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# The European Semester as a Governance Mechanism for Rule of Law Risks in the EU

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## Abstract

The European Semester is an economic governance tool that the European Union (EU) uses to monitor and coordinate national policies, but it has also evolved into a mechanism to address rule-of-law risks in Member States. By linking financial support to reforms, particularly through the Recovery and Resilience Facility (RRF), the Semester helps enforce rule-of-law standards and represents an innovative approach to safeguarding EU values. However, this process raises concerns about democratic accountability, and it overlooks broader societal concerns.

**Keywords:** European semester; recovery and resilience facility; rule of law

## I. Introduction

The governance of the European Union (EU) today faces an array of unprecedented challenges, most pressing among them a crisis in core EU values<sup>1</sup> – specifically, the respect for the rule of law.<sup>2</sup> These founding values, enshrined in Article 2 of the Treaty on European Union (TEU), are experiencing an alarming decline in certain Member States, leading to growing risks of authoritarian drift and institutional instability.<sup>3</sup> Such trends prompt critical questions about the resilience of the EU's governance frameworks and their capacity to mitigate risks that threaten the cohesion and stability of the Union's legal order.<sup>4</sup>

Confronted with the erosion of European values, the EU finds itself constrained by the limited mechanisms provided in its primary law to enforce these values among its members. While Article 7 TEU and jurisdictional tools offer formal

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<sup>1</sup> M Waelbroeck and P Oliver, “La crise de l'état de droit dans l'Union européenne: que faire” (2017) 2 Cahiers de droit européen 307.

<sup>2</sup> L Pech and K-L Scheppele, “Illeberalism Within: Rule of Law Backsliding in the EU” (2017) 19 Cambridge Yearbook of European Legal Studies 3, 3–47.

<sup>3</sup> The European Parliament even used the term “electoral autocracy” with regard to Hungary: European Parliament Resolution of 15 September 2022 on the proposal for a Council decision establishing, in accordance with Art 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, *P9\_TA(2022)0324*, para 2.

<sup>4</sup> For a more general reflection see C Rizcallah, *The Principle of Mutual Trust in European Law. An Essential Principle Facing a Crisis of Values* (Brussels, Bruylant 2022).

recourses, these mechanisms have proven inadequate due to both political and legal limitations.<sup>5</sup>

In response, the EU has had to innovate, crafting a new strategy that leverages regulatory tools beyond the jurisdictional and political instruments outlined in the Treaties.<sup>6</sup> Among these is the European Semester. It was initially designed as a tool for coordinating and monitoring economic, fiscal and social national policies. It's therefore a governance mechanism that operates through non-binding country specific recommendations (CSR) and monitoring processes, yet exerts significant influence over national policymaking.<sup>7</sup> The anchoring of the Recovery and Resilience Facility (RRF)<sup>8</sup> – the centerpiece of Next Generation EU – into the European Semester has further strengthened its capacity to enforce compliance by linking financial support to the implementation of reforms related to the rule of law – the so called spending conditionality. This dual role – coordinating economic policies while addressing rule-of-law risks – positions the European Semester as a distinctive instrument that enhances and complements the EU's existing legal and political frameworks.

However, the use of the Semester as a rule of law governance mechanism has the effect of exporting concerns about democratic accountability and the balance of power to the EU's rule of law policy. While it strengthens organs at the EU and national level exercising executive functions, it marginalises the role of the parliaments, and other stakeholders.

This article explores the European Semester's evolving role as a governance mechanism for managing rule-of-law risks, its implications for the EU's constitutional framework, and the challenges it poses to democratic and legal accountability. By examining this development, the article seeks to contribute to the broader discussion on the EU's capacity to address the complex interplay between economic governance and the protection of fundamental values. To this end, and in order to adequately capture the effects of the European Semester, an instrument-based approach will be employed.<sup>9</sup> This perspective not only seeks to understand the reasons behind choosing particular instruments but also to analyse the legal and societal impacts of these choices.

