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Of Funds and Values

The Rule of Law conditionality:
A politicization of the European Union Cohesion Policy?

by
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ABSTRACT

This research looks at if the Cohesion Policy is politicized, by looking at the newly proposed Rule of Law conditionality attached to funding, and what this signifies for European Integration. As the conditionality adds to the fold of an ever-increasing amount of internal EU conditionality attached to EU funding since 2014, this paper re-tools Schimmelfennig and Sedelmeier's external incentive model, and finds that there is a politicization of the Cohesion Policy. Furthermore, the research argues that it is Member States who are the agenda-setters for increased internal conditionalities and that European Commission acts on this politicization to serve a broad public interest. This research has found that it is a polarization of interests and values between the net-contributors and rule of law upholders, and net-receivers and rule of law breakers, attesting to that the policy is politicized. This paper found cleavages between political left/right on the issue and showcases geographical cleavages between Member States. In assessing what this politicization means for European integration, Liberal Intergovernmentalism was found best suited to explain the push for the proposal of a rule of law condition attached to funds and further discusses the role of Member States in European Integration and finds that in this case are the drivers of European Integration. Findings also include that net-contributing Member States prefer a more federal EU expenditure structure, to avoid national welfare losses.

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1. Introduction

The European Union is currently facing a Rule of Law crisis in their Member States. The EU finds itself in a difficult situation at the moment, where at one hand they are unwillingly funding illiberal Member States, notably through the Cohesion Policy, and on the other hand are seemingly unable to prevent or even punish the same illiberal Member States, mostly due to the unanimity rule in the European Council. The EU's Cohesion Policy is a powerful financial tool and is EU's foremost investment tool that seeks to promotes EU's overall harmonious development, strengthening of its economic, social and territorial cohesion. In particular, the policy aims at reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions. Representing roughly 30% of the EU budget, the Cohesion policy is one of the EU's largest policy areas¹. The EU have, like other international organizations and federal systems, progressively attached political conditions to the distribution of EU funding. The funding period 2014-2020 witnessed a large amount of negative, ex-ante conditionalities attached to funding, with the possibility of freezing or withdrawing funds if a Member State fails to achieve the conditions laid out.

In 2018 the European Commission proposed a regulation which aims at protecting the EU's budget from illiberal forces but is generally understood as a mechanism to resolve the illiberal crisis in Member States, effectively circumventing the Council, by freezing or withholding of Cohesion funding. Originally from a German proposal², the Commission drafted the so-called "rule of law conditionality" tied to EU funding, which is the most significant EU conditionality ever proposed, and is financially, legally and politically a powerful tool³, adding to an ever increasing trend of EU-governing through funding and the budget. The proposal has created heated debate between the Member States and certain member States are feeling targeted by this proposal and sees this is a massive power grab by the European Commission. The question of attaching rule of law criteria to EU funds have become a hot topic, where Swedish political parties⁴ in the run-up to the EU election have put it center stage in their political platform and

¹ The European Commission, *An introduction to EU Cohesion Policy 2014-2020*, (June 2014)

² The Federal Government. "Joint statement by the German government and the German Länder on EU Cohesion Policy beyond 2020":

³ European Commission, "Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in Member States". COM(2018) 324, Brussels (2018)

⁴ For the question in Swedish see appendix 1

is a polarizing question for the political parties. Politicization is the act of transportation of a non-political issue into the arena of politics. This unexplored research area leads this thesis to ask: *Is the Cohesion Policy being politicized and if so, what does this signify for European Integration?*

1.2. Aim, Scope and research question

The Cohesion Policy and the EU budget have always been a somewhat controversial topic. Critics of the policies state that the Cohesion Policy is wasteful and do not contribute to any positive change in the Member States. Given the policies aim at reducing territorial disparities, it is the poorer ones that benefits the most. It is therefore worrisome that the EU experiences an increasing democratic backsliding and the systematic violations of rule of law (RoL) by its Member States, notably in the poorer ones, which also are the ones who are the biggest beneficiaries of Cohesion Policy.

It is not only about economics, but democratic backsliding and illiberalism undermine the EU as a peacekeeper, normative international actor and contributes to the dysfunction of the single market. The EU seems unable to stop this trend and their traditional mechanisms have proven inadequate, notably article 7, to keep the democratic backsliders to change course, evident with Hungary and Poland. Hungary and Poland have been recorded systematically violating the rule of law, while countries such as Italy, Romania, Greece, Malta, Slovakia, Slovenia, Estonia and Bulgaria demonstrate systematic corruption and weak domestic institutions, which all threaten the EU's rule of law principles⁵.

This leads this research to ask: *Is the Cohesion Policy politicized, and if so, what does that signify for European integration?* By analyzing the latest proposal to link Rule of Law to the distribution of the Cohesion Policy, and this thesis aims to explore (1) why this is and (2) who the agents of this politicization are and lastly (3), what this trend signify for European Integration.

To answer these questions, this thesis will use empirical material to highlight the increased usage of internal spending conditionalities in Cohesion Policy since 2014 up until this day, and

⁵ Armin von Bogdandy, Antpöhler & Ioannidis “Protecting EU values”, in Jakab, András, and Dimitry Kochenov. 2017. *The Enforcement of EU Law and Values : Ensuring Member States' Compliance*. (Oxford : Oxford University Press, 2017)

the latest and most powerful conditionality (RoL proposal) as the focus point of this research. In order to analyze if the policy area is politicized, this thesis will review and analyze the voting results from the plenary sessions in the European Parliament regarding the proposal (January 2019), and to demonstrate whether one could see a polarization of opinions, values or interests based on those voting patterns. Statements and media coverage will be examined and analyzed in order to gain a deeper insight in the politicization process. The politicization analysis will be reinforced by assessing Schimmelfennig and Sedelmeier's⁶ four criterions for adoption of EU conditionalities, which sets out to explain why Member States would welcome EU conditionalities or why they try to oppose it. This is accompanied with Rational Choice Institutionalism, which theoretically assesses why Member States delegate power to supranational institutions in the first place and how to control the institutions after they have gained power. The findings of the politicization analysis will contribute in answering what this politicization signify for European Integration.

As De Wilde⁷ correctly points out, the EU budget is an interesting topic to research, due to the large range of different policy fields involved in the EU budget, as can be said about the Cohesion Policy, which covers a wide range of sub-policy fields and consists of over ½ of the budget⁸. In the Cohesion Policy there exists a very stark divide between the net-contributors and net-receivers, rich member states vs the poor, not to mention a geographical cleavage and a policy field which have been debated and gained much criticism. In a politicization-based research, this would be very optimal considering the affluence of different interests, values and ideas between the geographically and economically divided Member States. Given the economic cleavages in Europe, this is also a “battle” between East and West, West and South and West vs the rest. As suggested by De Wilde and reinforced in this research, the Cohesion negotiations involves most of the important institutions. Researching the European Union's budget is furthermore important due to the high level it has on European integration and the legitimacy of the Union itself⁹.

⁶ Schimmelfennig & Sedelmeier. “The Europeanization of Eastern Europe: The External incentives model revisited”. *Paper for the JMF@25 conference, EUI, 22/23* (June 2017)

⁷ Pieter de Wilde is an associate professor at NTNU, Norway.

⁸ De Wilde, Pieter. “How politicisation Affects European Integration: Contesting the EU Budget in the Media and Parliaments of the Netherlands, Denmark and Ireland” *Arena Report, Centre for European Studies, University of Oslo*, (2010), page 20

⁹ Ibid, page 21

It is fruitful to further operationalize the research question into several sub-categories:

- How can Schimmelfennig and Sedelmeier's criterions for adoption of conditionalities explain the politicization of the Rule of Law proposal?
- How does the voting patterns on the proposed regulation demonstrate politicization?
- How does the statements made regarding the proposal demonstrate politicization?
- If politicized, what does that signify about European integration?

1.3. Disposition of research

This thesis will begin with an (1) overview of the existing literature and (2) theoretical underpinnings of conditionalities, Rational Choice institutionalism (RCI), principal-agent model, liberal intergovernmentalism (Liberal IG) and the politicization of EU governance. After an overview (3) of the methodological approach, sources and material used for this research, this thesis will begin to examine empirical evidence of the rise of the so-called internal spending conditionalities attached to the current Cohesion Policy and the underlying mechanisms of EU's budget and Rule of Law.

After that, this research will lay down the “contextual” background, which aims to explain the reason and driving force for the increased spending conditionalities and for the proposal for the Rule of Law conditionality. Here, this thesis have divided between “Internal pressure”; which examines the political will of other Member States as an factor, “Brexit” as a driver for the arguably emboldening of the European Commission and recent “political developments” where the European continent have witnessed an increasing democratic backsliding and authoritarian forces at work in several EU member states, notably Hungary, Poland and Romania. Lastly in the contextual background we will look at the failure from the EU to uphold the Rule of Law and failure of their traditional mechanisms. In the analysis, this thesis will examine whether the Cohesion Policy is politicized by looking at the voting patterns in the European parliament regarding the proposal, official statements and media statements and by assessing Schimmelfennig and Sedelmeier's conditionality criterion. Before a short summary and conclusion, this research attempts to discuss what this politicization of the Cohesion Policy signifies about the direction and state of European Integration.

2. Literature review

Spending conditionality internally in the European Union is a topic that have received little academic attention. Most of the academic research have been on EUs usage of conditionalities in external affairs such as trade and development aid, where there exists a vast amount of research. There have also been several researches and academic papers written about the EU's usage of conditionalities on accession states and EU member states candidates, the so-called Copenhagen Criteria, which is also in the external category. There only exists a few papers, written strictly from a legal perspective. This thesis aims to fill that gap by explaining the rationale and contextual background of the increasing internal spending conditionalities from a political science angle. Although written about extensively, most of the authors fail to elaborate the deeper theoretical underpinning of conditionality and spending conditionality, which this thesis also aims to compliment.

The explanation for the lack of academic studies on this topic is arguably the novelty and perhaps the complexity of the area, combining many academic aspects and fields such as economics, EU law and political science.

