



ARTICLES

USUAL AND UNUSUAL SUSPECTS: NEW ACTORS, ROLES AND MECHANISMS TO PROTECT EU VALUES

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USUAL AND UNUSUAL SUSPECT IN PROTECTING EU VALUES: AN INTRODUCTION

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ABSTRACT: This *Article* introduces the *Special Section* “Usual and Unusual Suspects: New Actors, Roles and Mechanisms to Protect EU Values” which collects four *Articles* originally presented at the NOVA workshop “EU Democracy and the Rule of Law” in June 2021. The four *Articles* all reflect of how the EU institutions may protect and promote the common values in the Member States, in particular in the context of the ongoing constitutional crises in Hungary and Poland, but looking also at the medium and long-term efforts the EU is called to put in place to prevent new crises and promote a stronger rule of law culture in the Member States and civil society. This *Article* serves to place the considerations offered in those four contributions against two backgrounds: the current and evolving state of affairs, in which democratic and rule of law questions seem to emerge more and more strongly; and the institutional and academic debate that has taken place in the last decade. We argue that the *Articles* of this *Special Section* bring an original and innovative perspective to the debate, showing that the EU response must be based on a combination of political, judicial and financial tools, and that the EU needs to both try to respond to ongoing crisis and construct a stronger toolkit for the future.

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I. PROTECTING EU VALUES: THE STATE OF AFFAIRS

In October 2021, the Polish Constitutional Tribunal delivered its highly controversial ruling in case K3/21, firmly rejecting the primacy of EU law in the Polish constitutional system and directly confronting the Court of Justice and its attempt to protect the judicial independence of Polish judges.¹ The decision triggered a deluge of reactions, which went as far as arguing that the ruling could be seen as an implicit declaration of the Polish intention to withdraw from the European Union under art. 50 TEU.² Many commentators called on the Commission to react promptly and firmly, and the Commission did so, opening a new infringement procedure in December 2021 targeting the judgment of the Constitutional Tribunal but also questioning whether the latter could be considered a court “established by law”.³

Meanwhile, discussions in and on Hungary concentrated on what tools could be used by the opposition to “restore constitutionalism” in the country following a possible electoral victory in the spring 2022 elections.⁴ The decision of different opposition parties from the left to the center and even the right of the political spectrum to join forces and form a common electoral list seemed able to finally create a powerful challenge to Viktor Orbán and Fidesz.

At the EU level, on the “values front” the most important piece of news of the last months of 2021, together with the launch of the already mentioned infringement action against Poland, was the Opinion of Advocate General Campos Sánchez-Bordona on the new rule of law budgetary Conditionality Regulation.⁵ In his opinion,⁶ the AG dismissed the challenges brought by the governments of Hungary and Poland against the new instrument, confirming *inter alia* that the legal basis of the Regulation – art. 322 TFEU – was correct, that the Regulation did not circumvent the procedures of art. 7 TEU, and that it adequately protected legal certainty. The final judgment of the Court of Justice was then expected in the first months of the following year.

¹ Polish Constitutional Tribunal decision of 7 October 2021 case K 3/21.

² HCH Hofmann, ‘Sealed, Stamped and Delivered: The Publication of the Polish Constitutional Court’s Judgment on EU Law Primacy as Notification of Intent to Withdraw Under Art. 50 TEU?’ (13 October 2021) [Verfassungsblog verfassungsblog.de](https://www.verfassungsblog.de).

³ European Commission, *Rule of Law: Commission Launches Infringement Procedure against Poland for Violations of EU law by its Constitutional Tribunal* ec.europa.eu. See also ECtHR *Xero Flor v Poland* App. 4907/18 [7 May 2021].

⁴ See debate at [Verfassungsblog](https://www.verfassungsblog.de), *Restoring Constitutionalism* [verfassungsblog.de](https://www.verfassungsblog.de).

