed conditionality regulation was related to the decision-making process that led to its activation, with the draft regulation suggesting that the authority to suggest actions would be entitled to the Commission, whereas the Council should adopt it with reverse qualified majority, as outlined in the proposal by the European Commission (2018).⁶ This technically implied that the measures proposed by the Commission to remedy rule of law deficiencies would be put into effect unless the Council opposes them with a qualified majority vote, ultimately lowering the decision-making threshold (Blauberger and Van Hüllen, 2021, p.8). However, it did not make it to the final legislation, with a standard qualified majority rule being opted instead, after the heated European Council negotiations and veto threats by Poland, Hungary, and Slovenia on the MFF and the recovery

⁶ COM(2018) 324 final

package (Kölling, 2022, p.8), as well as general aversion of governments facing rule of law issues (Rubio, 2020 cited in Kölling, 2022, p.10).

Despite the omission of the reverse qualified majority rule, the proposal brought about two significant innovations. Firstly, it marked the first instance of integrating a rule of law definition within an EU legislative text, thereby gaining legitimacy through its adoption via the ordinary legislative procedure (Coman, 2022, p.203). Secondly, without signaling a change in the budgetary instruments of the Union, the conditionality regulation established a linkage between rule of law breaches and the EU budget (Kölling, 2022, pp.2-3). This connection to the Multiannual Financial Framework and the Recovery and Resilience package, with both files being adopted by unanimity in the European Council, was a deliberate move by the Commission to win off member states reluctant to agree to a budget increase post-Brexit, by ensuring the quality of EU spending policies (Coman, 2022, pp.201-202). However, one might argue that this calculated action yielded an inverse result, where the regulation, instead of fulfilling its initial objective of upholding the rule of law by halting EU funding, it ultimately prioritized safeguarding the budget through the freezing of funds until rule of law breaches were corrected (Schepele and Morijn, 2023a, p.39).

4.1.5. Conditionality vs Hungary: The Long-Awaited Decision of 2022

Overall, the threefold financial conditionality strategy deployed by the European Commission marks a turning point in EU policies to address Hungarian breaches of rule of law. In 2022, the European Commission, alongside the Council, suspended more than €28.7 billion of EU funding for Hungary due to the rule of law violations, utilizing a triplet of instruments: flagship Conditionality Regulation, the Common Provisions Regulation, and the Recovery and Resilience Facility (Schepele and Morijn, 2023b).

As outlined in the “Regulation (EU) 2020/2092”, the main goal of the instrument is to set forth the rules for the protection of the EU budget in instances of violations of the rule of law within member states (European Union, 2020). This tool was technically adopted to allow the enactment of measures by the European Union to correct any violations of the principles of rule of law, which either directly impact, or pose a serious risk, to the effective management of the Union’s financial resources (Rubio *et al.*, 2023, p.12). Despite the Hungarian and Polish requests for annulment of the Conditionality Regulation, the European Court of Justice dismissed them, thus confirming the legality of the instrument (Rubio *et al.*, 2023, p.15). The modified version of the conditionality regulation was finally adopted in December 2020, and was activated against Hungary by the Council in December 2022, leading to a €6.3 billion suspension in EU funds (Council of the European Union, 2022).

The process of its application was initiated by the Commission in April 2020, amidst identified repetitive and systemic legal irregularities in Hungarian governance that violate EU rule of law principles, listing errors in public procurement as well as in investigation and legal proceedings, anti-corruption measures, and conflicts of interest regarding the use of EU funds (Detre, Jakab and Lukácsi, 2023, pp.8-9). The Commission proposed to withhold 65% of funds tied to three specific programs under the MFF of 2021-2027, with Hungary pledging to implement corrective measures, criticized by scholars and civil society, leading to the dissatisfaction of the Council and the implementation of its decision in December (Detre, Jakab and Lukácsi, 2023,

pp.10-11). Even though the Council concurred with the Commission on the continued and high risk for the EU budget, it also acknowledged the Hungarian efforts to remedy the situation and reduced the suspended amount to 55% of funds (Detre, Jakab and Lukácsi, 2023, p.12).

4.1.6. *The Common Provisions Regulation and the Recovery and Resilience Facility Regulation*

The Common Provisions Regulation and the Recovery and Resilience Facility Regulation were integrated into the overarching framework of EU budget conditions for the period of 2021-2027. They were both employed in conjunction with the Conditionality Regulation to tie the allocation of EU funds to Hungary's adherence to Union values.

The primary objective of the updated Common Provisions Regulation⁷ is to address significant shortcomings in the control and management systems of EU member states, through preventive measures such as the interruption or suspension of payments, or corrective measures to identify irregularities in past spending (Rubio *et al.*, 2023, p.39). This instrument also grants the Commission with the authority to withhold reimbursements when a member state fails to adhere with certain conditions (Rubio *et al.*, 2023, p.41). These ex-ante conditionalities basically entail 16 thematic “enabling conditions” for the application of the EU cohesion funds, and 4 horizontal enabling conditions, encompassing public procurement, social rights, state aid and the implementation of the Charter for Fundamental Rights (Kölling, 2022, p.7). According to Article 15 of the regulation, funds are automatically suspended if the enabling condition is not satisfied in the member state’s partnership agreement, while the Commission retains the authority to halt payments during program execution upon discovering evidence that the enabling condition is no longer met (Rubio *et al.*, 2023, p.41). Even though the provisions for the freezing of funds have never been implemented on rule of law grounds, this instrument empowers the Commission to withhold EU monies towards rule of law violators for the first time, choosing however to apply them only in specific programs (Nguyen, 2022, p.3). In the case of the Hungarian Partnership Agreement, the Commission detected several instances of non-compliance, particularly judicial independence corresponding to the enabling condition of compliance with the Charter, thus resulting in the suspension of nearly €22 billion until the situation is remedied (Detre, Jakab and Lukácsi, 2023, p.33).

Amidst the backdrop of the Covid-19 health crisis, the novel Recovery and Resilience Facility⁸ instrument, funded by the NextGenerationEU, was created for the provision of concessional loans and grants towards member states to support the financing of necessary investments (Rubio *et al.*, 2023, p.50). This novel instrument operates in a performance-oriented basis with member states serving as final recipients, with the payments being contingent upon the fulfillment of specific milestones and targets, aiming to facilitate certain reforms, some related to the rule of law (Rubio *et al.*, 2023, p.50). Despite the primary logic governing the Recovery Regulation being that of economic conditionality, through tying funding to the accomplishment of tailored recommendations to each country from the European Semester procedure (Scheppele and Morijn, 2023a, pp.41-42). The European Commission and the Council ultimately approved the Hungarian Resilience Plan in 2022, albeit with stringent conditions, as

⁷ Regulation (EU) 2021/1060

⁸ Regulation (EU) 2021/241

the Commission introduced additional requirements focusing on judicial independence measures, extending beyond those under the Conditionality Regulation (Scheppelle and Morijn, 2023a, p.42). Under this instrument, the Commission is fully responsible for evaluating the fulfillment of the milestones and targets by a member state, as well as suspending payments in case of non-fulfillment (Rubio *et al.*, 2023, p.52). The main domains covered in the 27 milestones that the Hungarian Recovery and Resilience Plan must fulfill are related to judicial independence, anti-corruption measures and public procurement (Schwarcz, 2023, p.2), led the European Commission to block any payments towards Hungary, accounting for €6 billion as grants and €4 as loans (Detre, Jakab and Lukácsi, 2023, p.48).

4.1.7. Decoding the Three Budgetary Conditionalities: Unresolved Issues?

The legitimacy of all three regulations is affirmed through the Ordinary Legislative Procedure, with the participation of the three main EU institutions, the Commission, the Council, and the European Parliament, whereas they all contribute indirectly to the compliance with Article 2 TEU values (Detre, Jakab and Lukácsi, 2023).

Even though the objective behind all the above instruments is the suspension or reduction of EU funds allocations towards member states in case of non-compliance with the conditions, the rationale behind them varies. In essence, the Conditionality Regulation serves as a value-laden (Becker, 2024), negative ex-post spending conditionality (Fisicaro, 2020; Detre, Jakab and Lukácsi, 2023), safeguarding the common budget in a reactionary way, whereas both the other two regulations operate with ex-ante conditioning of funds (Detre, Jakab and Lukácsi, 2023). Furthermore, in terms of their objective, while the conditionality mechanism serves as an anti-corruption measure applied only in cases of a “sufficiently direct” causal link between rule of law backsliding and damage or threat to the financial interests of the Union, the other two tools operate as incentive mechanisms for specific policies (Detre, Jakab and Lukácsi, 2023, pp.48-49). The implementation of the three mechanisms is coordinated to create a comprehensive approach in the case of Hungary.