<sup>5</sup> See among many others: C Closa and D Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* (Cambridge, Cambridge University Press 2016); A Jakab and D Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance* (Oxford, Oxford University Press 2017); T Konstantinides, *The Rule of Law in the European Union – The Internal Dimension* (Oxford, Hart Publishing 2017); W Schroeder (ed), *Strengthening the Rule of Law in Europe – From Common Concept to Mechanisms of Implementation* (Londres, Bloomsbury/Hart 2016); A von Bogdandy and M Ioannidis, "Systemic Deficiency in the Rule of Law: What It Is, What Has Been Done, What Can Be Done" (2014) 51 *Common Market Law Review* 11, 59–96. On the judicial aspect: P Bogdanowicz and M Schmidt, "The Infringement Procedure in the Rule of Law Crisis: How to Make Effective Use of Article 258 TFEU" (2018) 55 *Common Market Law Review* 4, 1061–100; D Kochenov, "Biting Intergovernmentalism: The Case for the Reinvention of Article 259 TFEU to Make it a Viable Rule of Law Enforcement Tool" (2015) 7 *The Hague Journal on the Rule of Law* 153–74; KL Scheppele, "Enforcing the Basic Principles of EU Law through Systemic Infringement Actions" in C Closa and D Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* (Cambridge, Cambridge University Press 2016) pp 105–32.

<sup>6</sup> L Fromont and A Van Waeyenberge, "Trading Rule of Law for Recovery? The New EU Strategy in the Post-Covid Era" (2022) 27 *European Law Journal* pp 132–47.

<sup>7</sup> D Bokhorst and F Corti, "Governing Europe's Recovery and Resilience Facility: Between Discipline and Discretion" (2024) 59 *Government and Opposition* 720.

<sup>8</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ [2021] L 57, p 17.

<sup>9</sup> The *public policy instrument approach*, emphasises understanding the operational effects of specific tools, examining "the sum of issues that arise from the choice and use of tools (techniques, means of operation, devices) that enable the materialisation and operationalisation of government action." – P Lascoumes and P Le Galès, "L'action publique saisie par ses instruments" in *Gouverner par les instruments* (Paris, Presses de Sciences Po 2004) p 12. See also P Elliadis, M Hill and M Howlett, *Designing Government: from Instruments to Governance* (Montréal, McGill-Queen's University Press 2005) and A Van Waeyenberge, *Nouveaux instruments juridiques de l'Union européenne – évolution de la méthode communautaire* (Brussels, Larcier 2015).

This contribution first explores the specific regulatory features of the European Semester and its adaptation to the current rule-of-law crisis (II). It then considers the potential risks this mechanism may pose to fundamental principles of the EU's legal order (III).

## II. The European semester as an instrument for promoting the rule of law

Established in 2010, as a response to the sovereign debt crisis, the European Semester was to strengthen the coordination, the monitoring and assessment of national economic, budgetary and social policies within the EU.<sup>10</sup> Its main objectives are to encourage Member States to ensure sound public finance, avoid excessive macro-economic imbalances and adopt growth-enhancing structural reforms. To this end, since the 2024 reform, Member States have to draft a 4 to 5 years national fiscal-structural plan detailing their fiscal, structural reforms and investment commitments.<sup>11</sup> After being assessed by the Commission, the plans are endorsed by the Council.<sup>12</sup> During their implementation and, in general, whenever Member States have to take key decisions regarding their economic, social, budgetary and structural policies, they have to take into consideration the CSRs addressed to them by the Council on an annual basis.<sup>13</sup> Even before the 2024 reform, the European Semester had generated tensions with Member States since it subordinates all national policies – notably social policy<sup>14</sup> – to budgetary discipline and the correction of macroeconomic imbalances.<sup>15</sup> Over the year, the European Semester has been extended to other policy areas, such as such as environmental issues and the cohesion policy.<sup>16</sup> In particular, since its inception, the European Semester has contributed to promoting the rule of law, a role that has been strengthened with the introduction of the post-COVID European recovery plan, Next Generation EU.

Since its beginnings, the European Semester has included elements related to the rule of law – notably through the EU Justice Scoreboard that monitors the independence, efficiency and quality of national justice systems. In its communication titled “Further Strengthening the Rule of Law within the Union,”<sup>17</sup> the Commission presented the Semester as an “important

<sup>10</sup> Section 1a of Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, as amended by Regulation (EU) n° 1175/2011 of the European Parliament and of the Council of 16 November 2011, OJ [2011] L 306, p 12.

<sup>11</sup> Based on the Commission's assessment of the compliance with the numerical debt and deficit thresholds, and eventually a debt sustainability analysis to provide a reference trajectory outlining necessary adjustments to the national net expenditure path. See Art 11 Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) n° 1466/97, OJ [2024] L 1263.