⁵ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

⁶ Case C-156/21 *Hungary v Parliament and Council* ECLI:EU:C:2021:974, opinion of AG Campos Sánchez-Bordona and in case C-157/21 *Poland v Parliament and Council* ECLI:EU:C:2021:975, opinion of AG Campos Sánchez-Bordona.

The developments of those months seemed to lead to a truly decisive moment in the now decade-long⁷ battle to protect the rule of law and EU values in the Member States. On the one hand, the national threats to EU values and to the EU judicial order were becoming more and more acute. On the other hand, the EU institutions had become certainly more aware of the need to find robust answers and more equipped to develop effective responses. Even from the Member States' side, after much reluctance to take clear stances and to directly confront their peers in the Council,⁸ we could finally witness a "closing of ranks" in rule of law protection.⁹

When the Court of Justice then delivered its decisions on the new Conditionality Regulation in mid-February 2022, siding with the Advocate General and green lighting the new instrument, expectations grew even further. Both politicians¹⁰ and academics¹¹ immediately called the Commission to move swiftly and trigger the new Regulation against Hungary and Poland. To the disappointment of some, the Commission stressed however that before activating the Regulation, it remained necessary to adopt Guidelines,¹² as was agreed in the much-debated European Council Conclusions of December 2020.¹³ In any event, the time seemed ripe for robust action at the EU level.

The context however changed dramatically in the following days. Russia's invasion of Ukraine shifted the attention of the institutions and the Member States to the greatest foreign policy challenge since the creation of the Union's Common Foreign and Security Policy and forced to deal with the internal spillover effects of the conflict, from refugee

⁷ The new Hungarian constitution entered into force in January 2021. The literature on the crises is extensive: on the earlier debates, see e.g. A von Bogdandy and P Sonnevend (eds), *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania* (Hart Publishing 2015); C Closa and D Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* (Cambridge University Press 2016); on Poland: W Sadurski, *Poland's Constitutional Breakdown* (Oxford University Press 2019).

⁸ P Oliver and J Stefanelli, 'Strengthening the Rule of Law in the EU: The Council's Inaction' (2016) JCom-MarSt 1075.

⁹ J Morijn, 'A Closing of Ranks: 5 Key Moments in the Hearing in Cases C-156/21 and C-157/21' (14 October 2021) *Verfassungsblog verfassungsblog.de*.

¹⁰ European Parliament Resolution 2022/2535(RSP) of 10 March 2022 on the rule of law and the consequences of the ECJ ruling.

¹¹ L Pech, 'No More Excuses: The Court of Justice Greenlights the Rule of Law Conditionality Mechanism' (16 February 2022) *Verfassungsblog verfassungsblog.de*.

¹² The Guidelines have ultimately been adopted on March 2nd 2022: Communication C(2022) 1382 final from the Commission 'Guidelines on the Application of the Regulation (EU, EURATOM) 2020/2092 on a General Regime of Conditionality for the Protection of the Union Budget'.

¹³ European Council Conclusions EUCO 22/20 of 11 December 2020. For a critical analysis of the conclusions, see e.g. A Alemanno and M Chamon, 'To Save the Rule of Law you Must Apparently Break It' (11 December 2020) *Verfassungsblog verfassungsblog.de*; KL Scheppele, L Pech and S Platon, 'Compromising the Rule of Law while Compromising on the Rule of Law' (13 December 2020) *Verfassungsblog verfassungsblog.de*; for more nuanced takes, HT Nguyen, 'The EU's New Rule of Law Mechanism: How it Works and Why the "Deal" did Not Weaken it' (17 December 2020) Jacques Delors Centre www.hertie-school.org; B De Witte, 'The European Union's COVID-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift' (2021) *CMLRev* 3.

management¹⁴ to energy policies, to new discussions on the Union's enlargement policy. By virtue, most obviously, of their geographical positions, Poland and, to a lesser extent, Hungary are central players in the EU's reaction to the conflict and they play a key role in operationalizing the Union's common strategies, in terms for example of providing defence assistance to Ukraine or managing refugees inflow. In this complex scenario, rule of law and values protection seemed to lose some of its urge and the Commission, while not providing any official statement on the issue, seemed more reluctant to take further action. If not justified, the Commission's prudence was at least understandable, considering the size and gravity of the Ukrainian's conflict and the key role of Poland and Hungary in operationalizing the EU's reaction to the crisis. A moment of reflection on the timing, scale and scope of the EU's intervention was certainly needed.