However, there is a contentious point arising with the simultaneous application of the three regulations in the Hungarian case creating a complicated system with confluence among the instruments, posing challenges to navigating the various procedures. There are several difficulties in discerning responsibility during the monitoring phase of these instruments given the collaboration between supranational authorities and member states’ representatives, as well as the limited discretion of the Commission in initiating procedures, yet significant role in assessing non-compliance (Detre, Jakab and Lukácsi, 2023, p.53). The role of the European Parliament is also limited in comparison with that of the Council and the Commission, constrained to only indirect influence, with primarily exerting political control over the Commission (Detre, Jakab and Lukácsi, 2023, p.54). Finally, concerning the size of the sanctions, it has been argued that it should follow the logic of the costs of compliance being exceeded by the costs of non-compliance to yield effective outcomes (Kölling, 2022, p.4). Critics have argued that the suspended amount in the Hungarian case across the three mechanisms is relatively small, also highlighting the untouched status of agricultural funds (Scheppelle, Kelemen and Morijn, 2022), let alone the Commission’s decision to unfreeze € 10.2 billion last December. All in all, the European Commission has suspended roughly €22

billion against Hungary through the Common Provisions instrument, and an additional €10 billion through the Recovery instrument. Meanwhile, since the €6.3 billion have been “double-blocked” under both the Conditionality and the Common Provisions Regulation, encompassing three cohesion programs, it is unclear whether this amount is included within the €22 billion (Scheppele and Morijn, 2023a, p.43).

4.1.8. Budgetary Conditionalities: Paving the Way for Effective Supranationalism...

Rule of law enforcement policies have undergone a process of supranationalization, through the leading coalition of supranational actors and the diminishing role of sovereigntist arguments (Priebus and Anders, 2024). Indeed, the Conditionality Regulation signifies a notable institutional shift in EU rule of law instruments, as the European Commission holds the authority to initiate the process, backed by the Council’s support via a qualified majority vote - a supranational attribute (Nugent, 2017, p.437) - ultimately eliminating any veto options of member states engaging in backsliding projects.

Some authors have described the process underlying the establishment of the Conditionality Regulation as a manifestation of new intergovernmentalism (Coman, 2022), compatible with its assumption about the emergence of the European Council as a central actor in EU decision-making (Puetter, 2012). To corroborate these claims, Coman (2022) points to the active involvement of the European Council during the process of formulating the Conditionality Regulation, as well as the inclusion of the highly disputed “emergency brake” provision in the final text, granting member states the possibility to refer any concerns over its adoption to the European Council (Coman, 2022, p.238). However, these intergovernmental features should not overshadow the supranational core functions of the instrument. Even though the legal grounding between the Conditionality Regulation and the Article 7 TEU differs, with the first falling under the category of secondary EU legislation, and the second being outlined in the Treaties, from a political standpoint, the primary objective of both instruments is to punish rule of law offenders. The high dissensus among EU leaders on imposing sanctions through the Article 7 procedure, given its politicized nature, did not impede the enforcement of the Conditionality Regulation, alongside the other two mechanisms, against Hungary in 2022. This can be explained by the growing political deliberation towards sanctioning illiberal states, due to the acknowledgement that backsliding governments pose serious threats on blocking collective decision-making (Blauberger and Sedelmeier, 2024). The general reluctance of some EU leaders to penalize illiberal member states to avoid costs in collective decision making can be challenged when backsliding governments threaten to block common policies of the EU (Blauberger and Sedelmeier, 2024, p.8). Thus, there are growing incentives to collectively introduce sanctions against backsliding countries when the latter threaten intergovernmental decision-making (Blauberger and Sedelmeier, 2024, p.8). Despite obstruction tactics adopted by the backsliding governments of Hungary and Poland regarding the EU budget in 2020, the Council finally adopted the Conditionality Regulation, and even triggered it for the first time against Hungary two years later (Blauberger and Sedelmeier, 2024, p.12).

The decision-making process dictating the activation of the conditionality regulation against a member state is qualified majority in the Council, which can be considered as a major step, since it makes it easier to implement sanctions given the low majority requirements and the

involvement of fewer actors (Blauberger and Van Hüllen, 2021, p.5). However, when analyzing the three mechanisms used to withhold Hungarian funding, there is variation in the decision-making modes and the role of EU institutions in the process. One important observation is that the suspension of funding is less robust in the Conditionality Regulation compared to the Common Provisions Regulation, since in the latter, the Commission has the authority to unilaterally discontinue the flow of EU money towards a member state based on deficiencies in the systems of management and control (Kelemen, 2023, p.229), with the procedure excluding a vote in the Council. In addition, there is a high level of power granted to the European Commission in terms of withholding tranches of EU funding through both the Recovery and the Common Provisions instrument, in case of non-compliance with the milestones and super-milestones for the first, and the horizontal and thematic enabling conditions for the latter (Detre, Jakab and Lukácsi, 2023, p.42). Lastly, the lifting of the imposed measures is based on the Commission's proposal in the case of both the Common Provisions and the Recovery Facility regulation, unless the Council opposes it with a qualified majority vote (Detre, Jakab and Lukácsi, 2023, p.45). Conversely, in the Conditionality Regulation the discretion of the European Commission is weakened, as the lifting of measures is contingent upon a decision on the Commission's proposal by qualified majority in the Council (Detre, Jakab and Lukácsi, 2023, p.45).

According to the conceptualization of Priebus and Anders (2024), the evolution of EU rule of law instruments is characterized as a trend from pure intergovernmentalism towards constrained supranationalism and finally effective supranational tools, evaluated upon the following dimensions: the decisive involvement of supranational actors, the role of individual member states, and the potential effect of the decisions (Priebus and Anders, 2024, p.227-228). Supranationalism here involves delegating decision-making power to supranational entities, with the authority to make binding decisions against the wish of national states (Nugent, 2010, p.428 cited in Priebus and Anders, 2024, p.227). Given the elimination of unanimity burdens in the Council by introducing qualified majority voting in combination with the binding effect of the instrument, the Conditionality Regulation has been characterized as a case of "effective supranationalization" (Priebus and Anders, 2024). This characterization of "effective" supranational instruments, however, can extend to all three budgetary conditionalities used in the Hungarian case. Regarding the criteria used by Priebus and Anders (2024), effective supranationalism is detected when decisions result in binding outcomes and when either decision-making is dominated by EU actors or there is an ability to overrule member states (Priebus and Anders, 2024, p.228). While not explicitly rule of law instruments, both regulations on the Common Provisions and the Recovery Facility have been used alongside the Conditionality Regulation to address several rule of law deficiencies affecting EU finances in Hungary. Since all three instruments can yield binding effects, the first condition for "effective supranationalization" according to Priebus and Anders (2024) is fulfilled. However, there is a certain differential among the instruments regarding the second condition, with involvement of supranational EU actors in decision-making being satisfied in the case of the Common Provisions Regulation and the Recovery and Resilience instrument, since the European Commission plays a decisive role in suspending and lifting EU monies in case the ex-ante conditions are not satisfied (Detre, Jakab and Lukácsi, 2023, p.45).

... a happily ever after?

The analysis so far has highlighted the supranational shift in EU rule of law policies, especially in the case of the financial conditionalities triplet triggered against Hungary. However, their effectiveness in addressing backsliding hinges upon the way EU supranational actors utilize them on the ground (Priebus and Anders, 2024, p.225). In the coming sections, we will showcase how the Commission's endeavors to safeguard the Union's core values via supranational financial conditionalities are constrained by Viktor Orbán's use of issue-linkage tactics. In the next section we will demonstrate how the Hungarian Prime Minister leverages the intergovernmental setup of European Council negotiations, by threatening to veto crucial EU policies in exchange of concessions, thus limiting the effectiveness of these instruments.

4.2. Intergovernmental Negotiations and the Strategy of Issue Linkage

Up to this point, we have illustrated significant progress in the Union's efforts for upholding the rule of law. Central to the discussion are the three budgetary conditionalities, highlighting a notable shift towards more supranational modes of decision-making. Turning back to the research question, we will delve into how the institutional structure of the European Council negotiations enables Viktor Orbán to deploy issue-linkage strategies, acting as a veto point to hamper collective decision-making. This section will elucidate how the features of intergovernmentalism in the Union allow Hungary to connect the Commission's decision over the unfreezing of funds with the issues on the European Council's agenda, thereby impeding decision-making.

4.2.1. *The EU Mission to Revise its Joint Coffers*

Since the adoption of the Union's long-term budget for 2021-2027 by the Council of the EU and the European Parliament back in December 2020, several challenges with unprecedented effects have emerged, including the aftermath of Russia's invasion of Ukraine, heightened inflation, and migration issues (Council of the European Union, 2024). Given that the conflict in Ukraine is considered as a turning point for EU politics, with profound impact in various policy domains (Hernández and Closa, 2024, p.967), the European Commission put forward its proposal for a budgetary revision in June 2023, to bolster the common budget through specific legislative proposals (European Commission, 2023a). The content of these proposals encompassed the Ukraine Facility offering €50 billion in financial assistance to Ukraine, the Strategic Technologies for Europe Platform allocating €10 billion for digital technologies and competitiveness, and finally €15 billion for the management of migration, geopolitical instabilities, and natural disasters (European Commission, 2023a).