<sup>12</sup> *Ibid*, Arts 16 and 17.

<sup>13</sup> *Ibid*, Art 4.

<sup>14</sup> A Crespy and G Menz, “Commission Entrepreneurship and the Debasing of Social Europe Before and After the Eurocrisis” (2015) 53 *Journal of Common Market Studies* 4, 762. See on the socialisation of the European Semester: See also J Zeitlin and B Vanhercke, “Socializing the European Semester: EU Social and Economic Policy Co-ordination in Crisis and Beyond” (2018) 25 *Journal of European Public Policy* 2, 149–74.

<sup>15</sup> P Copeland and M Daly, “Social Europe: From ‘Add-On’ to ‘Dependence-Upon’ Economic Integration” in A Crespy and G Menz (eds), *Social Policy and the Euro Crisis: Quo Vadis Social Europe* (Basingstoke, Palgrave Macmillan 2015) pp 140–60.

<sup>16</sup> On the European Semester, see among a broad literature: L. Fromont, *La gouvernance économique européenne. Les conséquences constitutionnelles d'une décennie de crises* (Bruylant, Bruxelles 2022) pp 176–210; VA Schmidt, *Europe's Crisis of Legitimacy. Governing by Rules and Ruling by Numbers in the Eurozone* (Oxford, Oxford University Press 2022); n 14, J Zeitlin and B Vanhercke; D Argyroulis, “The European Semester: An Ordoliberal Construct?” (2023) 61 *Journal of Common Market Studies* 1, 143–60.

<sup>17</sup> “Further strengthening the Rule of Law within the Union: State of play and possible next steps”, COM(2019) 163 final.

early warning and prevention framework” for addressing rule of law issues before resorting to Article 7 TEU.<sup>18</sup> As an economic and budgetary instrument, it “has taken account of the relevance of the rule of law to the business environment in its work to promote growth-enhancing structural reforms”.<sup>19</sup> The European Semester therefore focuses on rule of law dimensions that “can have an impact on investment decisions and are therefore important to increase productivity and competitiveness”<sup>20</sup>; justice, anti-corruption, fraud, and conflict of interest issues, and decision-making process. For example, already in 2013, Italy was asked to “reduce the duration of case-handling and the high levels of litigation civil justice” and to “strengthen the legal framework for the repression of corruption.”<sup>21</sup> More recently, in 2023, a CSR addressed to Hungary explicitly mentioned the necessity to “improve the regulatory framework and competition in services ( . . . ) in line with principles of the single market and of the rule of law.”<sup>22</sup>

The COVID-19 pandemic further emphasised the role of the European Semester, particularly due to its close link with the RRF, the main vehicle of the recovery plan. For several years now, the European Commission has sought to improve the implementation rate of the CSRs. In 2019, it proposed to support their implementation with financial incentives, i.e. a form of (macroeconomic) spending conditionality. The Member States eventually agreed to create a budgetary instrument for competitiveness and convergence (BICC) which would have provided for financial support in achieving national reform and investments packages.<sup>23</sup> However, the COVID-19 crisis turned the tables and the BICC was replaced by the RRF. Indeed, the RRF supports reforms and investments that foster economic, social, and territorial cohesion among Member States and accelerate the digital and green transitions of European economies,<sup>24</sup> yet imposes macroeconomic and spending conditionalities.<sup>25</sup>

To benefit from RRF financing, Member States must comply with CSRs issued under the European Semester. Concretely, they were required to submit a national recovery and resilience plan, consistent with the challenges and priorities identified in the Semester,<sup>26</sup> notably in the CSRs from 2019 to 2020 (positive spending conditionality).<sup>27</sup> The Commission then evaluated these plans before submitting them for approval through a Council implementing decision. During this evaluation, the Commission ensures that the plans contribute to effectively addressing all or a significant part of the challenges identified in the relevant CSRs.<sup>28</sup> This criterion should receive the highest score.<sup>29</sup>

<sup>18</sup> *Ibid.*, p. 4.

<sup>19</sup> Commission, “Strengthening the rule of law within the Union – A blueprint for action,” COM(2019) 343 final, p. 8.

<sup>20</sup> “Further strengthening the Rule of Law within the Union: State of play and possible next steps”, COM(2019) 163 final, p. 4.