At the time of writing, the momentum may have shifted once more. The landslide victory of Fidesz and Viktor Orban in the April 2022 elections, after an electoral campaign characterized by an evident disparity in terms of media access between governmental and opposition forces,¹⁵ put the theme of values protection firmly back on the EU agenda. The Commission, which probably feared being criticized for excessively meddling in national democratic processes and thus refrained from taking formal action before election day, after the elections finally decided to activate the new Conditionality Regulation against Hungary.¹⁶ And while the Commission seemed ready to greenlight the Polish Recovery Plan under the RRF Regulation – until today the approval has been halted due to rule of law concerns – the most recent suggestions seem to indicate that the process might take longer, and the Commission might want to wait until clearer indications arrive from Warsaw on the possible reform of the much-discussed Disciplinary Chamber of the Supreme Court.

The situation is therefore extremely dynamic. But even if political considerations and contingencies influence the immediate institutional reactions, and may call for caution and restraint at times, the need of finding effective answers to the threats to the common values of the EU project is only becoming more evident. The underlying questions that have occupied the institutional and academic discussion in the last decade are not going away. On the contrary: whether or not the EU will be able to contribute to restore democracy and the rule of law in its Member States and ensure the common values of the EU project across the Union continues to be a defining question for the future of the integration process.

¹⁴ See e.g. Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

¹⁵ See the concerns expressed by OSCE in its request for a full-scale election observation mission: OSCE, 'Hungary: Parliament Elections 3 April 2022' (4 February 2022) www.osce.org.

¹⁶ As reported e.g. by L Bayer, 'In Major First, EU Triggers Power to cut Hungary's Funds over Rule-of-Law Breaches' (27 April 2022) Politico www.politico.eu.

II. PROTECTING EU VALUES: THE DEBATE

It would be impossible to summarize in this brief *Article* the steps taken by the institutions in the last decade, or the suggestions that have been advanced in the institutional, policy and academic debate. To just offer a brief sketch of the main directions and trends of the discussion, we can first highlight that the EU has put in place different strategies. It has made use of existing mechanisms, including both “direct”¹⁷ and “indirect”¹⁸ infringement procedures, and also activated art. 7(1) TEU, even if no formal decision has been adopted under it. But it has also created new mechanisms, including the Commission Rule of Law Framework¹⁹ and Rule of Law Reports, the Council Peer Review Mechanism²⁰ and more recently the Conditionality Regulation. Despite these efforts, the general consensus (though not without differences in the degree of criticism expressed)²¹ is that the EU response has been most often inadequate and disappointing.

As for the academic debate, this has been extremely lively as well. Soon after the start of the Hungarian crisis and even before the situation started to deteriorate in Poland, many different approaches have been suggested on how to respond to the attacks to democracy, the rule of law and human rights. In legal scholarship in particular, the focus has been first and foremost on strengthening the judicial responses to the crises.²² For example, much attention has been given to the use of the infringement procedure as a tool to protect the

¹⁷ I refer here in particular to the actions based on art. 19 TEU that the Commission started against Hungary: case C-619/18 *Commission v Poland (Independence of the Supreme Court)* ECLI:EU:C:2019:531; case C-192/18 *Commission v Poland (Independence of ordinary courts)* ECLI:EU:C:2019:924; case C-791/19 *Commission v Poland (Disciplinary Regime)* ECLI:EU:C:2021:596; and those based on the Charter of Fundamental Rights against Hungary: case C-78/18 *Commission v Hungary (Transparency of Associations)* ECLI:EU:C:2020:476; case C-66/18 *Commission v Hungary (Higher Education)* ECLI:EU:C:2020:792.