Revising the EU common budget is fraught with several challenges, potentially impeding smooth negotiation progress. In general, there is a high level of politicization and contention in negotiating EU's joint finances which can lead to prolonged negotiations, with disputes arising due to both political and economic factors (Nugent, 2017, p.424). One can argue that this trend is exacerbated by the inclusion of the NextGenerationEU instrument, which has contributed to the increased spending capacity of the Union, as well as the introduction of financial mechanisms to ensure conformity with EU values among violators. Overall, the basis of EU budget decision-making is highly intergovernmental, with final decisions being reached by unanimity at the European Council level (Nugent, 2017, pp.424-425), or more precisely by the default mode of consensus, since no votes are being casted among EU leaders (Nugent, 2017, p.192). Additionally, unanimity extends to specific matters involving sensitive national interests such as taxation, foreign and security policy, or enlargement (Nugent, 2017, p.176), with the initiation of EU membership negotiations for Ukraine falling under that category.

When zooming into the intergovernmental negotiations, however, literature suggests that formal authority should not be misunderstood with power over political decisions, even though EU leaders have equal footing granted by the constitution of unanimity (Tallberg, 2008, p.687). Although there are traditional variations in state-based power sources, the bargaining dynamics among EU member states can also be mediated by the institutional characteristics as well as the personal attributes and expertise of leaders (Tallberg, 2008, p.687). Therefore, the institutional

framework governing European Council negotiations dictates that the de facto right to veto constitutes a significant source of power, with agreements under unanimity requiring the consent by all member states, or else the absence of blockage (Tallberg, 2008, p.694). The rationale behind this decision-making mode in contrast to the majority rule is the counterbalancing of differences in structural power, by granting the participants the right to veto policy proposals (Tallberg, 2008, p.694). Additionally, the unanimity rule is expected to result in consensual decision-making processes, wherein disagreeing parties are appeased through concessions or “package deals” (Tallberg, 2008, p.694). However, the utilization of veto power is considered as a last resort option and exercised in cases where vital national interests are involved, such as in EU negotiations on the long-term budget, or reforming the Treaties (Tallberg, 2008, pp.695-696).

The other side of the argument, however, suggests that decision-making by consensus can lead to an institutional blockage, since it technically assumes that every member state within the group possesses the power to block consensus on a collective decision by merely indicating their dissent (Moore and O’Doherty, 2014, p.305 cited in Krick, 2017, p.110). This assumption corresponds to the intergovernmental nature of EU negotiations, in which bargaining among EU leaders generates outcomes reflecting “the lowest common denominator” (Elgström and Jönsson, 2000, p.686). Scharpf (1988) elucidated the risks intergovernmental dynamics pose on EU decision-making through the concept of “Joint Decision Trap”. This theoretical model suggests that the implicit de facto demands for unanimous decisions within the Union coupled with the direct involvement of EU governments in the decision-making generate sub-optimal public policies, namely “Joint Decision Traps”, which can be corrected by shifting towards a “problem-solving” approach to reach decisions (Scharpf, 1988, p.239).

However, the power of the de facto veto comes with certain limitations, since most efforts to obstruct decision-making lead to the temporary suspension of the decision and its future reintroduction in the agenda, rather than a complete blockage (Romme, 2004, p.706 cited in Krick, 2017, p.116). Thus, the interests of the most powerful participants tend to dominate the final decisions of intergovernmental negotiations, since they primarily reflect structural power differentials among participants, with institutional and personal features only playing a subordinate role (Tallberg, 2008). Finally, the European Council has been described as a club of members actively seeking consensus in collective agreements, by demonstrating support and accommodation towards a member state highly concerned with a specific issue (Wessels, 2015, cited in Nugent, 2017, p.193).

4.2.2. The Power of Viktor Orbán: Linking Unrelated Issues

Ahead of the European Council negotiations, Viktor Orbán resorted to the strategy of issue-linkage to justify his veto policy and thus, upgrade his bargaining position vis-à-vis the rest of the EU leaders. Blocking or attempting to block EU decisions by yielding the de facto veto is a strategy that has been repeatedly deployed by the Hungarian Prime Minister in the past, from the establishment of the European Public Prosecutor in 2017 and the European Border and Coast Guard in 2019, to the Russian oil embargo in 2022 (Winzen, 2023). In the case of the December 2023 negotiations, issue-linkage tactics acted as the building-block for indirectly requesting the revocation of the financial conditionalities imposed on Hungary. Shortly before

the upcoming summit, Balazs Orbán, the chief political advisor to the Hungarian Prime Minister, publicly affirmed that while the financing of Hungary and the Ukrainian aid are two distinct issues, they become intertwined in the light of the European Commission's proposal on providing financial assistance towards Ukraine through the common budget (Camut, 2023). These demands coincide with the European Commission's decision to release roughly €10 billion of Cohesion Funds towards Budapest, with Orbán's advisor even claiming that the upcoming Hungarian veto could be lifted in exchange of the total amount of funds withheld from Hungary through the budgetary conditionality mechanisms (Camut, 2023).

Furthermore, the Hungarian Prime Minister intentions to block discussions on Ukraine and the revision of the common budget were made public through a letter addressed to the European Council President signed by Viktor Orbán with his office's stamp on the 4th of December, published by the digital newspaper Politico. In the letter, Orbán expressed his opposition to both Ukraine Facility and Ukraine's accession path, citing these demands as "unfounded" (Orbán, 2023a, p.1). Overall, the primary message conveyed in his correspondence is the assertion of an absence of unity among EU member states, advising Charles Michel against the actualization of the expected European Council meeting, referring to an apparent "lack of consensus" that would lead to failure, thus indicating his future veto strategy (Orbán, 2023a, p.2). On the components of the budget revision proposals, the Hungarian Prime Minister directly opposed the initiation of accession talks with Ukraine, arguing that it contradicts the previous European Council conclusions from June 2022, in which EU leaders had deemed the country under-prepared (Orbán, 2023a, p.1). He even reiterated his previous suggestion on a "strategic discussion" among EU leaders on the general strategy of the EU towards Ukraine (Orbán, 2023a, p.1). Another point of contention for Orbán was the proposal for the Ukraine Facility, calling it "unsubstantiated", "unbalanced" and "unrealistic", ultimately calling for its postponement (Orbán, 2023a, p.2).

4.2.3. The Controversial Decision on Financial Conditionalities Against Hungary

4.2.3.1. The Content of the Decision

The Commission officially authorized the partial reimbursements of Union funds to Hungary, worth €10.2 billion previously halted via the Common Provisions Regulation (European Commission, 2023b). To support its claims, the Commission highlighted the various reforms that have been carried out by Hungary to bolster judicial independence, leading to the fulfillment of the horizontal enabling condition related to the conformity with the EU Charter of Fundamental Rights, highlighting however its constant monitoring role and the possibility to suspend funding in case of non-compliance (European Commission, 2023b). The judiciary measures aim to fortify judicial autonomy through several means, encompassing the empowerment of the National Judicial Council to curtail arbitrary decisions and undue influence by ensuring transparency and objectivity, the mitigation of political influence through reforming the Supreme Court (Kuria) as well as constraining its ability to examine questions meant for referral to the EUCJ, and lastly eliminating Constitutional Court's capacity to scrutinize judges' final rulings (European Commission, 2023b).

The remaining portion of the funding inaccessible to Hungary through the Common Provisions Regulation, accounting for €21 billion, is attributed to ongoing concerns related to academic freedom, asylum rights and the Hungarian child-protection law (European Commission, 2023b). Additionally, the Commission press release (2023) highlighted a negative evaluation on the conditions governing the Recovery and Resilience Facility, with four out of the twenty-seven Hungarian “super-milestones” related to judicial independence being left unfulfilled (European Commission, 2023b). What is even more puzzling is that this decision was accompanied by a pessimistic assessment on the budgetary conditionality, or else the Conditionality Regulation, responsible for safeguarding the budget from rule of law violations in Hungary. The assessment concluded that the €6.3 billion withheld via this instrument remain intact since the situation on the ground persists (European Commission, 2023b).

4.2.3.2. The Context of the Decision

The European Commission’s controversial decision to unblock funding previously suspended towards Hungary was scheduled on the eve of the European Council summit, on the 13th of December. Understanding the implications of such judgements, however, requires consideration of the political context and timing of their occurrence, especially amid tensions surrounding the EU budgetary revision and Hungary’s anticipated opposition on certain aspects, as highlighted in the preceding section.