<sup>21</sup> Council Recommendation of 9 July 2013 on the National Reform Programme 2013 of Italy and delivering a Council opinion on the Stability Programme of Italy 2012–2017, OJ [2013] C217, pp 42–6, recommendation 2.

<sup>22</sup> Council Recommendation of 14 July 2023 on the 2023 National Reform Programme of Hungary and delivering a Council opinion on the 2023 Convergence Programme of Hungary, OJ [2023] C 312, pp 155–66, recommendation 3.

<sup>23</sup> Eurogroup, *Term sheet on the Budgetary Instrument for Convergence and Competitiveness*, Press release, 14 June 2019; Proposal for a Regulation of the European Parliament and of the Council on a governance framework for the budgetary instrument for convergence and competitiveness for the euro area, COM(2019) 354 final – 2019/0161 (COD).

<sup>24</sup> Art 4(1) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ [2021] L 57 on 18 February 2021, p. 17.

<sup>25</sup> In this special issue, see L. Fromont, “What Conditionality Says About the Rule of Law” (2025) *European Journal of Risk Regulation* 1–14.

<sup>26</sup> *Ibid.*, recital 32 and Art 17(3).

<sup>27</sup> “Annual Sustainable Growth Strategy 2021,” COM(2020) 575 final, 5.

<sup>28</sup> Art 19(3b) Regulation (UE) 2021/241, *op. cit.*

<sup>29</sup> *Ibid.*, recital 42.

Member States' progress in implementing these plans is subsequently monitored within the framework of the European Semester, with a biannual reporting obligation and common indicators (14)<sup>30</sup> integrated into a recovery and resilience scoreboard.<sup>31</sup> Although none of these indicators specifically address the rule of law, existing Semester tools, such as the EU Justice Scoreboard or corruption indicators, provide a regular follow-up on these issues. In addition, other tools, such as the Rule of Law Report, serve as a reference for the European Semester, the EU Justice Scoreboard, and Next Generation EU.<sup>32</sup> The release of RRF funds is conditioned on the satisfactory achievement of each plan's objectives,<sup>33</sup> with the possibility of fund reduction or recovery when the targets are not met or in cases of fraud, corruption, or conflicts of interest impacting the EU's financial interests (negative spending conditionality).<sup>34</sup>

This conditionality – both positive and negative – was intended to improve the modest implementation rate of CSRs, including in the area of the rule of law. According to the Commission, the RRF, as a performance-based instrument, is a success since, on a multiannual perspective, it has accelerated policy action to implement relevant CSRs.<sup>35</sup> However, it is not clear if this improvement can be attributed to the RRF spending conditionality or to easier-to-comply CSRs, specifically fiscal ones.<sup>36</sup> In any way, reform implementation differs significantly across policy area. Data have showed that implementation rates related to the business environment – that cover rule of law issues – has increased.<sup>37</sup> In the Hungarian case, the performance-based approach of the RRF is also complemented by that of Regulation 2020/2092 even though the suspension of EU's funds does not concern the RRF. This is because the corrective measures requested by the EU under Regulation 2020/2092 and the reforms linked to the rule of law detailed in the Hungarian NRRP/CSRs partly overlap.<sup>38</sup> In the future, the role played by the RRF in fostering the implementation of the CSRs should be taken up by cohesion policy in general. As indicated in the reformed economic governance framework in 2024, “the cohesion policy funds are also synchronised with the European Semester” so that “reforms and investments under those funds should also be duly taken into account when national medium-term fiscal-structural plans are drawn up, in order to ensure consistency and, where appropriate, complementarity.”<sup>39</sup> As noted by the Common Provisions Regulation, this synchronisation will contribute to “outline and coordinate priority investment projects to be supported by national or Union funding, or both.”<sup>40</sup> Member States and the

<sup>30</sup> *Ibid*, Art 30. See also Commission Delegated Regulation (EU) 2021/2106 of 28 September 2021 supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility with a view to defining common indicators and the detailed elements of the Recovery and Resilience Scoreboard, OJ [2021] L 429, p 83.

<sup>31</sup> *Ibid*, Arts 27 and 29(4).

<sup>32</sup> “2020 Rule of Law Report. The rule of law situation in the European Union”, COM(2020) 580 final, 3.

<sup>33</sup> Recital 52 Regulation (UE) 2021/241, *op. cit*.