¹⁸ Borrowing the language of M Dawson and E Muir, ‘Hungary and the Indirect Protection of EU Fundamental Rights and the Rule of Law’ (2013) *German Law Journal* 10; see in particular case C-286/12 *Commission v Hungary* ECLI:EU:C:2012:687 and discussion in G Halmi, ‘The Case of the Retirement Age of Hungarian Judges’ in F Nicola and B Davies (eds), *EU Law Stories: Contextual and Critical Histories of European Jurisprudence* (Cambridge University Press 2017) 471.

¹⁹ European Commission, ‘A New EU Framework to Strengthen the Rule of Law’ (2014).

²⁰ Discussed by in this *Special Section* by T Conzelmann, ‘Peer Reviewing the Rule of Law? A New Mechanism to Safeguard EU Values’ (2022) *European Papers* www.europeanpapers.eu 671.

²¹ See e.g. the highly critical analysis of R Uitz, ‘The Perils of Defending the Rule of Law Through Dialogue’ (2019) *EuConst* 1; L Pech and K L Scheppele, ‘Illiberalism Within: Rule of Law Backsliding in the EU’ (2017) *CYELS* 3; K L Scheppele, D Kochenov and B Grabowska-Moroz, ‘EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union’ (2020) *Yearbook of European Law* 3. For a less critical analysis: C Closa, ‘The Politics of Guarding the Treaties: Commission Scrutiny of Rule of Law Compliance’ (2019) *Journal of European Public Policy* 5.

²² See however for different approaches: JW Müller, ‘Should the EU Protect Democracy and the Rule of Law inside Member States?’ (2015) *ELJ* 2; M Blauburger and RD Kelemen, ‘Can Courts Rescue National Democracy? Judicial Safeguards Against Democratic Backsliding in the EU’ (2017) *Journal of European Public Policy* 3.

rule of law and EU values,²³ even reinventing it as a tool of militant democracy,²⁴ or also on the broadening of the scope of application of the Charter of Fundamental Rights to foster individual and collective litigation.²⁵ Of course, the key procedure of art. 7 TEU has been explored in detail as well.²⁶ Many of these academic suggestions have also found support in the institutional “bubble”, most notably by the European Parliament that has endorsed several of these possible solutions in some of its Resolutions.²⁷

While the debate has been rich and insightful, one of its pitfalls has been that it has too often focused on finding a “silver bullet” that could address ongoing crises:²⁸ a single solution that could be activated at the EU level and that would be able to restore, top-down, democracy and the rule of law in the Member States.²⁹ This is reflected both in the institutional practice and in the academic debate. As for the first, EU institutions in the last decade have gone through an almost constant cycle consisting in introducing new instruments; using them, most often half-heartedly;³⁰ realizing that the new instrument had not fundamentally changed the situation on the ground; and then designing and introducing yet

²³ M Schmidt and P Bogdanowicz, ‘The Infringement Procedure in the Rule of Law Crisis: How to Make Effective Use of Article 258 TFEU’ (2018) CMLRev 4, and, of the same authors, ‘Ascertaining the “Guarantee of Guarantees”: Recent Developments Regarding the Infringement Procedure in the EU’s Rule of Law Crisis’ in A von Bogdandy and others (eds), *Defending Checks and Balances in EU Member States* (Springer 2021) 207; KL Scheppele, D Kochenov and B Grabowska-Moroz, ‘EU Values Are Law, after All’ cit. 3; P Pohjankoski, ‘Rule of Law with Leverage: Policing Structural Obligations in EU Law with the Infringement Procedure, Fines, and Set-Off’ (2021) CMLRev 431; M Bonelli, ‘Infringement Actions 2.0: How to Protect EU Values before the Court of Justice’ (2022) EuConst 30; T Boekenstein, ‘Making Do With What We Have: On the Interpretation and Enforcement of the EU’s Founding Values’ (2022) German Law Journal 431.