Viorica Viță¹⁰ have written a number of studies on the matter, looking at the novel introduction of conditionalities in Cohesion Policy from a legal background, a comparative conditionality research looking at US conditional spending and EUs spending conditionality¹¹ and finally a study where she maps and gives an overview the EU's internal spending conditionality¹². Viță only highlights the trend and does not further investigate the phenomenon and only mentions briefly that the introduction of internal spending conditionalities moves the EU in a new direction of governance. This research draws relevant legal perspectives from Vițăs research but goes further in exploring the underlying concepts of why this phenomenon occurs and its consequences of politicization from a political science perspective. Vițăs research on the new spending conditionality trend in the EU, but only briefly mentions the proposed Rule of law conditionality in the upcoming post 2020 MFF¹³, which the focus point of this research. To measure the impact the Cohesion policy has on European identity, Borz, Brandenburg and

¹⁰ Viorica Viță is a research fellow at the European Institution University

¹¹ Viță, Viorica. "The Rise of Spending Conditionality in the EU: What Can EU Learn from the U.S. Conditional Spending Doctrine and Policies?" *EUI Department of Law Research Paper No. 2017/16* (2017)

¹² Viță, Viorica. "Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality." *Cambridge Yearbook of European Legal Studies*, vol 19 (December 2017): 116–43.

¹³ Ibid

Mendez¹⁴ briefly mentions in the end of the research how the newly proposed rule of law conditionality might create politicization of the policy¹⁵. The three authors do not go further in discussing this issue, which is what this research will compliment, looking specifically if this rule of law proposal politicizes the Cohesion Policy and what that signifies for European Integration.

Schimmelfennig¹⁶ and Sedelmeier's¹⁷ research on EU's conditionality on candidate Member States lays down a typology of conditionalities that are specifically important for this thesis¹⁸. Here the authors found in an extensive research four main criteria's that determine whether countries will accept the conditionalities from the EU and on what grounds. This typology is applied to the so-called "candidate states", and have not been applied to internal EU affairs, which is what this thesis will do. As laid out by Schimmelfennig & Sedelmeier, conditionalities are a mechanism that disrupts the recipient government by introducing funding in order to adopt reforms and can take place because the receiving government deems the benefits of funding are greater than the costs of adaptation¹⁹. Below are the four criterions.

1) Reward: This condition is more likely to be implemented if the rewards are material, rather than the reward being praise from the EU. Material refers to the payment the European Commission grants member states through the Cohesion Policy and other EU funding. Here, the most important factor is the size of the payment where some member states benefit much more than other member states and hence might have different motivations.

2) Conditions: are based on the clarity and formulation of the conditions laid out, in this case, by the European Commission in the rule of law proposal. Vagueness on the other hand creates a situation where governments delay, underachieve or makes mistakes. Here, this research will look at the definitions laid out by the EC in order to evaluate how concise they are combined with comments or opinions by experts or politicians regarding the clarity of the proposal.

¹⁴ Borz, Brandenburg and Mendez, *The Impact of EU Cohesion Policy on European identity: Results from the COHESIFY citizen survey*. (2018), page 22

¹⁵ Ibid, page 23

¹⁶ Frank Schimmelfennig is a professor in European Politics at ETH Zurich

¹⁷ Ulrich Sedelmeier is an associate professor in International relations at London School of Economics and political science

¹⁸ Schimmelfennig & Sedelmeier. «The Europeanization of Eastern Europe: The External incentives model revisited». *Paper for the JMF@25 conference, EUI, 22/23 June* (2017), page 3-4

¹⁹ Svea Knoch, A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union, *German Development Institute* (2015), page 98

3) *The credibility*: refers to the EU's credibility to withhold or suspend funds in the case of non-compliance and on the other hand, the ability to deliver reward if rule is successfully adopted. To further conceptualize this: *How credible is it that the EU would withhold or suspend funds and how credible are they to reward successful condition adaptation²⁰?*

4) *Cost of adoption of conditionalities*: This criterion refers to what it costs a country to accept certain conditionalities. Actors will review of size of domestic adoption costs to determine if they are able or willing to accept or reject the conditionality. As Schimmelfennig and Sedelmeier explains, the adoption costs are expected to be high, otherwise such an adoption would have happened without conditionalities. Governments might be unwilling to adopt this condition if they deem it would result in a loss of power. This research will look at current state of Rule of Law in the Member States, given that this conditionality concerns itself with Rule of Law. This criterion is a combination of the criteria's above, where credibility, size, speed and clarity are vital components for determining the whether the cost of conditionality adoption is high or low and therefore will be the most central criteria for this research.

Mario Kölling²¹ explores the link between conditionalities and rule of law in the European Structural and investment funds post 2020 but does not explore the deeper nature of this deviation, the relationship between supranational institutions and national institutions nor if it is in fact being politicized. Kölling's study does however provide valuable research that gives this thesis a foundation to further investigate the politicization aspect. Gabor Halmi released an article in 2019 where he explored the possibility and desirability of a rule of law conditionality attached to European Funds²² and linked this to the failure of current EU mechanisms to remedy the situation of democratic backsliding countries such as Hungary and Poland. This is a valuable insight, but Halmi makes however no comment on how this shift affects the institutions involved nor the effects of the current spending conditionalities, which will be central to this research and thus gives important insight into the internal political mechanisms of the EU.

²⁰ Schimmelfennig & Sedelmeier. "The Europeanization of Eastern Europe" (2017), page 3-4

²¹ Kölling, Mario. Policy Conditionality - a new instrument in the EU budget post-2020?, *Sieps*, (2017)

²² Halmi, Gábor. "The Possibility and Desirability of Rule of Law Conditionality." *Hague Journal on the Rule of Law* 11 (1): 171–88 (2019)

Using the principal-agent analysis, John Bachtler²³ and Martin Ferry²⁴ explored how the EU has used its control mechanisms and conditionalities to influence Member States in the Structural funds²⁵. The authors found that tensions between conditionalities and that top-down control mechanisms are limited in influencing Member States. This paper is very technical and does not explore politicization or what these conditionalities indicates in terms of future European integration. It gives however a valuable insight into Cohesion Policy conditionality and the usage of principal-agent theory.

English academic articles of the politicization of the Cohesion Policy is as far as this research is concerned, non-existent. Although the research on politicization of European integration is rather new, there exists a large amount of research in this area. Notably scholars in this field are De Wilde, Zürn, Grande, Hutter, Rauh and Statham. De Wilde provides very valuable and insightful academic contribution for analyzing politicization in the EU.

In his article “*Show Me the Money!*’ Political Conflict in EU Redistributive Politics and the Constraining Dissensus”, De Wilde researches the Eurosceptic climate in the EU and its effect on the EU budget negotiation. De Wilde aims to investigate whether media portrayal of the budget negotiations is pitting Member States against each other and therefore could further Eurosceptic sentiment and that this might reinforce the “constraining dissensus”. This article provides valuable insight in the budget, which is a part of this thesis as well. It does not however deal with rule of law nor conditionalities, two elements which are central in this research.

Michael Zürn²⁶ describes in his article “*The politicization of world politics and its effects: Eight propositions*” the rationale and the resistance of international institutions and of the politicization of international institutions. Zürn highlight some of the dangers of this politicization of the international, such as negligence of national politics. The article provides insight into the different underpinnings of politicization as a concept, but does not directly tackle any specific EU policy, which this thesis aims to do.

²³ John Bachtler is a professor of European policy studies at University of Strathclyde

²⁴ Martin Ferry is a senior research fellow at the University Strathclyde

²⁵ Bachtler, John, and Martin Ferry. “Conditionalities and the Performance of European Structural Funds: A Principal-Agent Analysis of Control Mechanisms in European Union Cohesion Policy.” *Regional Studies* 49 (8): 1258–73 (2015)

²⁶ Michael Zürn is a professor of International relations at the Free University Berlin

In their article “From the euro to the Schengen Crisis: European integration theories, politicization and identity²⁷” Börzel and Risse assesses which of the three dominant integration theory is best suited in explaining the EU reaction to the euro and immigration crisis. With Liberal IG, postfunctionalism and neofunctionalism, this article provides vital information on integration theories and their view on politicization, but the research focuses on different aspects than this research, given the focus on Rule of Law, Cohesion Policy and conditionalities.

Christian Rauh’s²⁸ article titled “*EU politicization and policy initiatives of the European Commission: the case of consumer policy*²⁹” explores the policy consequences of EU politicization and concludes that this politicization challenges the “often technocratic” mode of the Commission and incentivizes the Commission to initiate legislation on what they deem as publicly salient issues. This article sheds great light on the drivers of politicization and the role of the Commission. It does not, however, shed any light on internal conditionalities or the Cohesion Policy, but gives this research a valuable theoretical framework for assessing politicization.

As to the academic research on Rule of Law in the European Union, the research in this topic is abundant. Carlos Closa³⁰ explored in his article from 2019 the Commissions expectations on eventual compliance can explain its different behavior when dealing the Rule of Law crisis in Hungary and Poland³¹. This article provides insight information in the EC response to RoL crisis in Hungary and Poland, but Closa does not explore the RoL conditionality or using funds for leverage. Oliver³² and Stefanelli³³ investigates the EU’s efforts to strengthen the Rule of Law within and the problematic unanimity rule of the Council³⁴. The authors highlight the

²⁷ Börzel, Tanja & Risse, Thomas. “From the euro to the Schengen crises: European integration theories, politicization, and identity politics”, *Journal of European Public Policy*, 25:1, 83-108, (2018),

²⁸ Christian Rauh is a research fellow at the Free University Berlin.

²⁹ Rauh, Christian. “EU Politicization and Policy Initiatives of the European Commission: The Case of Consumer Policy.” *Journal of European Public Policy* 26 (3): 344–65 (2019)

³⁰ Carlos Closa is a part-time professor at the School of Transnational Governance, European University Institute, Italy.

³¹ Closa, Carlos. “The politics of guarding the Treaties: Commission scrutiny of rule of law compliance”. *Journal of European public Policy*, 696-716, (2019)

³² Peter Oliver is teaching at the Université Libre de Bruxelles

³³ Justine Stefanelli is a senior research fellow at British Institute of international and comparative law

³⁴ Oliver, Peter, and Justine Stefanelli. “Strengthening the Rule of Law in the EU: The Council’s Inaction.” *Journal of Common Market Studies* 54, no. 5 (September 2016): 1075–84

failure of the Council of the EU to provide solutions in the case of Poland, but that in the case of Hungary, the EP's response was different.

In a paper published in 2019, Hooghe³⁵ and Marks³⁶ outline the main European Integration theories views on recent and ongoing EU crisis, such as Brexit, Migration and Illiberalism. The authors highlight that due to the intergovernmental strain in the Article 7 process, the Commission are seeking new channels for influence, notably through the rule of law conditionality in the Cohesion policy. Hooghe and Marks questions if this have created an impetus of supranationalism³⁷. The article aims only to highlight the theories and issues but does not dive deeper into the Rule of Law conditionality question or politicization, which this thesis will do.