<sup>34</sup> *Ibid*, Art 22. See also 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, OJ [2020] L 433I/1.

<sup>35</sup> Commission, “2024 European Semester – Spring package,” COM(2024) 600 final, pp 18–19.

<sup>36</sup> The Court of Auditors has also pointed out gaps in how NRRPs addressed CSRs: European Court of Auditors, “The Commission's Assessment of National Recovery and Resilience Plans – Overall Appropriate but Implementation Risks Remain” (2022) *Special Report* 21.

<sup>37</sup> See Z Darvas, “Countries Are Still Slow to Follow European Union Policy Recommendations” (2024) Bruegel Analysis; European Parliament, “The Implementation of Country-Specific Recommendations under the European Semester Cycles” (2024) PE 760.248.

<sup>38</sup> Since See *Annex to the proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary*, *supra* note 67, “Component 9: Governance and public administration”, pp 86 et seq.

<sup>39</sup> Recital 11 Regulation (EU) 2024/1263.

<sup>40</sup> Recital 15 Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the

Commission have to “take into account the relevant country-specific recommendations in the programming and implementation of the Funds.”<sup>41</sup>

Thus, the European Semester represents a powerful tool for dialogue between European institutions and Member States concerning necessary reforms and investments. It enables, on the one hand, the recommendation of reforms tailored to the specific needs of each Member State, and on the other, obtaining commitments and monitoring their implementation. In this sense, the European Semester epitomises the diversification of the EU’s means of action to counter the decline of the rule of law in Europe and marks the emergence of a strategy aimed at fully leveraging economic and budgetary policies to protect the rule of law, with significant implications for the European constitutional order.

### III. Constitutional and democratic risks of the European semester as a rule of law mechanism

Since its inception, the European Semester has raised democratic and constitutional concerns. The increasing reliance on the European Semester to ensure the protection of the rule of law has had the effect of exporting these concerns to the rule of law policy – where they were not present before. On the one hand, the European Semester is putting its capacity to shape policies that normally remain within national competence at the service of the rule of law. But, on the other hand, this Europeanisation of national policies underpinning the rule of law strengthens European Union institutions performing executive functions, primarily the Commission and the Council, questioning the coherence of EU action.

Firstly, the European Semester encourages – if not, through the RRF, compels – Member States to follow the reform and investment recommendations issued by European institutions in areas that remain mainly under the responsibility of Member States.<sup>42</sup> This is the case, for instance, with the organisation of national judicial systems, which, as the Court of Justice has reiterated, falls within the competence of Member States. The Court, however, specifies that “when exercising that competence, the Member States are required to comply with their obligations deriving from EU law,”<sup>43</sup> particularly the independence of the judiciary.<sup>44</sup>

The protection of the rule of law through the European Semester does not, however, inherently entail a violation of the allocation of competences between the EU and its Member States. The Court of Justice has previously emphasised that “Article 2 TEU is not a mere statement of policy guidelines or intentions, but contains values which, [...], are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles comprising legally binding obligations for the Member States.”<sup>45</sup> The Court further concluded that, “by requiring that the Member States thus comply [*in the exercise of their competences*] with their obligations deriving from EU law, the European Union is not in any way claiming to exercise those competences itself nor is it, therefore, arrogating them.”<sup>46</sup>

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Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ [2021] L 231/159.

<sup>41</sup> *Ibid*, Art 5(3).

<sup>42</sup> In accordance with the principle of conferral of powers enshrined in Art 5(2) TEU.

<sup>43</sup> Case C-619/18, *Commission v Poland*, EU:C:2019:531, para 52.

<sup>44</sup> Case C-64/16, *Associação Sindical dos Juízes Portugueses*, EU:C:2018:117.

<sup>45</sup> Case C-157/21, *Poland v Parliament and Council*, EU:C:2022:98, para 264.

<sup>46</sup> *Ibid*, para 270.



The use of the European Semester to influence national policies can be better understood as a form of Europeanisation of national policies related to the rule of law. Legal scholarship sometimes employs the concept of *competence creep* to describe this phenomenon.<sup>47</sup> In its broad sense, *competence creep* refers to various methods through which the Union intervenes in areas where it lacks specific competences, primarily via non-binding tools or processes (such as the open method of coordination, financial incentives, or parallel integration mechanisms).<sup>48</sup> The European Semester aligns particularly well with this model. It was initially designed as a non-binding process issuing CSRs that Member States are expected to translate into national policies, which are subsequently evaluated and compared using indicators.