In light of these events, the growing concerns surrounding the intention of the European Commission to partially release funds was reported in several media outlets and it was backed by anonymous statements from Brussels and Budapest officials suggesting that the motivation behind such decision could be driven by the aim to pre-empt any potential veto threats from Viktor Orbán, in the context of the EU negotiations on the Multiannual Financial Framework (Tamma, 2023). However, several European Commission officials have stated that the timing of the announcement of the decision is unrelated to the European Council meeting, since the Commission is constrained by its rules to evaluate the relevant reforms undertaken by Hungary until the 15th of December (Camut and Moens, 2023). Indeed, the Commission’s scheduled decision came as a response to several judicial reforms undertaken by Hungary in the previous months. The initial Hungarian reform package was adopted on the 3rd of May 2023 with the aim of addressing deficiencies in judicial independence, but it was widely criticized by civil society organizations for their defective and partial implementation (Hungarian Helsinki Committee, 2023a). In addition, EU institutions also challenged Hungary’s rule of law adherence, with a European Parliament resolution expressing concerns over broader issues of legislative transparency and the status of fundamental rights (European Parliament, 2024), alongside concerns of ministers in the General Affairs Council over media freedom, corruption and the rights of migrants and minorities among other issues (Council of the European Union, 2023a).

Moreover, just a few days before the Commission’s scheduled decision, Hungary has published in its official journal some extra legislative amendments for judicial reforms, significant for the country’s chances of unblocking long-awaited funds (Than, 2023), whereas on the same day of the Commission’s announcement, Viktor Orbán addressed the Hungarian Parliament in a speech publicly opposing the Ukrainian accession to the EU, on the grounds of the country’s

unreadiness to join the block and the potential negative repercussions for Hungary and the rest of the member states (Orbán, 2023b). Later that day, the Hungarian leader left for Brussels, where he had a meeting with the President of the European Council, in the context of the upcoming EU Heads of State and Government meeting, taking place between the 14th and the 15th of December, to decide among other things, the budgetary revision for the coming years (European Council, 2023a).

4.2.3.3. The Criticism

The European Commission's recent contradictory decisions cast a doubt on the effectiveness of financial conditionalities, as well as the Commission's credibility in enforcing them in the Hungarian case. Even though, the justification of the lifting of financial measures was based on several improvements on the enabling condition of judicial independence through the Common Provisions Regulation, the Commission maintained that the funding suspensions remain unchanged through the other two mechanisms, citing stagnation in fulfilling judiciary-related milestones under the Recovery instrument, and zero advancement in broader deficiencies of the rule of law issues under the Conditionality Regulation (European Commission, 2023b). This discrepancy underscores a fundamental tension within the European Commission's approach to assessing and addressing rule of law violations in Hungary.

This decision was met with criticism from academics and NGOs, as well as the European Parliament. According to the Hungarian Helsinki Committee's critique, the adopted reforms by the Hungarian government as well as the method of their adoption fail to adhere to relevant laws and rule of law principles, openly condemning the absence of public consultation, with the measures reflecting zero input by civil society organizations and other stakeholders (Hungarian Helsinki Committee, 2023b). Overall, these hasty modifications in an attempt by the Hungarian administration to fulfill the EU Charter-related enabling conditions are described as insufficient to resolve persisting issues in the Hungarian judicial system, with problems regarding case allocation in Kúria remaining unaddressed (Hungarian Helsinki Committee, 2023b). Other problems indicated by analysts pertain to the prohibition of the Kúria President's re-election, with the initial mandate remaining intact until a successor is chosen by a two-thirds majority in the parliament, and to several obstacles in the legislation for the restoration of judges' rights for referring questions to the EUCJ, reflecting a broad insincerity of the Hungarian government to reverse rule of law backsliding (Farkas and Kádár, 2023).

Furthermore, European Parliament adopted a cross-party resolution with 345 votes to 104, condemning the Commission decision to release funds towards Hungary given broader rule of law violations in the country, as well as the veto strategy deployed by Hungarian Prime Minister Viktor Orbán during the European Council negotiations in December 2023, by explicitly stating that the EU should not "give in to blackmail" (European Parliament, 2024). In addition, various commentators viewed the Commission decision over the fund release towards Hungary as a diplomatic strategy, mobilized to limit the veto power of Viktor Orbán in European Council negotiations (Kelemen, 2024; Nguyen, 2024). Some characterized the situation as a "Faustian bargain" with long-term consequences struck between the Commission and the Hungarian government, suggesting that EU prioritized political expediency over its commitments towards the rule of law and Ukraine (Pavone, 2023), whereas others regarded Viktor Orbán's strategy

as “successful maneuvering”, by directly linking it to the 10.2 billion fund release in exchange of rushed legislative actions to address judicial independence concerns by Hungary (Uitz, 2023).

4.2.4. European Council Meeting of December 2023

Growing concerns over a potential use of veto power by Prime Minister Viktor Orbán to block agreements on crucial issues are largely reflected in the European Parliament’s Briefing Report in the context of preparing the 14-15 December EU leaders meeting, citing uncertainty over the possibility of consensus with the potential for postponement of the summit for the new year (Drachenberg and Torpey, 2023a). Regarding the proposal made by Viktor Orbán for the establishment of a strategic discussion on Ukraine’s accession, the brief confirmed the possibility of EU leaders accommodating the Hungarian Prime Minister’s demand, on condition that the de facto veto policy is abandoned (Drachenberg and Torpey, 2023a, p.1). However, according to the European Commission President, “there is a growing consensus on the priorities” of the Union (Von der Leyen, 2023), with Ukraine ranking as the first point of discussion among the EU leaders on the agenda (Council of the European Union, 2023b, p.2). Overall, the possibility of obstruction tactics by Hungary in the upcoming European Council meeting is frequently cited in the document, reflecting Orbán’s willingness to leverage key EU policies to advance Hungarian interests with potential negative impact over the outcomes of the discussions.

The outcome of the European Council Summit in December has gathered differing appraisals, with 26 out of 27 EU leaders having secured a unanimous agreement on the initiation of accession negotiations with both Ukraine and Moldova, with negotiations being characterized as “long” and ultimately, “inconclusive” (Drachenberg and Torpey, 2023b, p.1). The reason behind the inconclusiveness is Viktor Orbán’s unwillingness to lift his veto on the issue of the MFF revision including the Ukraine Facility, signaling a temporary stalemate in negotiations, with EU leaders committing to the continuation of discussions next year in the European Council concluding document (European Council, 2023b). However, in the broader context of prevailing skepticism surrounding the negotiations, the Hungarian Prime Minister’s threats to block Ukraine’s membership did not materialize, despite Viktor Orbán’s constant opposition (Drachenberg and Torpey, 2023b, p.2). The strategy that solved the impasse was referred to as “coffee-break” or “toilet diplomacy” in the press (Camut, Barigazzi and Dallison, 2024), according to which the German Chancellor Olaf Scholz, after long negotiations among EU leaders, invited Viktor Orbán to exit the negotiating room during the voting, thus allowing for the unanimous decision to proceed (Drachenberg and Torpey, 2023b, p.2). All in all, Viktor Orbán managed to remain a notable obstacle to the budget revision agreement, maintaining his opposition even after attempts by the French President Macron to adjust the proposal closer to Hungary’s requests (Vinocur, 2023).

Overall, despite Viktor Orbán’s veto threatening tactics, the EU leaders managed to secure a unanimous agreement for the accession negotiations with Ukraine in December, albeit with the remaining veto of the Hungarian Prime Minister on the joint budget causing a temporary stalemate. The political solution to solve the impasse on enlargement policy through the informal going-for-coffee diplomacy, wherein Viktor Orbán left the negotiating room to allow

the unanimous vote by the rest of the participants illustrates the perseverance of consensus in the European Council, without however, completely resolving the tensions surrounding the negotiations.

4.2.5. The Special European Council Meeting of February 2024

After the inconclusive outcome of the December summit, the extraordinary EUCO meeting on the 1st of February aimed to finalize a political agreement among all 27 EU heads of state and government on the common budget revision. Given the need for the revised budget to undergo the legislative process of co-decision following a political agreement at the EU leaders' level, time constraints were significant. According to the Pre-European Council Briefing report of the European Parliament, EU member states' considerations encompass various factors, from the size and the distribution of funds across policy domains, the presence and extent of rebates, and finally, the new own resources (Drachenberg and Torpey, 2024, p.1). Overall, the final proposal accounted for €64.4 billion, a significantly shrunken version of the Commission's €65.8 billion proposal, or the European Parliament's €70.8 billion, reflecting diverging preferences of the member states. Following the updated version of the budgetary "negotiation box" devised by the Charles Michel at the December summit, all leaders endorsed this proposal apart from the Hungarian Prime Minister (Drachenberg and Torpey, 2024, p.1). The main point of contention centered around the Ukraine Facility, with a proposed allocation of €50 billion for the 2024-2027 period, reflecting the highest share of the overall budget figure (Drachenberg and Torpey, 2024, p.1).