3. Theoretical Framework

Choosing a theoretical framework for assessing whether the Cohesion Policy is politicized by the proposed internal rule of law conditionality is challenging, considering the novelty of this topic in EU research, both in terms of the type of conditionality discussed (internal), also in terms of politicization, where we will investigate it as both a response from Member States of EU increasing powers and a Commission that acts on a publicly salient issue. The challenge of this research lies in the theoretical conceptualization of “conditionality” on internal EU affairs, a previously un-research area. It is this thesis’s opinion that in order to tackle this problem successfully, a framework for internal usage of conditionality needs to be developed, together with the examination politicization theories and a fundamental awareness into the complex power delegation process in the EU. Power, according to Max Weber, is “*the possibility of imposing one’s will upon the behavior of other persons*”³⁸. The choosing of the theoretical framework and concepts are rooted in the complexity of the research question.

³⁵ Lisbeth Hooghe is a distinguished professor at University of North Carolina, Chapel Hill, US.

³⁶ Gary Marks is a professor at University of North Carolina, Chapel Hill, US.

³⁷ Hooghe and Marks. “Grand theories of European integration in the twenty-first century”, *Journal of European Public Policy*, (2019)

³⁸ Oliver, Dawn. *Common Values and the public-private divide*, Law in Context, (Cambridge University Press 1999), page 34

National delegation of power to supranational institutions such the Commission have given the supranational institution the power to impose conditionalities on internal affairs and thus Member States. As one of the reasons why politicization occurs, is due to a transfer of power to supranational institutions, it is therefore important to explore the theoretical approaches of power delegation in order to gain a deeper insight into the proposal of the Rule of law conditionality and therefore into the politicization process. This thesis will first review the theoretical underpinnings of conditionalities before discussion the theoretical background of power delegation and the power of the EU vis-a-vis Member States and finally, the conceptualization of politicization.

3.1 Conditionality: Theoretical underpinnings

Given the lack of attention on the EU's usage of internal conditionalities, this thesis will borrow some theoretical reinforcements from federal and international relations literature. Terence Daintith³⁹ states that a government can choose to launch conditional financial resources to gain specific policy objectives, such as Rule of Law. This he labeled "government by dominium". "Government by Imperium" on the other hand, are governmental conditions that pursue binding legal rules backed by sanctions. The two government tools can be used in parallel. Imperium power is according to Daintith "the government's use of the command of law in aid of its policy objectives"⁴⁰. So instead of using traditional legal rules back by sanctions, which is the current *modus operandi* in the EU, a "government" might govern through the budget, with economic means with strings attached such as political conditionalities⁴¹. This type of government by imperium model is best fitting for this research, given the Commissions evident increase of governing with strings attached to economic funding. Federal government use their spending power to influence the behavior of regions or to coordinate policies among the governments⁴².

³⁹ Terence Dainthith is a professor in law at University of London

⁴⁰ Dawn, *Common Values and the public-private divide*, page 36

⁴¹ Vičā, "What Can EU Learn from the U.S. Conditional Spending Doctrine and Policies?", page 3

⁴² Kölking, Mario, *Policy conditionality - a new instrument in the EU budget post-2020?*, SIEPS, swedish institute for European policy studies 2017, page 2

Conditionality, or spending conditions in the US federal system, are fundamental governing tactics that involves the art of governing through the budget⁴³. The dominant underpinning EU conditionalities is bargaining strategy, reinforced by reward that makes governments comply with its conditions⁴⁴. Given that the EU is often called *sui generis*⁴⁵, one of its kind, it is difficult placing the Union under any specific governmental label, however for this thesis it can be viewed as a sort of hybrid between a federal governing style and international organization⁴⁶.

Conditionality are in this thesis seen as a set of agreements a government might make in order to provide greater social, economic or political influence, to avoid more harsh or costlier methods⁴⁷. In the case of the RoL proposal, this is certainly the case, where the Commission gains greater economic and political influence over the rule breaking Member States, given that they can set the terms attached to the distribution of the Cohesion Policy funds. However, this thesis argues that it is not to avoid harsher or costlier methods, but the fact that other methods and mechanisms have previously exposed inefficiency and yielded no results, mostly due to Member States reluctance to change course and adhere, and the unanimity rule in the Council. Conditionalities can create progress and growth through forced reforms, which creates political support which in turn will allow the reforms and modernization to continue⁴⁸.

The conditionalities in Cohesion Policy 2014-2020 can be understood as a hybrid between conditionalities found in federal and international relations. Conditionalities that are used externally have requirements/pre-conditions attached to the disbursement of financial resources, which aims to change the recipient's behavior towards the priorities the donor wants. When used inside the EU it becomes an internal governance tool⁴⁹. The main underpinning of conditionalities are from economic theories, which have argued that financial assistance is

⁴³ Viță, "What Can EU Learn from the U.S. Conditional Spending Doctrine and Policies?", page 3

⁴⁴ Schimmelfennig & Sedelmeier. "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe", *Journal of European Public Policy*, 669-687 (2004) page 662

⁴⁵ Phelan, William. "What Is Sui Generis About the European Union? Costly International Cooperation in a Self-Contained Regime". *International Studies Review*. 14 (3): 367–385 (2012)

⁴⁶ Viță, V. "Research for REGI Committee – Conditionalities in Cohesion Policy, European Parliament". *Policy Department for Structural and Cohesion Policies: Brussels*. (2018), Page 16

⁴⁷ Veebel, Viljar, "European Union's positive conditionality model in pre-accession process ", *TRAMES*, 13(63/58), 3, 207–231 (2009), page 208

⁴⁸ Ibid, page 209

⁴⁹ Viță, V. "Conditionalities in Cohesion Policy", page 16

conducive to growth when conditional on good policies. So, what gives the EU power to impose these conditionalities?

3.2 Discussion of theoretical approach

When looking at the relative power of the EU vis-a-vis Member States, there are many competing theories that aims to explain this complicated relationship. Intergovernmentalism looks at the EC as merely an agent of the Member States and its main function is to facilitate cooperation between the governments of member states. The delegation of the right to initiate legislation proposals to the Commission, are according to IG a way to make legislation proposals neutral and to avoid that the final decision will be unfair⁵⁰. In Intergovernmental theory, the Member States delegate national power and competences to the EC based on efficiency and credibility of the Commission. Bache, Bulmer, George and Parker notes that neofunctionalists main critique of intergovernmentalism's view of the Commission, is that the Commission might use the margin of discretion that the Member States have delegated in order to maneuver the member states towards objectives in which they had not hope for or anticipated⁵¹. *Discretion* should be understood as the degree of autonomy or room to maneuver the agent has in performing the tasks set upon it to do. This thesis deems intergovernmentalism ill-suited to deal with this type of research, given the importance of the level of discretion which IG deems unimportant, and as we will see is an important theoretical aspect of this research. Equally with neofunctionalism, with its overly focus on interest groups and spillover, which this thesis believes are not of importance in explaining this phenomenon⁵².

The theoretical challenge of this thesis is based on the fact that even though this increased usage of conditionalities, i.e. top-down control, the Rule of Law conditionality proposal came from a German proposal, supported by France and embraced by other western Member States.

Therefore, this thesis sees the rational branch of European Integration suitable. Liberal intergovernmentalism, combined with principal-agent theory and Rational Choice Institutionalism are appropriate theoretical approach to explain the Rule of Law proposal and

⁵⁰ Bache, Bulmer, George and Parker, *Politics in the European Union*, fourth edition, 2015, page 238

⁵¹ Ibid, page 238

⁵² Ibid, page 12

thus to investigate the possible politicization of the Cohesion Policy. Liberal Intergovernmentalism will highlight why power is delegated and Rational Choice Institutionalism combined with Principal-agent theory can show what an agent can do once the power is delegated.

Moravcik clearly defined Liberal intergovernmentalism (Liberal IG), a baseline rationalist theory, in the 1990s, as where the Member States as rational actors and the main drivers of European integration. Liberal IG assumes that European integration moves forwards when Member States shares the same preferences. States find themselves in different types of interdependence. A realist account of this would be that national interests is a zero-sum game, and that one states gain is another's loss⁵³. This we will call negative interdependence. Member States would therefore form the same preferences in order to avoiding negative interdependence and delegates therefore power to supranational institutions⁵⁴. Moravcik explains that European Integration occurs due to Member States initial pursuit of economic gains, and that they are willing to relinquish national power to the supranational in order to gain this⁵⁵. Liberal IG can help to gain insight into The Rule of Law proposal, considering that it originally came from the German government⁵⁶, taken up and proposed by the EC and was swiftly backed by other Western Member States who feared the illiberal Member States could hinder the functioning of the Single Market and therefore jeopardize national welfare. Member States pursue European integration if they are convinced that they would reap greater benefits from that rather than national policies and pool sovereignty to avoid negative interdependence⁵⁷. Member States delegate political power to the EU in order to solve societal problems that can be blocked or delayed in a domestic setting or believe that the state would reap greater rewards than unilaterally, autonomously or by forming loose national policies⁵⁸.

In crisis, Member States are more willing to pool and delegate sovereignty, especially if the crises showcases previous failures due to decentralization and more delegation is needed to

⁵³ Kleine, Mareike, and Mark Pollack. "Liberal Intergovernmentalism and Its Critics." *Journal of Common Market Studies* 56 (7): 1493–1509 (2018)

⁵⁴ Tanja A. Börzel & Thomas Risse, "From the euro to the Schengen crises: European integration theories, politicization, and identity politics", *Journal of European Public Policy*, 25:1, 83-108, (2018), page 92

⁵⁵ Kleine, Mareike, and Mark Pollack. "Liberal Intergovernmentalism and Its Critics." *Journal of Common Market Studies* 56 (7): 1493–1509 (2018)

⁵⁶ The Federal Government. "Joint statement by the German government and the German Länder on EU Cohesion Policy beyond 2020": https://www.bmwi.de/Redaktion/EN/Downloads/S-T/stellungnahme-bund-laneder-kohäsionspolitik.pdf?__blob=publicationFile&v=1 (2017)

⁵⁷ Schimmelfennig. "Liberal intergovernmentalism and the euro area crisis", *Journal of European Public Policy*, 22:2, (2015) 177-195

⁵⁸ Ibid

safeguard gains from integration. Liberal IG states that Member States only delegate minimum amounts of authority to the EC in order to keep the Member States in control. In macro-economic fields, ruling government coalitions will form same preferences. This statement underlines the current RoL proposal, in which several Member States bands together to support the proposal. Although Hooghe and Marks argues that illiberalism does not pose an economic threat⁵⁹, this thesis opposes this statement because illiberalism could very well refuse to comply with Single Market rules and therefore pose an economic threat.