²⁴ K L Scheppele, D Kochenov and B Grabowska-Moroz, ‘EU Values Are Law, after All’ cit. 3.

²⁵ A von Bogdandy and others, ‘Reverse Solange: Protecting the Essence of Fundamental Rights against EU Member States’ (2012) CMLRev 2; A Jakab, ‘The EU Charter of Fundamental Rights as the Most Promising Way of Enforcing the Rule of Law Against EU Member States’ in C Closa and D Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* cit. 187.

²⁶ L Besselink, ‘The Bite, the Bark and the Howl: Article 7 TEU and the Rule of Law Initiatives’ in A Jakab and D Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States’ Compliance* (Oxford University Press 2017) 187; and the earlier contribution of W Sadurski, ‘Adding Bite to a Bark: the Story of Article 7, E.U. Enlargement, and Jorg Haider’ (2010) ColumJEurL 3.

²⁷ See e.g. see European Parliament, Report on the situation of fundamental rights: standards and practices in Hungary (2013); Resolution on the Need for a comprehensive Democracy, Rule of Law and Fundamental Rights mechanism, Strasbourg, 14 November 2018, Doc. 2018/2886(RSP).

²⁸ Not without exceptions: for different approaches, well showing the different dimensions and possibilities of EU intervention, see L Pech and others, Research Paper ‘An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights’ (April 2016) European Parliamentary Research Service www.europarl.europa.eu; M Dawson, *The Governance of EU Fundamental Rights* (Cambridge University Press 2017); A von Bogdandy, ‘Principles of a Systemic Deficiencies Doctrine: How to Protect Checks and Balances in the Member States’ (2020) CMLRev 3.

²⁹ For a similar view, M Dawson, *The Governance of EU Fundamental Rights* cit. 175, who criticizes “the folly of seeking a magic bullet to the EU’s rule of law dilemma or placing excessive faith in a single mechanism or set of institutions”.

³⁰ Take, for example, the decision not to use the Rule of Law Framework against Hungary.

another instrument. The academic discussion mostly followed the same steps, critically discussing the new mechanisms proposed or introduced by EU institutions or suggesting new possible avenues that might perhaps prove to be more effective. Some of the main academic collections on the subject are good examples of how the discussion proceeded: as insightful as they were, they mostly offered a “menu” of possible – and alternative – different choices but did not attempt to provide a single comprehensive solution.³¹

Another shortcoming of the discussion is that there has been relatively little clarity in terms of the goals that can and should be achieved by EU intervention. Can the EU truly restore democracy and the rule of law in the Member States? Or should it rather focus on sanctioning and excluding “rogue” Members? What is exactly the role of the EU and its institutions? Most importantly, how do different mechanisms contribute to achieving those objectives? In the legal discussion, perhaps we may have also overstated the ability of legal tools and judicial procedures to force change, overlooking the political, societal and cultural dimension of the constitutional backsliding phenomena.³²

III. THE *SPECIAL SECTION*

The *Articles* presented in this *Special Section*, based on the contributions discussed in the NOVA-MCEL workshop “EU Rule of Law and Democracy” of June 2021, aim to contribute to that debate, but offering a different and original perspective that we hope could contribute to addressing some of the pitfalls of earlier approaches. First, the *Articles* all take for granted that no single mechanism could ever solve the crises and restore democracy, the rule of law and fundamental rights in Hungary, Poland, or any other Member State. Rather, they understand the EU system to protect the common values as a broad toolkit. Within that toolkit, each of the mechanisms, even those that at first sight might look much softer in nature, may play a significant yet different role: some will be harder “enforcement” tools; other serve to monitor the situation; and yet other to promote the values and spread a democratic and rule of law culture across the Union.