The tight timeframe and the urgency to grant Ukraine with financial support in light of the temporary suspension of military funding towards Ukraine by the United States (Tamma, 2023) urged the EU leaders to devise different outcome scenarios to achieve some form of agreement at this European Council meeting, either by consensus or the enhanced cooperation of 26 EU member states (Drachenberg and Torpey, 2024, p.1). The possibility of reaching consensus among the 27 EU leaders has been endorsed by the European Council chief (Michel, 2023) and the German Chancellor (Scholz, 2023), after long discussions among EU leaders to reach a compromise (Drachenberg and Torpey, 2024, p.1), so that the Hungarian Prime Minister ultimately lifts his veto. However, in the aftermath of the Commission fund release decision towards Budapest in exchange of several judicial reforms and the lengthy negotiations in the European Council back in December 2023, the Hungarian claims have shifted, from requesting further reimbursements to insisting on an annual review of the financial aid granted to Ukraine, granting him with the possibility to annually veto the package (Drachenberg and Torpey, 2024, pp.1-2). However, growing concerns over the Hungarian Prime Minister's proposal led the EU leaders alongside the European Commission to deliberate on various alternatives, ultimately resorting to a feasible Plan B should consensus not prevail. The alternative plan for an "operational solution" involved bilateral guarantees towards Ukraine by the rest 26 Member States (Drachenberg and Torpey, 2024, p.2), an option advocated by Viktor Orbán himself (Orbán, 2024).

The swift unanimous agreement on the EU budget revision on February 2024 was somewhat unexpected, given the previous veto policy of Prime Minister Viktor Orbán, resulting in "one of the shortest meetings" in European Council according to Olaf Scholz (Drachenberg and

Nielsen, 2024, p.1). In the 10 pages of the European Council Conclusions concerning the Multiannual Financial Framework, the 27 EU leaders agreed to a budget of €64.6 billion, including financial commitments of €50 billion towards Ukraine through a special Ukraine Facility instrument (European Council, 2024). The outcome was facilitated by a breakfast gathering attended by EU leaders from Germany, France, Italy, and Hungary, alongside the Presidents of the European Council and the European Commission (Michel, 2024a). Regarding Hungarian demands, a watered-down version of the annual strategic discussion on the Ukraine Facility was indeed included in Point 7 of the Conclusions, without however any provisions for an annual veto possibility (European Council, 2024, p.2). The key message conveyed by several EU leaders, as reflected in the Post-European Council Briefing of the European Parliament, is that zero concessions were granted to Mr. Orbán to guarantee his veto withdrawal (Drachenberg and Nielsen, 2024, p.2). According to Winzen (2023), a veto position can be legitimized when two conditions are met: firstly, the urgency of a decision, and secondly, and if the stance of the objector is common among several governments (Winzen, 2023, p.8). Given the time pressure taking a decision to deliver aid towards Ukraine, as well as Viktor Orbán's obvious isolation, Hungary's claims justifying its veto position were not perceived as legitimate by the rest of the EU leaders, leading to the effectively bypassing his veto without further concessions being made. However, there was a rather puzzling sentence outlined in point 39 of the European Council conclusions, referring to previous conclusions of December 2020 regarding the application of the Conditionality Regulation (European Council, 2024, p.12). According to the Chief of the European Council, this point reflects the responsibility of the European Commission on funding allocation through the conditionality instrument (Michel, 2024b), whereas Olaf Scholz pointed to the need for upholding the rule of law among EU member states (Scholz, 2024).

4.2.6. Conclusion

In essence, the intergovernmental logics of consensus and unanimity within the European Council, particularly present in critical decisions like EU budget revisions and membership matters, facilitated Viktor Orbán's intentions to act as a veto-point. By employing the strategy of issue-linkage to justify his stance, the Hungarian Prime Minister endeavored to connect the issues under negotiation with the rule of law budgetary measures imposed on Hungary, thereby enhancing his bargaining power, and resulting in inconclusive outcomes and decision stalemates. This approach resulted in inconclusive outcomes and the temporary suspension of the negotiations on the budget in a special EU leaders' summit in February. However, the effectiveness of the issue-linkage strategy experienced a deterioration during this extraordinary meeting, with the EU leaders demonstrating unity and delivering on the EU's commitments regarding Ukraine and the joint budget, preventing any further obstructions. Viktor Orbán's demands were partially facilitated through a watered-down version of his initial request for a future strategic discussion on Ukraine.

In the backdrop of the European Commission's decision to revoke budgetary measures and allocate €10.2 billion towards Hungary, some analysts criticizing this move, arguing that it undermines the overall effectiveness of the three financial conditionalities imposed on the country. Amidst this criticism, however, one point stressed in the European Court of Auditors Report on the financial conditionalities is worth our attention. Specifically, the report highlights

that the lifting of budgetary measures may be easier than the suspension of payments, underscoring the importance of considering broader political factors when it comes to EU decision-making (European Court of Auditors, 2024, p.47). The most contentious point reflecting the wider challenges arising from the interconnection of the EU decision-making modes, the report clearly states that decisions on lifting budgetary conditionalities that require qualified majority voting may coincide with decisions on crucial EU policies that require unanimity, such as the proposal for EU budget review or Ukraine Facility (European Court of Auditors, 2024, p.47). No matter the motivation behind the European Commission's decision on Hungary, the potential utilization of issue-linkage strategy by Viktor Orbán to block key EU policies and to eliminate the effectiveness of budgetary conditionalities in the future remain.

Despite Viktor Orbán's loss regarding the outcome of the European Council meeting in February, finally withdrawing his veto on the Ukraine Facility, his institutional veto power is not going to disappear any time soon, with several opportunities to block decisions on Ukraine's accession to the EU in the future. The million-dollar question surrounding the broader rule of law crisis within the European Union is whether has the EU possesses the capacity to protect not only the rule of law through its budgetary conditions, but also decision-making from obstruction tactics deployed by backsliding member states.

4.3. Interview Findings

The interview questions were structured in four broader categories: (1) the role and effectiveness of the three financial conditionalities under consideration, (2) the evaluation of the Commissions' judgement on the progress made by the Hungarian government in terms of judicial reforms, followed by the decision to reimburse €10.2 billion in cohesion funds, (3) the strategy of Viktor Orbán during the European Council negotiations in December and February, as well as the final outcome, and (4) the future of rule of law policies in the EU.

4.3.1. Assessment of the three budgetary conditionality measures regarding rule of law protection

The overall judgement on the financial conditionalities deployed by the European Commission, alongside the Council, was positive, with the most responses revolving around the Conditionality Regulation, given the strong presence of the EU member states in its procedure. The most prevalent view is the effectiveness of the measure in the case of Hungary, serving its role as an instrument for safeguarding the rule of law and the EU's financial interests, whereas Qualified Majority Voting has made the mechanism more practical and effective, in contrast to Article 7 TEU.

While discussing the effectiveness determinants of the Conditionality Regulation (CR), the prevailing sentiment among the interviewees regarding the nature of the measure underscored its financial dimension. One interviewee for instance asserted that the Conditionality Regulation is effective “and has teeth”, with “money being the main factor of effectiveness”, further noting that “the rationale behind it was to find a mechanism that can be implemented through Qualified Majority Voting instead of unanimity” (Interview 1, Legal Advisor, 4 March 2024). The decision-making aspects of the Conditionality Regulation were also stressed in contrast to another rule of law measure, the Article 7 TEU procedure, with “qualified majority voting in CR being a factor of effectiveness”, whereas “Article 7 is very politicized [...] and here we have a real discussion, and this mechanism could be practical, bearing consequences” (Interview 8, Diplomat, 12 March 2024). Indeed, deciding with a Qualified Majority in the Council for the enactment of the Conditionality Regulation was regarded as an effective decision-making mode that made possible the adoption of the instrument, and that ultimately “changed the dynamics because no country can solely block it” (Interview 1, Legal Advisor, 4 March 2024). Critical voices expressed concerns over the strict conditions imposed by the instrument, calling the required condition for a direct link between the rule of law and the EU budget as “the weakest point of the regulation”, excluding several violations that the European Commission could examine, whereas there is broad ambiguity on the terminology since “neither the regulation itself, nor the Commission's guidelines specify what constitutes exactly a direct risk for the EU budget, the financial interests of the Union and the link between the two” (Interview 6, Legal Advisor, 11 March 2024).

Another point raised during the discussions was the notable level of discretion granted to the Commission within the Conditionality Regulation framework, which was assessed differently by respondents. Some stressed that “the Council is based solely on the Commission's assessment”, even though it is a Council decision (Interview 2, Budget attaché, 5 March 2024), raising questions about the consistency and transparency in decision-making, with others

placing their trust on the European Commission as an “independent institution” with the “expertise” and “competence” to implement such measures (Interview 3, Budget attaché, 6 March 2024). On the implementation of the measure in light of the report by the European Court of Auditors published in March 2024, one respondent cautiously noted that definitive conclusions are premature due to the limited number of cases, concluding that initial observations however suggest that “based on this one case of Hungary, things seem to be doing their job rather well” (Interview 7, Legal Advisor, 12 March 2024). Furthermore, the interconnectedness of domestic and international considerations for rule of law promotion were underscored by the Ambassador interviewed who highlighted the importance of the external dimension of the principle and its relevance within the broader geopolitical and neighborhood context (Interview 5, Ambassador, 11 March 2024). When evaluating the European Commission’s responses to address challenges when it comes to ensuring rule of law compliance within EU member states, the Ambassador expressed concern about the uncertainty surrounding “doing business with Hungary”, citing its economic legislation and policies, encouraging the European Commission “to take a clear stance on Hungary” (Interview 5, Ambassador, 11 March 2024). According to another respondent the experience with the Hungarian case has demonstrated that financial instruments such as the Conditionality Regulation have tangible effects in incentivizing the member state to change its legal framework, albeit with limitations, since core concerns on the rule of law remain unresolved (Interview 6, Legal Advisor, 11 March 2024). In conclusion, the following statement captures the essence of the Conditionality Regulation according to most of the respondents: “the regulation is a game changer, precise, technical and money-based, with a stick and almost no carrot, and only indirectly linked to the rule of law” (Interview 1, Legal Advisor, 4 March 2024).