3.3 Rational Choice and Principal-Agent theory

Rational Choice Institutionalism (RCI) and Principal-agent theory compliments the underlying theories of Liberal IG with a more in-depth contribution to how the agent (EU) can maneuver and gain autonomy. As can be seen above, neofunctionalism, intergovernmentalism and social constructivist scholars have looked and debate executive politics in the EU, though it is RCI and principal-agent theories that have proven itself to be the dominant theory in the study of executive EU politics⁶⁰. Mark Pollack⁶¹, found that the principal delegates power based on convenience and cost-benefit analysis⁶². The Commissions autonomy varies and is different according to policy area, but in terms of agenda setting, it has been demonstrated that the European Commission enjoys the highest amount of agenda-setting power when the information is imperfect, the uncertainty about future plans are high and asymmetrical distribution of information between the agent and the principal favors the agent, the European commission⁶³.

Rational choice theory and the principal-agent theory, often considered a heuristic tool, can help identify the elements for understanding the dynamics of power, once power delegation from Member States to the EU have taken place⁶⁴. Such a relationship is created through the delegation by the principal (Member States) to the agent (EU). RCI highlights that where Quality majority voting (QMV) applies, it serves a Member State best to seek help from the

⁵⁹ Hooghe and Marks. "Grand theories of European integration in the twenty-first century", (2019)

⁶⁰ Pollack, Mark A. "Rational choice and EU politics." *Handbook of European Union Politics* (2007): 31-55. page 39

⁶¹ Professor in political science and law at Temple University, USA: <https://sites.temple.edu/pollack/>

⁶² Bache, Bulmer, George, and Parker. *Politics in the European Union*, page 27

⁶³ Pollack. "The New Institutionalism and EC Governance: The Promise and Limits of Institutional Analysis" (1996), page 449

⁶⁴ Delreux, T, Adriaensen, J. "Introduction: Use and limitations of the Principal-Agent model in Studying the European Union". In *The Principal Agent Model and the European Union*, (Palgrave Macmillan, 2017)

Commission⁶⁵. RCI offers some interest insight into how Member States might control this delegated power, which gives this thesis a better theoretical insight when analyzing voting patterns and the Commission's legislative method to implement this proposal. Pollack highlight however that there is a danger delegating power to supranational institutions on the basis that the agent might have preferences on their own and start acting on their preferences and not always their principals' best interest, known as discretion. Delreux compliments this argument, by stating that the agent might act in an interest-induce manner, which is when the agent act in an opportunistic way to maximize their own preferences and therefore might diverge from the principal's preferences⁶⁶.

Legislative overruling might be a credible threat; however, the effectiveness of this threat is solely determined by voting rules. This is apparent in European Council voting, where they follow an unanimity voting rule, while QMV voting is viewed with a more integrationist and interventionist policy⁶⁷. This is a very important aspect of this research, where it is evident that the European Commission have carefully crafted a voting procedure that benefits them the most and is of an interventionist nature. For Rational Choice institutionalism, the principals try to limit the discretion of the agent and to control its agent through "sanctioning, threat of budget cuts, of legislative overruling by the member states and - most drastically - of a revision or cutting-back of the powers of the agent"⁶⁸. Pollack gives important insight in this statement, given that the proposal is a self-standing regulation accompanied with the MFF and is based on Article 322, where QVM applies and therefore overruling might prove difficult.

Cost-benefit analysis are central elements in both International relation theories and rational choice theories⁶⁹. International relation theories view conditionalities are used by institutions or countries as a mechanism to influence the behavior of other countries by incentives mostly in the form of funding. RCI is a powerful theory for understanding what Zurn and De Wilde explains as *level*, meaning the power of the institutions vis-a-vis Member States and of *scope*, meaning the breadth of policy fields were the EU have power, a pivotal aspect of this research.

⁶⁵ Bache, Bulmer, George and Parker, *Politics in the European Union*, fourth edition, 2015, page 26

⁶⁶ Delreux, T, Adriaensen, J. "Introduction: Use and limitations of the Principal-Agent model in Studying the European Union". In *The Principal Agent Model and the European Union*, (Palgrave Macmillan, 2017)

⁶⁷ Pollack. "The New Institutionalism and EC Governance: The Promise and Limits of Institutional Analysis", *Governance* 9(4):429 - 458 · (1996), page 435

⁶⁸ Ibid, page 446

⁶⁹ Svea Knoch, "A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union", *German Development Institute* (2015), page 98

This thesis believes that a liberal intergovernmental approach, supplemented with principal-agent theory gives a strong theoretical framework for this research.

3.4 Politicization as a concept

This thesis defines politicization is the act of transportation of a non-political issue into the arena of politics. Although there are numerous definitions, scholars such as De Wilde and Zurn also notes this, defining it as “*Politicization in general terms means the demand for or the act of transporting an issue into the field of politics - making previously unpolitical matters political*”⁷⁰. Politicization is a theory and concept that have in the recent decade been increasingly applied to many EU studies and research, as a result of the ending of the so-called “permissive consensus”⁷¹.

Politicization can be seen when a publicly visible polarization of interests, values or opinions towards the process of policy formation within the EU⁷². There are several debates regarding why politicization occurs, but several scholars in the field, such as Zurn, Hutter, Grande and De Wilde, all highlights that the main drive for such a politicization is the ever-increasing authority of the EU and that politicization happens as a result of authority transfers from Member States to the EU⁷³. European institutions have gained a degree of authority that far precedes any other international institution. Likewise, other prominent scholars such as Grande and Hutter (2015), Hoeglinder (2015) and Schmidtke (2015) have analyzed politicization of European Governance and concluded that it has increasingly escalated since post-Maastricht period, mostly due to the transfer of power from national government to the supranational institutions, which have created intense politicization in regards to areas that are of financial, identity political and sovereignty⁷⁴. It is therefore why this thesis will use politicization theory, given that the Rule of Law conditionality is a strong sign of power accumulation for the EU and the powers to use

⁷⁰ Zurn, Michael “The politicization of world politics and its effects: Eight propositions”, *European Political Science Review* (2014), 6:1, 47–71, page 50

⁷¹ De Wilde, “How politicization affect European Integration”, (2010), page 6

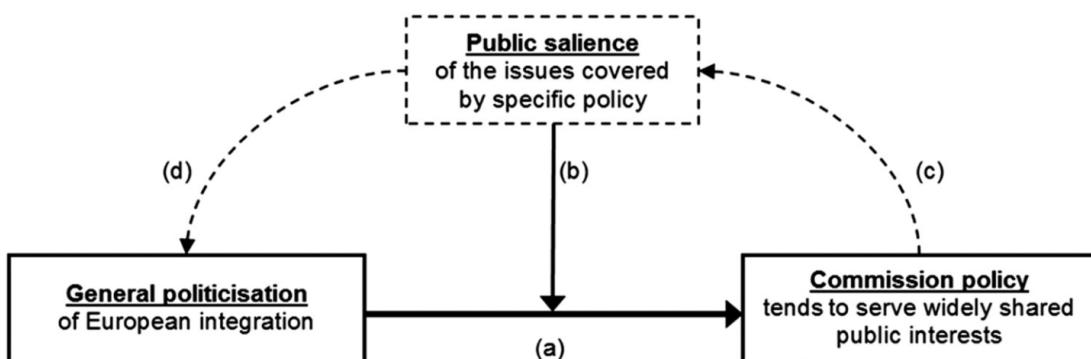
⁷² Statham, Paul, and Hans-Jörg Trenz. “How European Union Politicization Can Emerge through Contestation: The Constitution Case.” *Journal of Common Market Studies* 51 (5) (2013): 965–80, page 966

⁷³ De Wilde & Zurn. “Can the Politicization of European Integration Be Reversed?*”, *Journal of Common Market Studies*, Vol. 50, pp. 137-153, (2012), page 138

⁷⁴ Hutter, Swen, and Edgar Grande. “Politicizing Europe in the National Electoral Arena: A Comparative Analysis of Five West European Countries, 1970-2010.” *Journal of Common Market Studies* 52 (5): 1002–18 (2014)

funds as leverage for good rule of law behavior, a novelty in EU governance. Equally important is Rauh's theory which assumes that the Commission acts to legislate on publicly salient issues.

General EU politicization can incentivize the Commission to adopt policies that are widely shared public interests⁷⁵. In issues that are particularly salient, the Commission will weight risks of isolating traditional stakeholders in order to please publicly supported issues and topics. The Commission's cost-benefit analysis takes in, as mentioned, isolating traditional stakeholder or to contradicting present legislation against the risk of its policy being evaluated and understood by the broad public. If the risk of public evaluation is higher, it might directly feed back to the political evaluation of supranational institutions, European integration and the Commissions competences, which, depending on what the EC decides, can be positive or negative.



⁷⁶ **Table 1:** Illustration of Rauh's theory of general EU politicization – based on that the EC tends to serve public interests

The growing awareness of international institutions and polarization of political preferences is evident when studying the politicization of European integration⁷⁷, and becomes crystallized in situations when the Commission enjoys the “initiation right” and seeks to further the European integration – sometimes to the dissatisfaction of some Member States. Politicization share similar features of cleavage theories, where there exists structural tension between national

⁷⁵ Rauh, Christian. “EU Politicization and Policy Initiatives of the European Commission: The Case of Consumer Policy.” *Journal of European Public Policy* 26 (3): 344–65, (2019)

⁷⁶ Ibid

⁷⁷ Rauh, “EU Politicization”, page 346

identities, public understanding and an advancing European integration that seeks to further their power of the European integration course⁷⁸. This becomes very clear in the Cohesion Policy, where there exists a clear cleavage between net-contributors and net-receivers. This is also amplified by the geographical division between these two groups, namely East and West.

The links between rational choice institutionalism, conditionalities and politicization are very suitable for this type of research, where there both exists a power relationship between the supranational institutions and Member States.

4. Methodology

The challenges of this research lie in the unexplored area of “internal conditionalities”. To overcome this challenge, the research will employ Schimmelfennig and Sedelmeier’s conditionality criteria’s, which this research will “re-tool” in order to make it usable for internal affairs. Schimmelfennig and Sedelmeier’s external incentives model aims to explain the rationale of conditionalities to promote rule transfers on the eastern enlargement, but as Mizell (2015) explains⁷⁹, the model is broad and can therefore be used broadly. This thesis therefore suggests by comparing the rule of law conditionality proposal and the Copenhagen criteria (given that those are the conditionalities used for external assessment) we could see if they are applicable for internal measures.

In order to gain a deeper understanding of the recent increase in internal conditionalities, this research will highlight the background of the 2014 expansion of conditionalities in the Cohesion Policy and the underlying rationale, to see if the motives and actors involved correlates and gives a stronger insight and indication into the Rule of Law conditionality. By doing this, it will also be easier to see if the Cohesion Policy is politicized, and if so, what this signifies for European Integration.

