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## **SECURING 'RULE OF LAW' WITH ECONOMIC POWER**

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Faced with a smaller EU budget after Brexit, some capitals have argued that governments that violate the rule of law should lose their entitlement to EU financial support, in particular access to 'structural funds'.

Some insist that making receipt of these funds conditional on respect for the rule of law is neither feasible nor desirable.

I disagree.

It is legally sound, fair and can benefit the public. And in contrast to the slow and uncertain process behind Article 7, which for Hungary is gently meandering its way through the European Parliament and for Poland seems to have fallen down the back of the Council's sofa, conditionality can lead to swift and tangible consequences.

According to the Treaty on European Union, the EU's "aim is to promote peace, its values and the well-being of its peoples." Every policy, law and power of the EU is supposed to serve this goal.

Financing governments that undermine the rule of law, like those in Poland and Hungary runs against the core goals of the EU.

Some argue that economic sanctions are inherently discriminatory because they will be felt much more acutely by less prosperous countries in central and eastern Europe.

The argument is akin to saying that police should never run after suspects because it's not fair on criminals with short legs.

EU funds can already be cut off as a sanction on governments when they fail to comply with EU public spending limits, or when they violate rules on how they should spend EU funds.

The relevant laws require the EU to take the given country's economic situation into account to ensure that sanctions aren't disproportionately harsh.

The fact that richer countries can resist economic sanctions more easily is surely reason to expand the toolbox rather than throw away the hammer. Different countries have different pressure points.

Countries with a genuinely free press will be more sensitive to international political pressure.

Countries with an independent judiciary will be more sensitive to legal challenges.

And less prosperous countries with neither will be more sensitive to economic sanctions.

## **Civil liberty**

Some have argued that conditioning funds on respect for the rule of law is unworkable because the notion can't be measured. This simply isn't true.

At its core the rule of law is a requirement that individuals should have access to impartial, independent and effective courts to protect their freedoms.

This is a very old civil liberty with a very precise legal definition built on sixty years of case law from European and international courts.

EU rules on structural funds already contain requirements for governments to set up bodies according to certain criteria to administer and monitor how those funds are spent.

The EU can simply add another requirement, that as a backup to these bodies, individuals must have prompt access to an effective remedy before an independent national court.

Technically, this is already part of EU law, following a case by the EU's Court of Justice, but the commission department responsible for structural funds (the directorate general for regional and urban policy) hasn't been enforcing it.

Commission officials are already equipped with guidelines to help them decide when governments have broken the rules and when funds should be cut. A requirement for independent courts can simply be slotted into existing procedures, with one proviso.

The commission currently relies on national authorities to self-report about compliance. To make the new requirement effective, that practice has to change, and the commission has to independently check the health of national courts.

## **Stoking scepticism**

Some have argued that conditionality could backfire by harming the general public and allowing targeted governments to stoke euroscepticism.

This is only a realistic danger if the EU wields the tool clumsily.

The commission could be given discretion to take over the selection and management of projects from national authorities, rather than cutting off funds completely, in cases where stopping funds would have a direct negative impact on the public.

Management could then be handed over to an executive agency - the commission has power to set up such bodies to administer EU funding programmes for fixed periods of time.

This would allow the EU to do some awareness-raising of its own and advertise that funding for the public benefit is coming from Brussels, and also minimise the risk of funding being misused through government corruption or cronyism.

Authoritarian populists continue enjoy increasing electoral success across the EU and to pursue policies that undermine the rule of law.

As they grow in strength, the EU's room for manoeuvre will become more limited. Current negotiations on the multi-annual financial framework may be the last opportunity for the EU to use its economic muscle to preserve its values.

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