4.3.2. The Controversial Decision to Release EU funding towards Hungary

On the evaluation of the Commission’s decision to start reimbursing cohesion funds to Hungary through the Common Provisions Regulation, and its justification on the judicial reforms carried out by the member state concerned, the data collected indicate varying degrees of skepticism and criticism, with some interviewees even declining to any political inquiries. Overall, the responses highlight the complex interplay of political, legal, and procedural factors leading the European Commission to take this decision, with several inconsistencies arising among responses, indicating the stakeholders’ multifaceted interpretations and perspectives on the issue.

Firstly, the decision to release funds triggered a lot of ambiguity according to the interviewees, with the disparity of views suggesting varying interpretations, while raising questions about the transparency of the decision-making process. Even though it was clear that Hungary did not satisfy all the milestones and enabling conditions, funds were partially released, leading to perceptions of leniency, or as one respondent pointed “looking through the fingers” when it comes to Hungary (Interview 1, Legal Advisor, 4 March 2024). Some respondents expressed suspicion of political expediency, noting the two contradictory decisions from the Commission, deeming the enabling conditions for the Charter of Fundamental rights good, but the implementation assessment on the rest of the conditions for rule of law matters remaining unchanged. At the end of the day, there is the “high discretionary power held by the

Commission, with the Council playing a bystander role”, and with a certain level of cynicism characterizing budgetary conditionalities as they often come down to the field of political negotiation (Interview 2, Budget attaché, 5 March 2024),

Moreover, there is wide discrepancy regarding the Commission’s rationale to release the funds. Some respondents, such as the Ambassador on March 11, 2024, believed that the Commission had a solid case to justify its decision for reimbursements, recognizing that “Hungary is ticking the boxes” and viewing its compliance assessment as a clear legal procedure devoid of any political considerations (Interview 5, Ambassador, 11 March, 2024). In addition, other respondents saw the decision as an acknowledgement that some efforts are being made, fully trusting the Commission on its judgement, with “no evidence suggesting unethical behavior of the Commission” (Interview 8, Diplomat, 12 March 2024), while others expressed their concerns since the decision has not been discussed at the technical level, despite it being perceived as a politically correct decision (Interview 3, Budget attaché, 6 March 2024). Furthermore, one interviewee considered the criticism from the European Parliament as valid, emphasizing the need for explanations from the Commission as well as strong monitoring of compliance within EU member states (Interview 7, Legal Advisor, 12 March 2024).

Another puzzling point concerned the lack of clarity of the decision-making process, regarding the criteria and procedures under the Common Provisions Regulation, raising questions on the quality of their assessment. One respondent highly criticized the regulation by stating that the procedure and “the criteria of the CPR are undescribed and non-existent”, leaving a broad level of discretion for the Commission in applying the enabling conditions to each of the Charters’ fundamental rights (Interview 6, Legal Advisor, 11 March 2024). Despite the Commission’s repeated statements in the past regarding the non-compliance with the enabling conditions by both Poland and Hungary, there were two things according to the interviewee that dictated the decision: firstly, the lack of trust towards the Hungarian government to implement the conditions, and secondly the fact that the procedure itself did not leave room to the Commission to postpone the decision, otherwise Hungary could contest the withholding of funds to the European Court of Justice, which could damage the Commission’s credibility (Interview 6, Legal Advisor, 11 March 2024). Given these considerations, the respondent pointed to a political argument common among the Commission circles, acknowledging that “we have to cave in at some point with the CPR procedure, so let’s do it now”, in combination with an anonymous declaration by a Commission official that “we will get the accession for Ukraine, tit-for-tat” (Interview 6, Legal Advisor, 11 March 2024).

Furthermore, what added to the perplexity was one question of the interview protocol that collected very little responses, which concerned the rationale behind reimbursing Hungarian funds through the Common Provisions Regulation instead of the Conditionality or the Recovery and Resilience Facility, given the intertwined nature of deficiencies addressed in all instruments. Most of the respondents cited the technical and complex nature of the three measures as reasons for inability to provide a valid response. Finally, there are inconsistencies among the responses with a varying perception of political expediency, conflicting assessments on Hungary’s compliance and the question of clarity of the decision-making processes.

4.3.3. *European Council Negotiations and Viktor Orbán's Tactics*

The responses on the questions related to the European Council negotiations of December and February in the context of the Multiannual Financial Framework revision provide diverse viewpoints on Viktor Orbán's tactics and in turn Hungary's role within the EU, by further pointing to the complexities surrounding consensus-building and decision-making. The overall picture suggests a partial success of the Hungarian Prime Minister in the negotiations, suggesting a complex mix of factors including the timing and the context of the decisions, political expediency, and the portrayal of Hungary as a tough negotiator.

In conjunction with the previous question, several respondents stressed the high level of speculation that followed the European Commission's decision to reimburse funding towards Hungary preceding the European Council meeting, especially regarding Hungary's potential veto policy on key EU decisions. On the topic of collective decisions at the EU leaders' level, one interviewee commented that "unanimity is a waste of energy", continuing that "political decisions are sub-optimal, yet the member states are not at the point to abolish it" (Interview 1, Legal Advisor, 4 March 2024), which the Ambassador opposed, by stating that "unanimity acts as an upward filter" with member states dealing with different political realities domestically, and "the European Council has the power to take the time so that everyone can agree to something" (Interview 5, Ambassador, 11 March 2024). There is a general acknowledgement of frustration when dealing with a member state that constantly obstructs decision-making, highlighting that both member states and the media perceive Hungary as a threat, with one thing being certain, that "there will be other occasions in the future where Hungary will try to do the same" (Interview 6, Legal Advisor, 11 March 2024), with Slovakia being the most cited example as a potential Orbán ally in blocking decisions among interviewees, while others argued that these blackmailing tactics hinder the Union to develop according to its values (Interview 7, Legal Advisor, 12 March 2024).

When delving into the issue-linkage strategy deployed by Viktor Orbán, his actions are portrayed as a mixture of success and political maneuvering, with one respondent affirming that "Orbán partially succeeded with concessions" (Interview 2, Budget attaché, 5 March 2024), referring to implications of the European Commission's decision for the fund release, with another interviewee stressing that "when you have a member state that says no to everything, you can't always have it against you", pointing to the Union's aim to accommodate diverse interests in joint decisions (Interview 3, Budget attaché, 6 March 2024). While acknowledging political expediency, there was a broad consensus on the coincidental timing of the Commission's decision and the Hungarian tactics in the European Council. The respondents confirmed that it was Viktor Orbán that linked "unrelated issues and decision-making processes" (Interview 8, Diplomat, 12 March 2024), by attempting to capitalize on a "loose connection" between key EU policies such as the Ukraine Facility and the Ukraine's accession to the EU, and EU funding allocations (Interview 2, Budget attaché, 5 March 2024). Another respondent actively involved in the MFF negotiations stressed also the Hungarian opposition regarding the repayment of EU's overdue interest rate of the NextGenerationEU fund, by stating that "[Hungary] was not prepared to pay interest on money it doesn't get", given the suspension of funds through the financial conditionalities, but at the end of the day Orbán was perceived as a winner with the EU budget not being reduced, and Hungary receiving funds through the Border Management mechanism among other things (Interview 3, Budget attaché, 6 March

2024). The same interviewee added that “it would be a paradox for a country like Hungary that wants the increase of the EU budget, to deny its revision, even if it only gets little fresh money” (Interview 3, Budget attaché, 6 March 2024). However, the Ambassador interviewed provided a contrasting view, suggesting that Viktor Orbán’s role is not as significant, stating that “it is not in his interest to overdo it, because he wants to remain a member of the club” (Interview 5, Ambassador, 11 March 2024). Furthermore, most interview participants depicted the Hungarian Prime Minister as willing to act unilaterally, using his veto power to block common decisions and adept to maintain control in the political decision-making, as well as of the political narrative. There was the affirmation that Viktor Orbán, wanted to sell his narrative back home to the domestic audience (Interview 8, Diplomat, 12 March, 2024), and given the lack of media pluralism in Hungary in contrast to other member states, “anything he can get is perceived as a win” (Interview 5, Ambassador, 11 March 2024). Ultimately, he managed to project the image of the “tough negotiator” (Interview 2, Budget attaché, 5 March 2024), with the ultimate objective being “to present his position to his constituents” (Interview 5, Ambassador, 11 March 2024).