This research follows an interpretive policy analysis, which Wagenaar defined as “An interpretive approach to policy analysis is one that focuses on the meanings of policy, on the values, feelings, or beliefs they express, and on the processes by which those meanings are

⁷⁸ Statham, Paul, and Hans-Jörg Trenz. “How European Union Politicization Can Emerge through Contestation: The Constitution Case.” *Journal of Common Market Studies* 51, 5 (2013): 965–80, page 967

⁷⁹ Mizell, Lee. “Conditionality in practice: Emerging lessons for public investment”. *OECD & European Commission, The graduate institute of international and development Studies, Geneva*, (2017), page 9

communicated to and ‘read’ by various audiences”.⁸⁰ The choice for this method was based on the fact that in a politicization research, a polarization of interests occurs due to cleavages in economic, national and political reasoning, wherein a focus on the meaning of policies, the values, feelings or beliefs they express would be best suited in order to understand this polarization, and why some would welcome conditionalities and why some might not.

This thesis has based the case selection on the dynamics of the Cohesion Policy. The Cohesion Policy, there is a divide between those to contribute most to the EU budget and those who receive the most. Furthermore, when looking at the Rule of Law conditionality, this thesis has chosen to look at Hungary, Poland and Romania for the analysis of politicization due to the fact that these three countries exhibit most severe and public cases of rule of law violation. Not only are these countries Rule of law violators, they are also major beneficiaries of the Cohesion policy, which makes the case selection ideal. Given this research’s politicization focus, i.e. polarization of values and interests, the research will also focus on the “others” are saying, which are those who are net-contributors to the Cohesion Policy and are not rule of law violators. Pollicization can be assessed where one can witness a polarization of opinions, interests and values, and therefore it will be fruitful to not only look at Hungary, Poland and Romania, but what the “others” also say.

When looking at statements connected to the proposal, this research considers qualitative content analysis the optimal tool. Qualitative content analysis is very similar to discourse analysis; however, it distinguishes itself on the fact that qualitative content analysis concerns itself with smaller aspects of a text, which are usually statements, paragraphs or claims made. As discourse analysis treats the texts holistically, qualitative content analysis particular aspects reflected in a text. This method is particularly useful in studies that are concerned with politicization, since it allows the researcher to focus on actor behavior⁸¹.

⁸⁰ Hendrik Wagenaar, "Interpretation and Intention in Policy Analysis," in *Handbook of Public Policy Analysis: Theory, Politics, and Methods*, ed. Frank Fischer, Gerald J. Miller, and Mara S. Sidney (2007)

⁸¹ De wilde, “How Politicisation Affects European Integration”, page 30

4.1 Sources and material

The sources and material used in this research can be compiled into four categories. The first category contains firsthand material from EU institutions and legal documentation regarding legislation, empirical information and are used to explain this highly complex and intricate topic that is the Cohesion Policy, legislative process and the EU budget. The second category are mostly research and academic literature that have highlighted some aspects of this research. As stated in the literature review, the research on this topic is non-existent and therefore the academic material is scattered and compiled of different sub-topics used in this thesis. The third category are mainly mass media sources, used for statements from officials regarding the RoL proposal.

The fourth and final category are material gathered for the analysis and are mainly external quantitative data, such as votewatch.eu for data regarding votes, democracy index for evaluation of conditionality criteria's and other quantitative datasets provided from EU databases regarding the EU budget and the Cohesion Policy. The last category of material will be used to measure the conditionality criterions. The publications are public.

5. Contextual background

Now that we have covered the theoretical and methodological aspects, this thesis will highlight the contextual background in order to get a clearer picture of the Rule of law in the EU, the driving forces and rationale for the increased spending conditionalities of the Cohesion Policy and the proposal on protection of the EU's budget that contains a Rule of Law conditionality. In order to highlight the trend of increasing spending conditionalities from the European Commission and if or why it is politicized, it is important to understand some of the motivations and logic behind this trend. This thesis has outlined four pivotal storylines, which includes; what this thesis deems as a Brexit-effect, internal pressure and evidence of illiberal trends in Poland, Romania and Hungary combined with other countries that have evidence of deteriorating democratic values. One of the most important aspects for the storyline in order to understand the rule of law conditionalities is the failures of EUs traditional enforcement mechanisms and the frustration of the European Council unanimity rule regarding Article 7.

5.1 Cohesion Policy - an overview

Cohesion policy is EU's main goal is to close regional economic and structural disparities in the EU's member states and contribute to the EU's overall harmonious development and is a manifestation of EU solidarity⁸². Cohesion Policy of the European Union is a rather recent policy area and gained economic and political momentum after the reform of 1989, after the accession of Portugal and Spain in 1985⁸³. The accession of Spain and Portugal revealed the need for more regional funding to close disparity gaps⁸⁴. After 1988 Cohesion policy have been reformed several times. As Piattoni⁸⁵ and Polverari⁸⁶ explains, the enlargement of the European Union and the need to prioritize the new goals of the Lisbon Treaty was in fact the most radical reform of the Cohesion policy "since 1989". The EC felt that the enlargement would lead to a widening of the economic development gap, that socioeconomic disparities will double and the GDP per capita will decrease by 12,5%⁸⁷.

Common provisions regulation of 2013 introduced *common rules* for five different funds, merging European regional development funds, European Social Fund, Cohesion Fund with the European agricultural fund for rural development and European Maritime and fisheries fund, now called European Structural and Investments fund (ESI)⁸⁸. The motivation behind the merger was that common rules for the funds the strategic investment would have a greater impact and create less confusion. The five funds follow a single set of rules and goes under the name of Structural and Investment Funds (ESI funds)⁸⁹. Although they represent a very small amount of European GDP (0,4%) they have a big impact on member states and for this period (2014-2020) account for 454 billion euros and combined with additional national and private

⁸² Müller, Klaus. "European added value in practice". *European Parliamentary research service*, (2018)

⁸³ Bache, Bulmer, George, and Parker. *Politics in the European Union*, page 407

⁸⁴ Simona Piattoni, Laura Polverari, *Handbook on Cohesion Policy in the EU*. (Edward Elgar publishing, Cheltenham UK, 2016), page 22

⁸⁵ Piattoni is a professor in Political Science at University of Trento, Italy.

⁸⁶ Polverari is a Senior research fellow at the University of Strathclyde, U.K.

⁸⁷ Simona Piattoni, Laura Polverari, *Handbook on Cohesion Policy in the EU*, page 28

⁸⁸ REGULATION (EU) No 1303/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⁸⁹ The European Commission, *European Structural and investment funds 2014-2020*, Official texts and commentaries, publications office of the European Union, (2015)

co-financing the amount increases to 638 billion€⁹⁰. It is one of the most important policy areas in the EU and is financially significant⁹¹. The Cohesion Policy encompasses a wide range of EU policy activities: infrastructure, telecommunications and jobs training⁹². The EU Cohesion Policy is based on Article 174 to 178 in the Treaty of the European Union⁹³. Article 174 states:

“In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions. Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.”⁹⁴

⁹⁰ Müller, Klaus. “European added value in practice”. *European Parliamentary research service*, (2018)

⁹¹ Piattoni, Simona & Polverari, Laura. *Handbook on Cohesion Policy in the EU*, page 1

⁹² Buonanno, Laurie, and Neill Nugent. “Explaining the EU’s Policy Portfolio: Applying a Federal Integration Approach to EU Cohesion Policy”. *Bruges Political Research Paper No. 20, December* (2011), page 3

⁹³ Lecarte, Jacques & Kołodziejski, Marek. “Economic, Social and territorial Cohesion”. (European Parliament, 2018)

<http://www.europarl.europa.eu/factsheets/en/sheet/93/economic-social-and-territorial-cohesion>

⁹⁴ Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XVIII: ECONOMIC, SOCIAL AND TERRITORIAL COHESION - Article 174 (ex Article 158 TEC) *Official Journal 115 , 09/05/2008 P. 0127 - 0127*