In particular, the Europeanisation in the context of the European Semester is supported by a contractual approach. Member States have to submit to the Council and the Commission a national medium-term fiscal-structural plan defined as “the document containing the fiscal, reform and investment commitments of a Member State, covering a period of four or five year depending on the regular length of the legislative term of that Member State.”<sup>49</sup> They are presented as voluntary commitments although in reality, since the European Semester has been linked to the cohesion policy and made more country-specific by the 2024 reform, they resemble contractual agreements. Fiscal-structural plans are moving closer to an “agreement between the EU and a Member States on an economic programme, negotiated by those parties, to comply with predefined economic objectives in order to be able, subject to fulfilling that agreement, to benefit from” EU funding.<sup>50</sup> But, from a constitutional perspective, the European Semester allows the EU to export its sphere of influence to rule of law concerns where its competence is limited<sup>51</sup> while avoiding criticisms of national sovereignty violation or breaches to the principle of conferral.<sup>52</sup>

Thus, while the European Semester may be described as a *soft law instrument*, it exerts tangible effects on the shaping of national policies<sup>53</sup> – especially since it is now incentivised through direct financial incentives. For instance, Poland committed to a comprehensive reform of the disciplinary regime applicable to Polish judges to enhance judicial independence. This commitment led the European Commission to approve Polish NRRP on June 1, 2022,<sup>54</sup> a decision that surprised some observers.<sup>55</sup> Similarly, Hungary pledged to adopt reforms to its framework for combating fraud, corruption, and conflicts

<sup>47</sup> On this concept, see S Weatherill, “Competence Creep and Competence Control” (2004) 23 YEL 1, 1–55.

<sup>48</sup> See A Prechal, “Competence Creep and General Principles of Law” (2010) 3 Review of European and Administrative Law 1, 5–22; S Garben, “Restating the Problem of Competence Creep, Tackling Harmonisation by Stealth and Reinstating the Legislator” in S Garben and I Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future*, (Oxford, Hart 2017) p 301.

<sup>49</sup> Art 2.6 Regulation (EU) 2024/1263.

<sup>50</sup> This is the definition of the Memoranda of Understanding adopted during the sovereign debt crisis given by the ECJ: CJEU, 13 June 2017, case *Florescu e.a.*, C-258/14, EU:C:2017:448, paras 34 and 41.

<sup>51</sup> A Baraggia and M Bonelli, “Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges” (2022) 23 German Law Review 2, p 145.

<sup>52</sup> C Fasone and M Simoncini, “Next Generation EU and Governance by Conditionality: A Transformation of the European Economic Constitution?” (2024) 9 European Papers 3, 1553–154.

<sup>53</sup> D Bokhorste and F Corti, “Governing Europe’s Recovery and Resilience Facility: Between Discipline and Discretion” (2024) 59 Government and Opposition 720.

<sup>54</sup> Press released from European Commission, “NextGenerationEU: European Commission endorses Poland’s €35.4 billion recovery and resilience plan,” 1 June 2022.

<sup>55</sup> See, in particular, the action for annulment brought by four associations of judges against the Council Decision of 17 June 2022 approving Poland’s Recovery and Resilience Plan: The Good Lobby Profs, “TGL Profs action in support of unprecedented lawsuit against the Council of the EU’s decision to approve Poland’s recovery and resilience plan,” *Press Released*, 28 August 2022, available at <https://www.thegoodlobby.eu/wp-content/uploads/2022/08/TGL-Profs-Press-Release-28-Aug-2022-.pdf>.

of interest to unlock European funding.<sup>56</sup> Actually a review of the NRRPs show that 13 of them include reforms and/or investments aiming at improving the efficiency, quality or independence of justice systems – by, for example, improving judicial infrastructure, training judicial system employees, reducing length of the proceedings, or reorganising the judicial map.<sup>57</sup>

Secondly, the Europeanisation of policies related to the rule of law through contractualisation reinforces the phenomenon of “executive dominance”<sup>58</sup> within the EU, referring to the growing prominence of organs and institutions performing executive functions. Indeed, contractual arrangements are mainly arrangements between EU and national executives. At the EU level, the Commission appeared to be the only institution “endowed with the ‘political autonomy,’ the ‘technical expertise,’ and the vision needed to coordinate the Semester.”<sup>59</sup>

In contrast, the European Parliament is only marginally involved in the European Semester, despite having participated in its establishment. Beyond a right to information, it was decided to grant the Parliament an economic dialogue,<sup>60</sup> modeled after the monetary dialogue between the European Parliament and the European Central Bank. The economic dialogue allows the competent parliamentary committee to invite the presidents of the bodies responsible for European economic governance (Council, Eurogroup, Commission, European Council, European Central Bank, European Stability Mechanism) to discuss their decisions. The dialogue may even include an exchange of views between the European Parliament and the Member State potentially affected by a measure.