Second, the *Articles* do not insist on the more “traditional” instruments of the EU values-protection’s toolkit, such as art. 7 TEU or the infringement procedure, but consider a wider range of actors, roles and procedures. These include both “usual suspects”, such as the Court of Justice, which however, as Bornemann suggests, is actually able to modulate its responses to “autocratic legalism” cases; or also the Conditionality Regulation,

³¹ See e.g. the approach followed in C Closa and D Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* cit. or A Jakab and D Kochenov (eds), *The Enforcement of EU Law and Values* cit.

³² Highlighted however in a number of contributions: D Adamski, ‘The Social Contract of Democratic Backsliding in the “New EU” Countries’ (2019) CMLRev 623; JHH Weiler, ‘Not on Bread Alone Doth Man Liveth (Deut. 8:3; Mat 4:4): Some Iconoclastic Views on Populism, Democracy, the Rule of Law and the Polish Circumstance’ in A von Bogdandy and others (eds), *Defending Checks and Balances in EU Member States* cit.; B Bugarič, ‘A Crisis of Constitutional Democracy in Post-Communist Europe: “Lands in-between” Democracy and Authoritarianism’ (2015) ICON 219.

which should also be seen in a broader context, especially after the reforms introduced in the legislative process and the judgment of the Court. Then, the Peer Review mechanism in the Council or the “spending powers” of the Union can instead be considered truly “unusual suspects” that while potentially able to strengthen the Union’s toolkit, have so far remained in the shadow of other instruments.

Third, the *Articles* of this *Special Section* consider tools of different nature. Of course, judicial mechanisms are of fundamental importance and the Court of Justice (supported by national courts) is certainly a key player in rule of law protection. But it is only one actor in a broader framework. Political mechanisms, not only art. 7 but also softer instruments such as the Council’s peer review systems, are also crucial. And finally, especially in a context of significant growth of the Union’s spending powers, financial tools may also become essential. Seen together, the *Articles* map the emergence of new actors and new mechanisms, or in some cases old actors with new roles, and reflect on how they can contribute to the Union’s values-protection toolkit. They do so by combining a legal analysis with political science methodologies and reminding us of the importance of looking at the interaction between the legal, political and socio-cultural dimensions of the on-going challenges.

IV. THE CONTRIBUTIONS

The first *Article* (Bornemann) focuses on the judicial dimension.³³ Bornemann reflects on an “old” actor – the Court of Justice – but conceptualizes the new role it has acquired in recent times as (often) “last soldier standing”³⁴ in fighting illiberal policies of autocratic governments. The *Article* reflects on the strategies and judicial responses that the Court has put in place and assesses what responses have proved to be more effective. By distinguishing one “constitutional” and two “administrative” types of responses, the *Article* shows that the Court is able to modulate its answers in different cases and argues that it should measure its approach against the strategic objectives that autocratic legalists pursue.

The second *Article* (Conzelmann) analyses a more “political” way to protect EU values.³⁵ It looks in particular at the role of the Council, but not within the traditional context of the art. 7 TEU procedure; rather, it explores one of the recent additions to the Union’s values-protection toolkit, the Council’s peer review on the rule of law. While of course softer in nature than other tools, it is argued that the peer review system could still complement other mechanisms and bring added value in particular when it comes to preventing future crises and promoting a rule of law culture across the Union, provided

³³ See J Bornemann, ‘Judicial Responses to Autocratic Legalism: The European Court of Justice in a Cleft Stick?’ (2022) *European Papers* www.europeanpapers.eu 651.