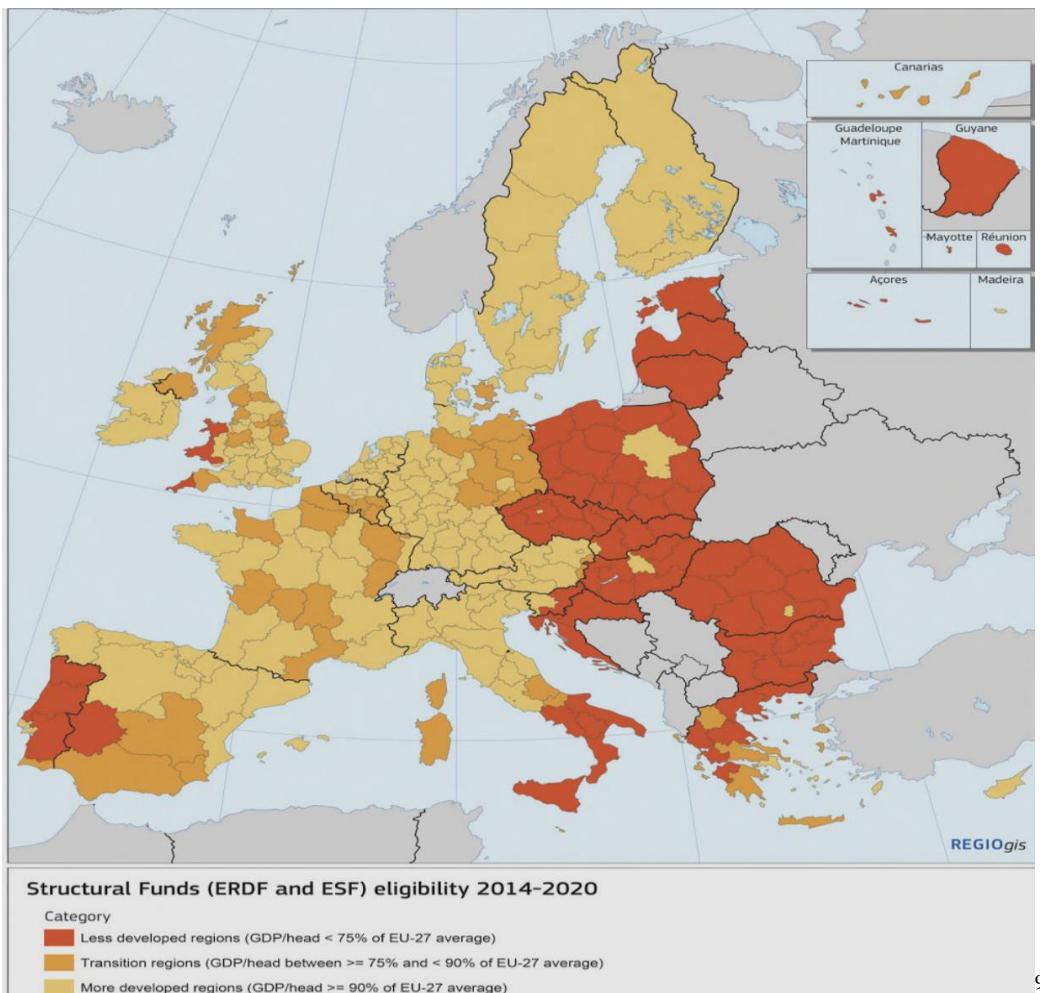
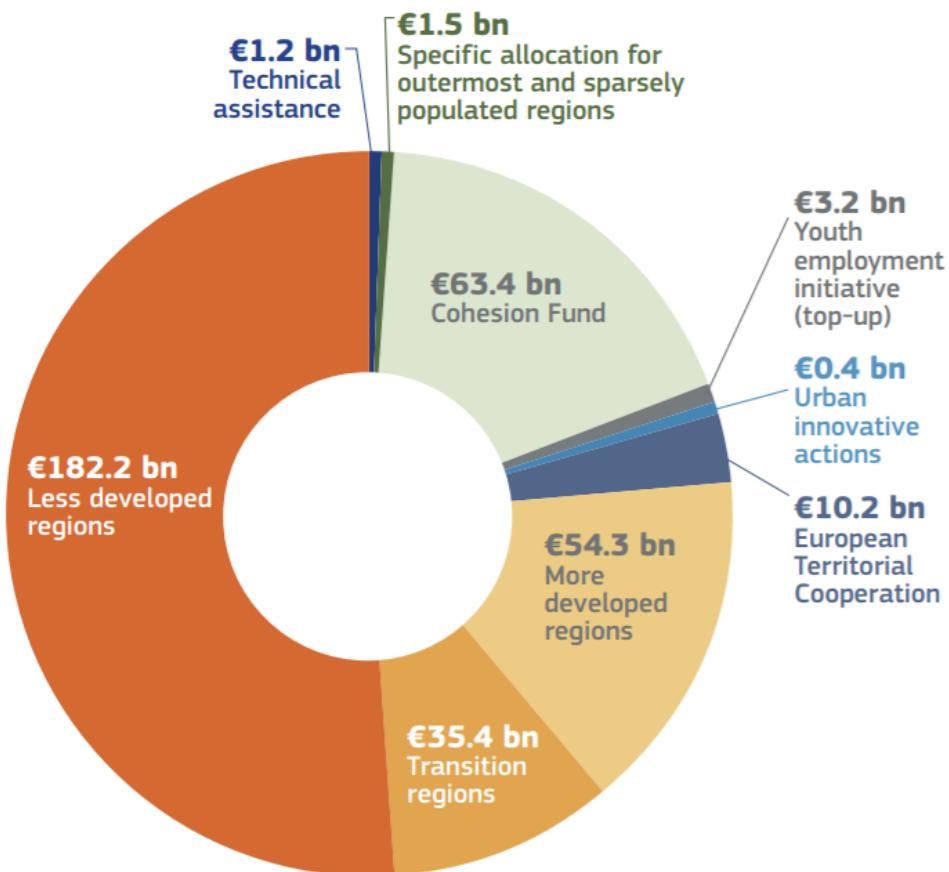


Table 3: A map of which EU countries that are eligible for funds and divided into three geographical categories.

⁹⁵ Piattoni & Polverari. *Handbook on Cohesion Policy in the EU*. (Edward Elgar publishing, Cheltenham UK, 2016), page XXIX

COHESION POLICY FUNDING 2014-2020 (€ 351.8 billion)



⁹⁶ **Table 2:** Illustrates Cohesion Policy funding for 2014-2020 and divided by their expenditure posts.

⁹⁶ The European Commission, *An introduction to EU Cohesion Policy 2014-2020*, (June 2014)

5.2 The EU budget

The EU budget, also called the multi-annual framework (MFF), is decided and agreed upon on a multi-annual basis and in the current period (2014-2020) allocates 900 billion €⁹⁷. Though this might look like a large number, it is approximately 1% of the Member States GDP. The current MFF consists of seven expenditure items. Structural agricultural aid, also known as the CAP, which receives 38% of the MFF followed by Cohesion policy (34%). The remaining items are EU-wide infrastructure, research and cultural projects (13%), external relations (6%), justice and home affairs (2%), fisheries (1%) and running costs (6%)⁹⁸. The EU's capacity to implement the budget is limited and therefore 80% of the budget is managed by member states themselves. The MFF is proposed by the European Commission, with political considerations from the European Council, and decided unanimously⁹⁹. The budget of the EU is a controversial topic, where critics often focus on that it is wasteful and on the other hand being essential to the EU economy¹⁰⁰. Critics have also focused on the financial crisis in the countries that receive the most - the Cohesion countries¹⁰¹. Nunez and Katarivas shows that despite criticism and size, the EU budget is not a mere drop in the ocean, it has a considerable impact and plays a key role in driving European integration. The EU budget is enshrined and legally embedded in the Treaty of the European Union (TEU) and listed in article 312. The current MFF consists of seven items. Structural agricultural aid, also known as the CAP, which receives 38% of the MFF followed by Cohesion policy (34%). The remaining items are EU-wide infrastructure, research and cultural projects (13%), external relations (6%), justice and home affairs (2%), fisheries (1%) and running costs (6%)¹⁰². The EU's capacity to implement the budget is limited and therefore 75% of the budget is managed by member states themselves. With a clearer understanding of the EU's budget and financial allocations, let us take a look at the EU's experiences with conditionalities.

⁹⁷ Viță, Viorica. "Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality." *Cambridge Yearbook of European Legal Studies* 19, (2017), pp 120

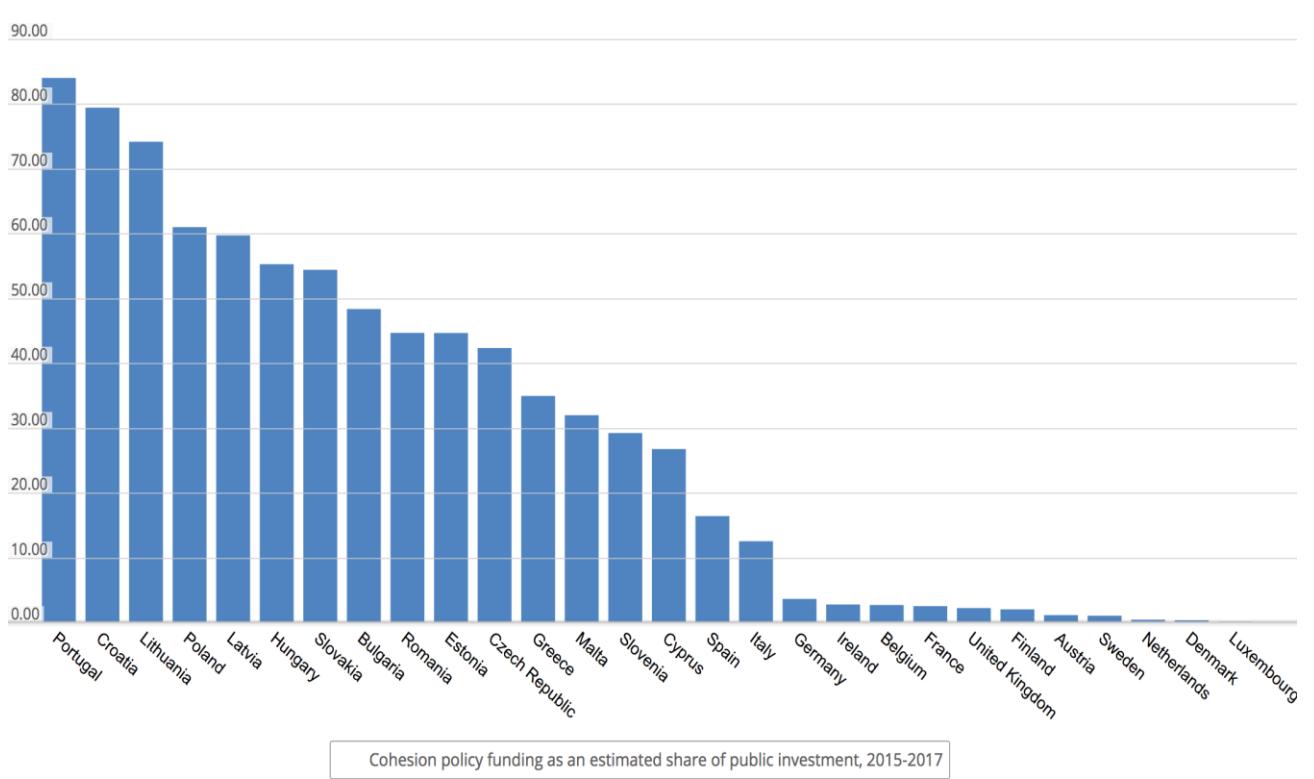
⁹⁸ Ibid page 121

⁹⁹ Bache et al. *Politics in the European Union*, page 211

¹⁰⁰ Nunez Ferrer & Katarivas, "What are the effects of the EU budget: Driving force or drop in the ocean?" *CEPS special report no.86*, (2014), page 1

¹⁰¹ Ibid, page 4

¹⁰² Simona Piattoni, Laura Polverari, *Handbook on Cohesion Policy in the EU*, page 121



¹⁰³ Table 1: Illustration of Cohesion policy funding as an estimated share of public investment during the 2015-2017 period. The Y axis are percentage of public investment.

5.3 EUs experience of conditionality

For the purposes of this research, the need to map the recent and increasing internal conditionalities are important in order to get a clearer image of the proposed conditionality. This mapping of the rise of internal conditionalities adds to what this thesis sees as an increasing politicization of the Cohesion Policy, culminating with the RoL proposal.

5.3.1 EU Conditionalities externally

The European Union have a long-standing experience in using conditionalities, although almost exclusively in external affairs. The EU have ever since 1990 increasingly introduced conditionalities in their external trade policies and development policies, especially with third countries. There are mainly three categories of EU conditionalities: Political conditionalities applied by the EU in external aid and trade agreements with third countries 2) Conditionalities

¹⁰³European structural and Investment Fund, Data.

in EU budget support programs 3) Specific conditionalities related to individual aid programs. Since 1995 the EU have attached political conditionalities with third world countries, most notably through their GSP scheme. There are mainly two types of conditionalities, positive and negative. Conditionalities that are attached to aid and trade policies with third countries can be negative, i.e. reducing or suspending funds if the country violates or break human rights, rule of law or other democratic values. From 2008 the EU also started using sustainability clauses in support programs and trade¹⁰⁴.