Zooming into the European Council negotiations and Viktor Orbán’s veto threatening tactics, there were varying degrees of concern regarding the abstention as well as the role of the European Council President. On the coffee-break solution, according to which the Hungarian Prime Minister left the negotiations room “to get a coffee”, by enabling the rest of the EU leaders to unanimously decide to initiate accession talks with Ukraine, the most common view among the interviewees is that the incident was strategically orchestrated by the German Chancellor Olaf Scholz according to some interviewees, continuing by stating that this strategic solution will not become a routine method to solve impasses in EU decision-making. Overall, it was characterized as a “magic trick” (Interview 6, Legal advisor, 11 March 2024), with most participants framing it as a tactical move that ultimately led to consensus. Indeed, the Ambassador interviewed mentioned that the coffee-break was “on the spot”, a collective plan that was presented to the Hungarian leader and he accepted (Interview 5, Ambassador, 11 March 2024). Some respondents even linked this incident to the vacancy created by Charles Michel announcing his upcoming withdrawal from his post serving as the European Council Chief to run for the European elections. Many respondents highlighted the crucial role played by the head of the European Council, especially when dealing with member states prone to break the rules like Hungary, with the Ambassador hoping that the next chair of the European Council will try to avoid situations like this, while also stressing that Michel was unprepared in the December meeting “with no Plan B”, and that “it should have been Mr. Michel to solve this, not Mr. Scholz” (Interview 5, Ambassador, 11 March 2024). However, other respondents described it as a “worrying incident” (Interview 2, Budget attaché, 5 March 2024), pointing to the fact that it creates a precedent in decision-making, with “political expediency” also playing a role ahead of the European elections in June (Interview 3, Budget attaché, 6 March 2024).

When discussing the outcome of the negotiations, the overall sentiment was that consensus prevailed at the end with the interests of the European Union not being compromised, despite efforts for obstruction. Concerning the alternative scenarios of the consecutive European Council meetings, one participant highlighted that the ideal scenario presented at the COREPER level was a common solution on the MFF package, agreed by all 27 member states, with the alternative being the enhanced cooperation option, proposed by the “frugals” to carry out the Ukraine Facility outside of the EU budget. However, it was contrary to Hungary’s

interests to accept a proposal like the enhanced cooperation, as it would signify a loss of funds from other sources such as the STEP, the Western Balkans Facility and the Asylum, Migration, and Integration Fund (Interview 3, Budget attaché, 6 March 2024). Additionally, it was mentioned that the Hungarian request for an annual discussion on Ukraine Facility with the condition of a unanimous vote was indeed included in the Special European Council conclusions of February 2024, however watered down, excluding the voting, and thus the veto possibility.

Another viewpoint reflects on Viktor Orbán's reactions during the negotiations, suggesting that "he could not take two yeses in the same meeting", leading to the revision being adopted rather quickly in a very short February 2024 meeting (Interview 8, Diplomat, 12 March 2024). Another solution that was mentioned during the interviews but not in any official EU document was a consideration by the Rotating Council Presidency to trigger Article 7 that would negate Hungary from its voting rights, so that the 26 member states could agree on the Ukraine Facility (Interview 5, Ambassador, 11 March 2024). The fact that Viktor Orbán "caved in so quickly" is a result of his isolation (Interview 6, Legal Advisor, 11 March 2024), with various respondents evaluating the outcome as a defeat for the Hungarian Prime Minister and emphasizing the difficulties and the political struggle to achieve consensus. Overall, there is a sense among the responses that Hungary's interests were not significantly prioritized, whereas it was stressed that the point in European Council meetings is to "engage constructively" (Interview 5, Ambassador, 11 March 2024). In summary, interview participants commonly expressed that the interests of the European Union were saved at the end of the day, highlighting the crucial importance of financial assistance and Ukraine's accession path. One participant's sentiment of "relief" underscores the significance of the unimpeded enlargement path for Ukraine, as these obstruction tactics "prevent the Union from developing in line with its values" (Interview 7, Legal Advisor, 12 March 2024).

4.3.4. The Future of Financial Conditionalities, the Rule of Law and decision-making within the European Union

There is a prevailing consensus among the interview participants on the continuous mobilization of financial conditionalities within the European Union and a strong emphasis on the need to uphold the rule of law and maintain the EU's values and principles.

On the role of financial conditionalities in the European Union and the European Court of Auditors Special Report assessing their implementation published in March 2024, the respondents supported the ECA's findings, according to which the Conditionality Regulation marks a significant development in the Union's rule of law framework, whereas all three tools come with several risks and shortcomings on their implementation (European Court of Auditors, 2024). A lot of respondents confirmed the progress made by the European Commission regarding the application of the Conditionality Regulation alongside the other two mechanisms, conforming to the principle of proportionality (Interview 6, Legal Advisor, 11 March 2024), as well as the gaps mentioned in the report, stating that there is a need for more transparency, information from the European Commission and more involvement from the Council (Interview 2, Budget attaché, 5 March 2024), with others advocating for a more

prominent role of the European Court of Auditors (Interview 5, Ambassador, 11 March 2024), providing an independent opinion (Interview 7, Legal Advisor, 12 March 2024). Furthermore, according to a confidential document with the draft Council conclusions on the Court of Auditor's Report addressed to the Budget Committee, made available by one interviewee, the Council urges the Commission to take measures to strengthen the regulatory framework of the financial conditionalities, by guaranteeing its administrative capacity for effective implementation of the measures, refining its guidelines, offering a more thorough documentation on its assessments, and ultimately grounding proposals regarding the removal of the budgetary measures under the conditionality regulation on substantial evidence.

On the future of rule of law policies within the Union in light of the upcoming Hungarian Council Presidency, most participants supported the strengthening of the financial conditionalities, especially the Conditionality Regulation, with one interviewee stating a lack of concern regarding Hungary's presidency (Interview 8, Diplomat, 12 March 2024). On the Conditionality Regulation specifically, one respondent specifically stated that "the Conditionality Regulation is the internal hygiene of the European Union, and if there is no hygiene, then there is a problem" (Interview 1, Legal Advisor, 4 March 2024), contributing to setting an example to other member states that are prone to backsliding tactics, as it creates dynamics to prevent the deterioration of the rule of law (Interview 2, Budget attaché, 5 March 2024). Some participants stressed the possibility of Slovakia being the next case that the Conditionality Regulation will be applied, as well as potential ally for Hungary when it comes to EU decision-making. Nevertheless, one participant highlighted that there needs to be a rule of law policy mix combining several instruments aside from the financial conditionalities, placing strong emphasis upon the Commission's infringement proceedings which have proved their power in the case of Poland (Interview 6, Legal Advisor, 11 March 2024).

The issue of enlargement in relation to the rule of law is another prominent concern among EU member states. According to the interview participants, when discussing EU's enlargement policy and serious political decisions, a certain level of hesitation arises among member states due to rule of law backsliding concerns and potential risks associated in candidate countries (Interview 1, Legal Advisor, 4 March 2024), leading the rule of law to become "the number one priority" (Interview 5, Ambassador, 11 March 2024). In conclusion, participants stated that respect for the rule of law is considered as an existential imperative for the European Union, reflecting the core values and principles upon which is built, stressing that it is an ongoing process with room for further development and improvement of financial conditionality policies, especially regarding future enlargement. Overall, the interviewees highlighted the gaps in the financial conditionalities, regarding the high level of discretion enjoyed by the Commission and the need for transparent and evident-based procedures.

4.3.5. Conclusion

Overall, the analysis has several implications for rule of law policies as well as for EU decision-making. The overarching theme emerging from the interview responses is that while financial conditionalities are largely perceived as effective instruments to enforce rule of law compliance, there are several concerns regarding transparency in decision-making and future policy directions. On the evaluation of the three financial conditionality measures triggered in the case

of Hungary, most participants provided positive feedback, emphasizing that the Conditionality Regulation is an effective rule of law instrument, with Qualified Majority Voting in the Council making it possible to implement, contrasting it with the politicized Article 7 TEU procedure.

There were additional concerns regarding the significant discretionary margin of the European Commission across the budgetary conditionality mechanisms, with growing skepticism over its decision for reimbursements to Hungary, with doubts surrounding transparency in decision-making and the questioning the credibility of the Commission. Some interviewees even suggested that political expediency might have influenced the decision. Moreover, discrepancies emerged regarding the rationale and the criteria employed by the Commission, with some interviewees affirming Hungary's compliance efforts as a significant development, while others expressing doubts.