³⁴ D Kochenov and P Bárd, ‘The Last Soldier Standing? Courts Versus Politicians and the Rule of Law Crisis in the New Member States of the EU’ in EH Ballin, G van der Schyff and M Stremmer (eds), *European Yearbook of Constitutional Law 2019: Judicial Power: Safeguards and Limits in a Democratic Society* (Asser 2020) 243.

³⁵ See T Conzelmann, ‘Peer Reviewing the Rule of Law? A New Mechanism to Safeguard EU Values’ cit.

however that its design and institutional choices are adequate. The *Article* suggests possible reforms that could be implemented to bolster the peer review scheme.

The other two *Articles*, Staudinger and Fiscaro, concentrate on budgetary and financial tools to protect and promote EU values and the rule of law, in the context of the new Multiannual Financial Framework as well as the Next Generation EU Recovery Plan. Staudinger focuses on the much-discussed 2020 Conditionality Regulation.³⁶ She argues that while originally designed as a true “rule of law” conditionality mechanism, the Regulation has turned out to be rather a “budgetary” conditionality, as the conditions for its activation have become more stringent following the amendments pushed through by the Council. This has been confirmed by the recent judgments of the Court of Justice which are also analyzed in the piece. At the same time, the conditionality tools constructed within the Recovery and Resilience Facility Regulation may prove to be a better way to enforce a genuine rule of law conditionality.

Fiscaro’s *Article* also reflects on the rule of law conditionality possibilities offered by the RRF system, but his *Article* takes a broader perspective and maps how the growth of the Union’s spending powers creates new opportunities to protect, promote and enforce EU values through financial means.³⁷ The *Article* thus explores also the so-called “enabling conditions” in the Structural and Investment Funds, and in particular the condition related to the EU Charter of Fundamental Rights; and the new “Justice, Rights and Values fund” through which the EU can finance and support civil society organization. As in the case of the Council’s peer review, these instruments may be softer in nature, especially when compared to the conditionality regulation, but nonetheless have a role to play in the Union’s toolkit.

As argued earlier, when seen together, these *Articles* remind us that the protection of EU values is not, and cannot be, assigned to a single actor, via a single mechanism. There is no silver bullet, so to say, and seeking one would be fruitless. Rather, the protection of EU values is a shared responsibility, in at least three different senses. First, it is shared in a vertical sense, as it must involve both EU and national actors. Second, it is shared in a horizontal sense, as different actors are called to intervene: the Court of Justice (Bornemann), the Council (Conzelmann), but also of course the Commission as the executive and administrative body in charge of managing EU funds (Staudinger, Fiscaro), and civil society at both EU and national level also has a key role to play (Fiscaro). Third and finally, it is a shared responsibility of judicial (Bornemann), political (Conzelmann) and “budgetary” actors (Staudinger, Fiscaro). Furthermore, when read together the contributions highlight that short-term reactions to threats and breaches to EU values (such as those of the Court of Justice or under the Conditionality Regulation) must be combined with medium and long-

³⁶ See I Staudinger, ‘The Rise and Fall of Rule of Law Conditionality’ (2022) European Papers www.europeanpapers.eu 721.

³⁷ See M Fiscaro, ‘Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union’s Values’ (2022) European Papers www.europeanpapers.eu 697.

term efforts of prevention and promotion of democracy, the rule of law and human rights (for example, with the Council's peer review system or through civil society funding). This is not, or at least not only, an issue of tackling on-going crises, but a continuous process of building a true, Union of Values', an effort which inevitably will take time.

Now that the toolkit has become more robust, it is time to develop a governance framework that allows for concerted, and hopefully more effective, action. Both "softer" and "harder" tools can contribute to the framework, and each of them might have a slightly different function: preventing new crises; promoting rule of law, human rights and democratic culture; but also of course sanctioning breaches. The key is thus less to find *the* right solution, but to combine old and, where necessary, new mechanisms, maximizing their effectiveness also by designing a common strategy to be followed by the institutions. We hope that this *Special Section* and the four *Articles* it contains offer ideas in that direction.