Conditionalities tied to EU membership accession were introduced in 1991, where they were included in the “European Agreements” for candidate Member States. These agreements were mostly trade related, but increasingly introduced other conditions which were set in 1993, known as the “Copenhagen criteria”. Conditionalities tied to the European Agreements became even more complex. In 1997 the conditions related to “existence of a functioning market economy” created liberalized prices and trade, legal system, macroeconomic stability and a developed financial sector¹⁰⁵.

In the 2004 and 2007 enlargement process the EU started using conditionalities in a systematic way as a model of governance. Complying with these conditions, the accession nations saw a total transformation of the economic, legal and institutional system. Though tough and complex, these conditionalities tied to candidate member states were extraordinarily effective in preparing candidate states for EU membership and sought to prepare the new member states to handle the forces inside the Single market.

5.3.2 Conditionalities in the Cohesion Policy

EU's first experience with internal spending conditionality was the macroeconomic conditionality in 1994, attached to EU funding and was largely introduced with the new enlargements¹⁰⁶. With the economic and financial crisis of 2008 in mind, the EU increased the usage of spending conditionalities in the European Structural and Investment funds¹⁰⁷. The increase can be seen particularly in the 2014-2020 cohesion policy, where the EU have

¹⁰⁴ Berkowitz, Catalina Rubianez, Pienkowski. “The European Union’s experiences with policy conditionalities”, *EC-OECD Seminar Series on Designing better economic development policies for regions and cities* (2017), page 12

¹⁰⁵ Ibid, page 9

¹⁰⁶ Viță, V. “Revisiting the dominant discourse on conditionality in the EU”, page 128

¹⁰⁷ Berkowitz, Rubianez & Pienkowski. “The European Union’s experiences with policy conditionalities”, page 4

introduced both *ex ante* and *ex post* conditionality attached to the distribution of funds, which marks an historical expansion in the use of spending conditionalities. The reformed Cohesion Policy also came at a time where one could observe several Member States experiences constitutional crisis and showcased systematic failure to follow key rule of law elements¹⁰⁸. The ESI funds accounts for 0,4% of the Eu's GDP but have demonstrated to have a major impact on the economy for the member states¹⁰⁹.

The infringement conditionality (2000-2013) was the second conditionality introduced and was aimed at mainstreaming EU policy objectives through spending in notable areas such as environment and gender equality. In short, the conditionality required all ERDF and ESF spending to comply with EU law, where the EC could withhold funds. This conditionality was successfully used against Italy in the case Italy v. Commission. The European Commission launched infringement proceedings against Italy in 2007 due to the Campania regions was benefiting from ESF funds for waste disposal and management - but breached against the EU waste directive.

Expansion of conditionality (2014-2020) saw a huge increase in internal conditionalities. In terms of enforcement of the conditionalities, there have so far been none. Figures shows that many of the EU Member States displays serious lack of compliance with the ex-ante conditionalities and that the Commission have chosen not to enforce or withheld funds. In the Common Provisions regulation there is an alternative to self-suspend if the Member States saw the conditions unreachable¹¹⁰. This was to spare the Member State from political embarrassment of being suspended by the Commission. There have been at least three self-suspensions¹¹¹.

The Ex-ante conditionalities (ExAC) attached to Cohesion Policy for the period of 2014-2020 are both General and Thematic. There are seven General Ex ante conditionalities, which are horizontal preconditions which cover broad areas such as anti-discrimination, gender, disability, public procurement, state aid, environmental legislation and statistical systems. There are 29 thematic ex-ante conditionalities are linked to 11 thematic objectives and cover

¹⁰⁸ Viță, V. "The Rise of Spending Conditionality in the EU: What Can EU Learn from the U.S. Conditional Spending Doctrine and Policies?" *EUI Department of Law Research Paper No. 2017/16* (2017), page 18

¹⁰⁹ European Court of Auditors. "Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instrument", *Special report* (2017)

¹¹⁰ Viță, V. "Revisiting the dominant discourse on conditionality in the EU", (2017), page 127

¹¹¹ Ibid, page 128

themes such as renewable energy, smart specialization, research and infrastructure and digital growth¹¹².

ExAC are specific pre requirements that must be met by Member States before the EU funds are given¹¹³. In the current Cohesion Policy, there are 48 ex ante conditionalities. The rationale behind the usage of ex ante conditionalities (ExAC) is that they can more effectively address barriers that hinders the investment in the member states before funds are distributed¹¹⁴. By addressing barriers beforehand, the funds are implemented better and more strategically. In the MFF 2014-2020 proposal the Commission underlines the fact that Cohesion Policy is much more than just an “expression of Solidarity with the poorer and weakest regions”¹¹⁵. The impact of public investment and their results rely on having sound frameworks and regulatory, administrative and institutional strengths, and weaknesses are bottlenecks that hinder the public spending¹¹⁶. Therefore, the ExAC are there to identify weaknesses beforehand and to guarantee the ultimate usage of resources from the EU funds. According to EU findings, these ExAC helped trigger reforms in member states and addressed delays and shortcomings in the transposition of the EU *acquis* by adopting, strengthen and apply EU law and legislation to improve policy frameworks.

In the negotiation process for the 2014-2020 Cohesion Policy, there was an ambivalent sentiment towards the ex-ante conditionalities. However, the reaction to the new requirements (conditionalities) have been less than might be expected and flew under the public’s radar¹¹⁷. This is mainly because most of the Member States saw the conditions as valuable in helping address barriers and implement funds more efficiently. However, several of the thematic and general conditionalities were considered not appropriate, whereas they were not directly related to the ESI funds. Greece objected to the “general ex-ante conditionalities” due to the fact that Greece viewed the link to effectiveness weak and could not see how they would be assessed or impact the program, and therefore felt they were intrusive to national competences and

¹¹² Metis GmbH, “The implementation of the provision in relation to the ex-ante conditionalities during the programming phase of the European Structural and Investment (ESI) funds”, *Final report The European Commission* (2016)

¹¹³ Viță, V. “research for REGI committee - Conditionalities in Cohesion Policy”, *European University institute* (2018), p 18

¹¹⁴ Commission staff working document, “The value added of ex ante conditionalities in the European Structural and investment funds”, *Brussels 31.3.2017, 127 final*, (2017), page 5

¹¹⁵ Claire Dhéret, Andreea Martinovici and Fabian Zuleeg, “The state of play on the EU Multiannual Financial Framework (MFF) 2014 – 2020 interinstitutional negotiations”, *European Policy Centre* (2012)

¹¹⁶ Commission staff working document, “*The value added*”, page 4

¹¹⁷ Mendez, Kah and Bachtler, *The promise and perils of the performance turn in EU Cohesion policy*, (University of Strathclyde, 2012), page iii

policies¹¹⁸. Greek authorities generally accepted most of the thematic conditionalities and viewed them as a helpful tool in implementing the funds.

5.4 Rule of Law in the EU - an overview

Having now had a thorough overview of the budget, Cohesion Policy and conditionalities, this thesis will give an insight and overview of the Rule of Law in the EU. EU values are needed in order to create a successful Union, European integration and a basis for a common European “way of life”¹¹⁹. This way of life is needed for a political integration, not only market integration, but also for a support the development of a European identity and ensuring the legitimacy of the Union itself. These “EU Values” are firstly protected in the accession criteria’s in the 1993 Copenhagen European Council, article 49(1) TEU. This entails that Member States must, after their accession, promote EU values. Article 7 of the TEU is a procedure to sanction a Member State that does not uphold these values. Article 7 can go as far as to suspend a countries membership and requires unanimity in the European Council. This is however not a one-way street. The EU must also respect the Member states national identities, enshrined in Article 4 (2) of the TEU¹²⁰.

The EU budget and its potential can only be realized if all the necessary elements are in place, economic, regulatory and administrative capacities. In the current MFF all member states are required to demonstrate good regulatory framework in order to make EU funding a success alongside political conditionalities in the Cohesion Policy that foster a stronger relationship between Member States¹²¹. In the communication sent by the EC it states explicitly that the respect of rule of law is “a prerequisite for confidence that EU spending in Member States is sufficiently protected”¹²². In the communication sent out by the EC in 2014 entitled “A new EU framework to strengthen the Rule of Law”, the rule of law is the backbone of any modern constitutional democracy¹²³.

¹¹⁸ Ibid, page 23

¹¹⁹ European Parliament. “Member States and the rule of law, dealing with a breach of EU values”, *Briefing* (march 2015), page 2

¹²⁰ Ibid, page 2

¹²¹ European Commission, proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, Brussels, 2.5.2018 COM(2018) 324 final 2018/0136 (COD),

¹²² Ibid

¹²³ European Commission, proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, Brussels, 2.5.2018 COM(2018) 324 final 2018/0136 (COD),

In recent times, several of European Union member states have been reported to systematically violating the fundamental rule of law, which is enshrined in article 2 of the Treaty of the European Union. Romania, Hungary and Poland are well known examples of this democratic backsliding, but other countries such as Italy, Bulgaria, Estonia and Greece are also experiencing rule of law concerns and corruption¹²⁴. This threatens the fundamentals of the European Union and compromises its credibility whilst hampering with the functioning of the single market and competitiveness as a global actor and trade giant. EU promotes good governance and rule of law worldwide and is one of the biggest normative international actors. The credibility of the EU as a global actor is tremendously diminished if several of its member states are in fact illiberal themselves. The EU have mechanisms externally to force compliance, mostly by sanctioning and creating political dialogues. However, the EU lack a functioning mechanism internally to create compliance, as we will see further down. Article 7 TEU is a strong tool and is a sanction mechanism, but as seen it is not effective considering that it requires unanimity in the European Council. Given the obvious inefficiency of Article 7 to bring about desired change in the member states, articles 258 and 259 of the TFEU is therefore often suggested.

This inability to sanction countries in the Council have created some fresh thinking in the EU regarding the other possibilities to monitor Rule of Law in the Member States. Let's look at some of the proposed Rule of Law mechanisms, in order to get a fuller picture of the currently debated proposal.

The reverse Solange Doctrine is possible mechanism to a persistent breach of EU values by Member States. Inspired by the German Federal constitutional Court, several scholars have suggested this approach of dealing with Member States breach of Rule of Law. This mechanism is based on individual action of EU citizens and citizens could challenge domestic exercise of power if his or her fundamental rights are of systematic breach by the national government¹²⁵. Fundamentally, a serious rule of law violation of a Member State can be considered as an

¹²⁴ Jakab, András, and Dimitry Kochenov. *The Enforcement of EU Law and Values : Ensuring Member States' Compliance*. (Oxford : Oxford University Press, 2017), page 218

¹²⁵ European Parliament, *Member States and the rule of law, dealing with a breach of EU values*, (briefing march 2015), page 6

infringement of the substance of Union Citizenship. So far, the European Court of Justice have not found an appropriate case for the development of this tool¹²⁶.