There is variation in evaluation Viktor Orbán's tactics, with some interview participants acknowledging partial success and political maneuvering, while others characterizing the outcome of the February summit as a defeat for the Hungarian Prime Minister. Furthermore, the tactics of veto threatening, and issue-linkage sparked concerns regarding the obstruction of both EU policies and EU values. The incident of Orbán leaving the negotiation room gathered mixed sentiments, with some respondents viewing it as a strategic option, essential to solve the decision-making stalemate, while others worried about its potential use in the future as a general practice. Finally, interview participants supported the continued use of financial conditionalities, emphasizing the need to uphold the values and principles of the Union.

5. Conclusion and Policy Recommendations

This research paper aimed to analyze the complexities of the European Union's decision-making system by exploring the dynamic interplay between EU institutions that affect the capacity of the European Commission to enforce budgetary conditions in Hungary. Therefore, this study revolved around the question of "what are the inter-institutional logics that constrain the European Commission in effectively implementing budgetary conditionalities with Hungary's veto threat at play?", with the research hypothesis expecting that intergovernmental structures in the EU provide Viktor Orbán with leverage to hinder the effectiveness of Commission's financial conditionalities, through issue-linkage.

In the first part of our analysis, we demonstrated the supranational turn in EU policies for rule of law protection by utilizing and extending the conceptualization of Priebus and Anders (2024) to cover all three conditionalities used to suspend Hungarian funding. Given that the three regulations fulfill the criteria highlighted by Priebus and Anders (2024) regarding the producing binding effects, and either the decision-making is dominated by supranational actors, or there is a possibility of overruling member states through qualified-majority voting, then we have a case of supranationalization. In the second part of our analysis, we showcased how the strategic use of "cross-issue vetoes" deployed by Viktor Orbán, facilitated by the intergovernmental features of negotiating in the European Council, led to a temporary decision impasse. In essence, the Hungarian Prime Minister enhanced his bargaining power and managed to obstruct progress in negotiations regarding the budgetary revision, although its effectiveness waned during the special EU leader's meeting in February. The final part of our analysis, revolving around the interviews conducted, highlighted the perceived effectiveness of the budgetary conditionality instruments in enforcing compliance with EU values, without however neglecting to criticize some of their aspects regarding the transparency of decision-making and the credibility of judgements made by the European Commission. The supranational feature of the Qualified Majority Voting was largely regarded by the interviewees as an effectiveness determinant for the application of the Conditionality Regulation, and it was welcomed by many participants as a potential avenue for the future of decision-making in the EU. Finally, there were mixed sentiments regarding the overall assessment of Viktor Orbán's issue-linkage strategy, with alarming concerns regarding the potential future use of veto being expressed.

What was showcased in this study regarding decision-making modes was the operation of the qualified majority governing the conditionality regulation, in tandem with the intergovernmental logics of negotiations in the European Council, and ultimately linked via issue-linkage. All in all, the outcome of EU integration has resulted in the concurrent domination of two different modes of decision-making in the Union, namely the qualified majority voting mode with the active participation of supranational actors in case of strong consensus, and the intergovernmental mode dominated by member states (Costa, 2023, p.149).

Policy Recommendations

The first policy recommendation is to improve the existing framework governing the application of the budgetary conditionality measures. The interview responses stressed the need for the European Commission to guarantee the transparency and consistency of the decision-making procedure by improving the clarity of the conditions and the evaluation criteria governing decisions for the suspension and the removal of budgetary measures towards member states. Ultimately, this can contribute to well-informed decision-making and enhance the credibility of future judgements, refuting any future speculation and criticisms about political expediency.

The second policy recommendation is to explore the possibility of treating the conditionality mechanisms and criteria laid down in them collectively and as a single package, to avoid any risks of overlapping among objectives and conditions of each instrument. The European Commission's rationale to trigger the Common Provisions and the Recovery Facility Regulation, following the Council's decision for the enactment of the Conditionality Regulation against Hungary, showcase the possibility and the political will to implement these tools simultaneously, and it should also be maintained on any decision regarding the lifting of the penalties. These recommendations can be complemented by the more consistent use of the traditional infringement proceedings outlined in Article 258 TEU, to further enhance the effectiveness of the Union's efforts in safeguarding rule of law among its member states.

The third policy recommendation is for EU leaders to contain political unity in decision-making to refute any attempts of blocking EU policies. One potential avenue to resolve any future intergovernmental bargaining impasse would be to devise alternative solutions through the Enhanced Cooperation mechanism according to Article 20 TEU. In addition, given that Charles Michel's decision to resign from his duties as European Council President created a leadership vacuum, future Council Presidents should refrain from such public statements in light of significant decisions. Furthermore, the consideration of extending Qualified Majority in various policy fields could be prove effective, due to the elimination of veto options for opposing member states. This is even more pressing given potential alliances between backsliders, with Slovakia being highlighted as a potential Orbán ally. Lastly, regarding rule of law backsliding, the possibility of extending budgetary conditionalities in the future Multiannual Financial Frameworks should also be considered, given the possibility of enlarging the European Union.

Any attempt to evaluate the effectiveness of implementing the Conditionality Regulation, alongside the Common Provisions and the Recovery instrument in Hungary would be premature, as they have only been used recently and applied only in one case. Overall, despite the efforts to create the most efficient tools it all comes down to political will to enforce them effectively and fully.

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7. Appendix

Appendix 1. Standard Interview Protocol [the order is indicative]

Q1: The European Commission has introduced several measures of budgetary conditionalities, the Conditionality Regulation, the Common Provisions Regulation and the Recovery and Resilience Facility. From your perspective, what factors contribute to the effectiveness or ineffectiveness of the EU's rule of law promotion efforts?

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Q2: Since the Conditionality Regulation can be triggered with the QMV in the Council, in contrast to for instance the unanimity burden of Article 7, how do you assess the role of QMV in addressing RoL issues in practice? Can we talk about an enhancement of the Commission's power or are there significant limitations?

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Q3: How do you assess the Commission's decision to release funds withheld from Hungary through the Common Provisions Regulation?

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Q4: How do you perceive Viktor Orbán's strategy of veto threatening in the European Council regarding the 50 billion towards Ukraine and its Accession in the EU, the context of the MFF revision?

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Q5: How do you explain Viktor Orbán's "coffee-break" during the negotiations on Ukraine's Accession to the EU given Orbán's previous veto threats? Whose idea was it and do you think it is going to become a permanent way of dealing with vetoes in the future?

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Q6: Given the interconnectedness of the financial conditionality measures, why were the funds towards Hungary released through CPR and not CR?

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Q7: Do you think the financial conditionalities introduced by the European Commission are desirable measures and that they will they remain in the future?

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Q8: How do you see the future of rule of law policy in the EU, given the European elections and the upcoming Hungarian Presidency of the Council?

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Appendix 2: List of Interviews conducted (Each interview number corresponds to a different person interviewed)

1. Interview with a Legal Advisor, Permanent Representation of Southern Member State, Brussels, March 4, 2024
2. Interview with a Budget attaché, Permanent Representation of Southern Member State, Brussels, March 5, 2024
3. Interview with a Budget attaché, Permanent Representation of Southern Member State, Brussels, March 6, 2024
4. Interview with a Counsellor for the MFF Negotiations and a Legal Advisor, Permanent Representation of Southern Member State, Brussels, March 7,2024. *
5. Interview with an Ambassador, Permanent Representation of Western Europe Member State, Brussels, March 11, 2024.
6. Interview with a Legal Advisor, Permanent Representation of Western Europe Member State, Brussels, March 11, 2024.
7. Interview with a Legal Advisor, Permanent Representation of Northern Member State, Brussels, March 12, 2024.
8. Interview with a Diplomat, Permanent Representation of Northern Member State, Brussels, March 12, 2024.
9. Interview with Counsellor for EU Budget, Permanent Representation of Southern Member State, Brussels, March 20, 2024.

*The only interview with two participants

(Last page)

Public Policy Master's Thesis Series

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Who is Afraid of Viktor Orbán? Intergovernmental logics and the European Commission's Rule of Law Policy

Evangelia, Kapeli

Abstract

For over a decade, the progressive erosion of the rule of law occurring in certain member states has posed a persistent threat to the fundamental values of the European Union, with Hungary emerging as a focal point. The main inquiry of this research project is to investigate the institutional logics constraining the European Commission's ability in effectively implementing budgetary conditionalities, particularly in light of Hungary's veto threats. Following a qualitative research design involving document analysis and elite semi-structured interviews with key stakeholders, the study uncovers how the intergovernmental structures of the EU provide Viktor Orbán with leverage to hinder the effectiveness of EU rule of law policies through the issue-linkage tactics. While the conditionalities examined demonstrate a relatively high degree of effectiveness in enforcing compliance with the rule of law according to interview participants, there are lingering concerns about the transparency and credibility in EU decision-making processes of their application. Finally, there were mixed sentiments regarding the overall assessment of Viktor Orbán's "cross-issue vetoes" strategy in European Council negotiations, with some viewing it as obstructive, and aimed at projecting strength domestically. However, despite the ultimate failure of these strategies, concerns for the future of EU collective action remain intact.

Key words

Rule of Law Conditionalities, European Union, Issue Linkage, Qualified Majority Voting, Veto Power, Hungary