Under the RRF, a recovery and resilience dialogue was also introduced.<sup>61</sup> This dialogue may address Member States’ recovery and resilience plans and their evaluation, the state of recovery, resilience, and adaptability of the Union, or procedures related to payments, suspensions, and terminations under the RRF. However, the dialogue must be conducted

<sup>56</sup> J Le Pavous, “En Hongrie, des réformes de façade pour amadouer la Commission européenne”, *Le Soir*, 22 September 2022, available at <https://www.lesoir.be/467060/article/2022-09-22/en-hongrie-des-reformes-anticorruption-de-facade-pour-amadouer-la-commission>.

<sup>57</sup> European Commission, “Rule of Law: Judicial Systems” (2022) Recovery and Resilience Scoreboard – *Thematic Analysis*.

<sup>58</sup> D Curtin, *Executive Power of the European Union: Law, Practices, and the Living Constitution* (Oxford, OUP, 2009); D Curtin, “Democratic Accountability of EU Executive Power: A Reform Agenda for Parliaments” in F Fabbrini, E Hirsch Ballin et H Somsen (eds), *What Form of Government for the European Union and the Eurozone?* (Oxford, Hart 2015) p 171.

<sup>59</sup> R Coman, *The Politics of the Rule of Law in the EU Polity. Actors, Tools and Challenges* (Palgrave MacMillan 2022) p 107.

<sup>60</sup> Art 3 of Regulation (EU) n° 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, OJ [2011] L 306, p 1; Art 6 of Regulation (EU) n° 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, published in OJ [2011] L 306, p 8; Art 28 of Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97, OJ [2024] L 1263; Art 14 of Regulation (EU) n° 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, published in OJ [2011] L 306, p 25; Art 2 bis of Council Regulation (EC) n° 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EU) n° 1177/2011 of 8 November 2011, OJ [2011] L 306, p 33; Art 15 of Regulation (EU) n° 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area, published in OJ [2013] L 140, p 11; Art 3(9) of Regulation (EU) n° 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the Euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ [2013] L 140, p 1.

<sup>61</sup> Recital 61 and Art 26(1a) to (g), Regulation (UE) 2021/241, *op. cit.*



based on the Recovery and Resilience Scoreboard, whose indicators do not encompass rule of law issues. A notable and welcome distinction from the economic dialogue was introduced: the regulation establishing the RRF stipulates that “The Commission shall take into account any elements arising from the views expressed through the recovery and resilience dialogue, including the resolutions from the European Parliament.”<sup>62</sup>

The marginal involvement of the European Parliament is explained by the fact that the European Semester was initially designed as a mere framework for coordinating and monitoring national policies. Not only was it not intended to be legally binding, but it also relies on national decision-making procedures where democratic oversight and political accountability can be exercised.<sup>63</sup> However, empirical studies have showed the lack of adequate involvement of national parliamentary, social and civil society actors within the framework of the RRF and the European Semester.<sup>64</sup> At this stage, and even if the 2024 reformed economic governance framework insists on the consultation of various stakeholders,<sup>65</sup> national ownership is mainly restricted to governmental authorities.<sup>66</sup> This situation creates a mismatch between the responsibilities acquired by certain EU institutions through the European Semester in the areas of policies related to the rule of law and the political and democratic oversight that can be exercised over these responsibilities.<sup>67</sup>

Consequently, the European Parliament has criticised its limited role from the outset, arguing on the basis of principles of democratic legitimacy and transparency, which, in its view, require “the obligation of the Council, the Commission, and the Eurogroup to be accountable to the European Parliament at all stages of the European Semester process.”<sup>68</sup> Addressing these criticisms has become increasingly urgent at least for two reasons. On the first hand, since CSRs are linked to cohesion funds, they became *de facto* binding. Its nature also changed: it is no longer merely about coordinating and monitoring national policies but also about allocating European funds.<sup>69</sup> On the other hand, in general terms, the European Parliament could be given a greater role in the EU’s rule of law toolbox. From now on, it is no longer a question of determining from a political point of view – via the Council and the European Council – or a legal point of view – via the Commission, as the guardian of the Treaties and the CJEU – the existence of breaches of the EU’s founding values: it is also a question of defining the rule of law reforms and investments to be implement at the national level.

In addition, the contractualisation of the European Semester enables the Commission to pursue a country-specific approach, that has been reinforced by the 2024 reform of the European economic governance. The European Semester is presented by the Commission as “a soft process of policy coordination ‘based on guidance, not on corrections,’ as ‘an informal discussion’ between the member states and EU institutions before countries deliberated and adopted their national budget.”<sup>70</sup> Yet, various factors – such as the

<sup>62</sup> *Ibid*, Art 26(3).

<sup>63</sup> B Crum, *How to Provide Political Guidance to the Recovery and Resilience Facility?* PE 651.371, October 2020, p 13.

<sup>64</sup> See: B Vanhercke and AC Verdun, “From the European Semester to the Recovery and Resilience Facility: Some Social Actors Are (Not) Resurfacing” (2021) European Trade Union Institute Working Paper no. 13; R Rodríguez Contreras and P Sanz, “Involvement of Social Partners in the National Recovery and Resilience Plans” (2022) Eurofound; Resolution of the European Social and Economic Committee on Involvement of Organised Civil Society in the National Recovery and Resilience Plans” EESC-2021-00693-00-00-RES-TRA, p 48.

<sup>65</sup> Art 11 Regulation (EU) 2024/1263.

<sup>66</sup> P Thinus, “The EU’s Transactional Approach to Rule of Law Spending Conditionality in the 2020s” (2024) 63 *Journal of Common Market Studies* 13.

<sup>67</sup> L Fromont, *op. cit.*, p 654.

<sup>68</sup> J Schuster, “Report on Economic Policies of the Euro Area 2020”, 2020/2078(INI), 16 October 2020, point K.

<sup>69</sup> B Crum, *op. cit.*, p 14.

<sup>70</sup> R Coman, *op. cit.*, p 107; D. Bokhorst and F Corti, *op. cit.*, p 720.

financial health of Member States linked, for example, to financial market pressure or fiscal and current account deficit or geopolitical issues such as the war in Ukraine – influence their bargaining power vis-à-vis the Commission as well as the flexibility they enjoy in implementing CSRs.<sup>71</sup> This, in turn, puts the principle of equality between Member States under pressure.

## IV Conclusion

The European Semester, though initially designed as a tool for economic and budgetary coordination, is increasingly emerging as an essential mechanism for risk management in the area of the rule of law within the EU. By incorporating CSRs on key institutional aspects such as judicial independence, anti-corruption measures and decision-making process, the European Semester contributes to preventing authoritarian tendencies and stabilising the foundational values of the EU.

The use of the European Semester as a risk regulation mechanism also highlights tensions between State sovereignty and the EU's institutional stability requirements. The Semester grants EU executive institutions significant influence over policies that remain under the competence of Member States, yet these institutions are not subject to adequate oversight by the European Parliament. Democratic and constitutional concerns regarding the European Semester are now extended to the EU's rule of law policy. This calls into question the coherence of the EU's action. Because if the European Semester was to be assessed according to democratic criteria and the rule of law, it might not pass the test. Furthermore, the European Semester primarily benefits dimensions of the rule of law that enhance the investment climate in Member States. This explains the predominant focus on issues such as justice, anti-fraud, and anti-corruption. In contrast, other dimensions of the rule of law – those with no direct impact on growth and competitiveness, such as LGBTQIA+ rights – continue to be addressed through political and judicial tools, the inefficacy of which is frequently criticised.

Ultimately, the future of the European Semester as a governance and risk regulation instrument will depend on its ability to balance its economic objectives with the preservation of the Union's fundamental democratic and legal values.

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<sup>71</sup> L. Fromont, *op. cit.*, pp 204–11. See also K Efstathiou and GB Wolff, “What Drives Implementation of European Union's Policy Recommendations to Its Member States?” (2022) *Journal of Economic Policy Reform* 2, 177–98.