The Commission released in March of 2014 a Communication on what they called “*A new EU framework to strengthen the Rule of Law*”. This framework is supposed to resolve rule of law issues before they manifest themselves and alleviate the situation before having to launch Article 7. The act cannot authorize any binding measures, but it does however strengthen the role of the EU in safeguarding and protecting the rule of law¹²⁷. It is supposed to be used in advance, before launching Article 7 and without “clear risk of serious breach” or “serious and persistent breach”.

What constitutes a full or flawed democracy? This thesis will lay out the Economist democracy Index definitions the in following paragraphs. Of the cases this thesis is analyzing, there are no “hybrid” democracies, however some countries have decreasing democracy index and it is helpful to be aware of what the “next steps” entails.

Full democracy: According to the Economist democracy index, countries that have political freedoms, civil liberties and a political culture conducive to the flourishing of democracy. Media are independent and diverse, functioning of government is satisfactory and an effective system of checks and balances and an independent judiciary where judicial decisions are enforced¹²⁸.

Flawed: Flawed democracies have also free and fair elections but showcase significant weakness in governance, underdeveloped political culture and low levels of political participation.¹²⁹

Hybrid: A hybrid democracy are defined by irregularities that cause elections from being free and fair. Serious weakness is graver than in flawed democracies and corruption tends to be

¹²⁶ Bogdandy, Antpöhler & Ioannidis “Protecting EU values”. In Jakab, András, and Dimitry Kochenov. 2017. *The Enforcement of EU Law and Values : Ensuring Member States’ Compliance*. (Oxford : Oxford University Press, 2017)

¹²⁷ Jakab, András, and Dimitry Kochenov. *The Enforcement of EU Law and Values : Ensuring Member States’ Compliance*. (Oxford : Oxford University Press, 2017), page 225

¹²⁸ The Economist, *Democracy Index 2018: Me too? Political participation, protest and democracy*, 2019 page

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¹²⁹ Ibid

widespread and the rule of law and civil society is weak. Judiciary is not independent, and this type of democracy showcases harassment towards media and journalists¹³⁰.

5.5 Conditionality Framework renewed

Having showed the External incentives model and conditionality criteria's in chapter 2, this thesis will highlight both the usability and novelty of this "renewing" of the pre-accession conditionalities criteria's put forth by Schimmelfennig and Sedelmeier. Are the pre-accession conditionalities criteria's useful to examine internal conditionalities? These conditions were laid down in the so-called Copenhagen Criteria discussed in chapter 5.3.2, a large set of conditions that were ex-ante of nature. It is therefore logical to review these conditions with the Cohesion Policy conditions in order to assess whether the criteria's useful in this research, and more importantly, the Rule of Law conditionality. As Veebel explains, the earlier accession negotiations were overwhelmingly complicated, but was gradually replaced with a more technical conditionality system¹³¹.

1. Political Criteria	Institutions guaranteeing democracy, human rights, the rule of law, respect for and protection of minorities
2. Economic Criteria	Existence of a functioning market economy, Capacity to cope with competitive pressure and market forces
3. Administrative Criteria	Take on the obligations of membership (Acquis Communautaire)

Source: Staab, 2011: 37.

¹³² **Table 4:** Illustration of the three conditionality categories in the Copenhagen criteria's

The fulfilment of these political criterions is an absolute for joining the EU and are cannot be negotiated. More importantly, these conditionalities are legally and politically binding and links directly to Article 6 (1) of the TEU: "*The Union is founded on the principles of liberty,*

¹³⁰ The Economist, *Democracy Index 2018*; 2019 page 49

¹³¹ Veebel, Viljar, "Relevance of Copenhagen Criteria in actual accession: Principles, Methods and shortcoming of EU pre-accession evaluation", *Studies of transition states and societies*, VOL 3, (2011), page 3

¹³² Afrim Hoti, Dren Gerguri. "The Copenhagen political criteria for joining the EU: The case of Kosovo" *Teorija in Praksa Let*, volume 54, issue 6. (2017), page 1010

democracy, respect for human rights and fundamental freedoms and the rule of law; these values are common to all Member States”¹³³.

In the RoL proposal: ‘*the rule of law*’ refers to the Union value enshrined in Article 2 of the Treaty on European Union which includes the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection by independent courts, including of fundamental rights; separation of powers and equality before the law;”¹³⁴.

Given this research overview and history of the current Cohesion Policy conditionalities, combined with the overview of the Rule of Law conditionality proposal, one can see that the four criteria’s are still very much applicable, considering that the conditionalities in the current EU funds have a very strong resemblance to the Copenhagen Criteria. This research’s focus is on the Rule of Law, which is based on similar article in the proposal and Copenhagen criteria. Therefore, I find the external incentives model fit for investigating internal conditions. There is of course difference between some of the criteria’s, such as size, which for a candidate Member State would be much larger (joining the EU) than within just the Cohesion Policy. However, this thesis believes it is sufficient grounds for applying these criterions on internal matters and can be successfully used as a theoretical framework for the analysis of internal conditionalities.

5.6 The Brexit – Effect

After many years of tough Brexit negotiations and the probable departure of the U.K from the European Union, the appreciation of the EU and EU membership is currently at an all-time high. In a large-scale survey conducted by the EU found that two thirds of Europeans believe that their country has benefited from being an EU member, which is the highest percentage since 1983¹³⁵. There are several factors for this, however, one could contribute this rising trend to the U. Ks departure from the EU where media coverage of losses and downside is widely reported, not to mention the strain of the negotiations. This has emboldened the European

¹³³ Hochleitner, Erich, “The political criteria of Copenhagen and their application to Turkey”, *working paper, Austrian institute for European security policy*, (2005), page 2

¹³⁴ Ibid, page 8

¹³⁵ Eurobarometer Survey 89.2 of the European Parliament, a public opinion monitoring study, *Democracy on the move - European Elections - one year to go*, (May 2018)

Commission, feeling confident that another Member States will not leave anytime soon and the time for deeper integration is now. Also having a veto player (U.K) lose its seat at the table, seeing that the U.K have often been the most prominent Eurosceptic voice in the EU since the Kingdom joined. Most of the respondents in the Eurobarometer survey believed that their voice counted in the EU, a trend which can be traced to 2016, which can be explained by a so-called “wakeup call” that was witnessed after the Brexit referendum¹³⁶. As the survey states, the 2016 Brexit referendum had a deep impact on how Europeans view both their place and membership with the EU¹³⁷. Therefore, one could conclude that Brexit did not create a chain-reaction of leavers, but rather the opposite.

From Brexit to the on-going budget discussion post-2020 there are several items that will create tension and debate. With the U. K’s likely departure from the union, the question regarding the overall size of the budget is increasingly debated. The U.K was a net-contributor to the EU budget and are leaving behind a large hole in the budget. The EU Commissioner of Budget and Human resources have called upon the Member States to contribute more to the budget than before, in order to fill the hole that the UK leaves behind¹³⁸. Several countries are outraged by this, especially from those who see the budget as wasteful and fueling corruption and illiberalism in the eastern European member states¹³⁹. One can therefore see the Rule of Law proposal not only as a valuable political tool for the EU institutions, but also as a way of justifying the potential increased contribution to the EU budget.

5.7 Internal pressure

The rise in spending conditionality was mostly a product of the 2008 financial crisis aftermath, where the EU saw the need for a closer surveillance of Member States’ economic governance. In the same time, EU saw an increase in member states reluctance or failure to follow rule of law and key EU policies¹⁴⁰. After the Cohesion policy period of 2007-2013 several member states, stakeholders and EU institutions were increasingly disappointed by the output of the policy spending and value added. The European Commission requested a review regarding the

¹³⁶ Eurobarometer Survey 89.2 of the European Parliament, a public opinion monitoring study, *Democracy on the move - European Elections - one year to go*, (May 2018), page 7

¹³⁷ Ibid, page 14

¹³⁸ Benjamin Fox. “Oettinger: EU budget should increase despite Brexit funding gap”. *Euractiv February 2018*

¹³⁹“Brussels begins big battle on post-brexit budget”. *Euractiv*, april 2018: <https://www.euractiv.com/section/eu-priorities-2020/news/brussels-begins-big-battle-on-post-brexit-budget/>

¹⁴⁰ Viță, V. “The rise of spending conditionality in the EU” (2017), page 18

function of the Cohesion Policy. The report was led by economist Fabrizio Barca, the Italian Minister of economy and finance. After the consultation of stakeholders and Member States, Barca was critical of many aspects of the current Cohesion Policy and called for a comprehensive reform in what is now known as the “Barca report”¹⁴¹. Barca proposed changes to governance and a greater concentration of priorities in what he called place-based and territorial concept, which the Commission eventually labeled “Ex-ante and ex-post conditionalities”¹⁴².

The rule of law conditionality had its starting point during the refugee crisis of 2015-2016 after several countries refused to show EU solidarity in taking in refugees¹⁴³. It did not gain legislative traction until the German government sent the Commission a “rule of law” proposal in May 2017. The proposal suggested The Commission to look into possibilities of linking EU funds to Rule of Law conditions, where Member States that does not uphold the rule of law would risk losing funding. The seven-page states that “the possibility should be investigated of whether the receipt of EU cohesion funds could be linked to adherence to fundamental rule of law principles”¹⁴⁴. Another factor was at the same time the question regarding rule of law in some member states rose, stalemate in Article 7 procedures, combined with Brexit and that the departure of the U.K, a large net contributor, would leave.

These two contextual circumstances are very important to understand both the “emboldened” of the European Commission but also the fact that the EC felt internal pressure to strengthen its mechanisms and tighten its control of EU funds. Also, it could be argued that The Commission is increasingly desperate, seeing that their enforcement mechanisms for Rule of Law does not work the way they hoped.

¹⁴¹ Bache, Ian, Simon Bulmer, Stephen George, and Parker. 2015. *Politics in the European Union*, page 424

¹⁴² Ibid 424

¹⁴³ Kölling, Mario, *Policy conditionality - a new instrument in the EU budget post-2020?*, Sieps (2017) page 2

¹⁴⁴ Rinke, Andreas, “Cut funds to EU members that Violate rule of law: German Proposal”, *Reuters*, May 30, 2017: <https://www.reuters.com/article/us-germany-eu-cohesion-funds/cut-funds-to-eu-members-that-violate-rule-of-law-german-proposal-idUSKBN18Q28R?il=0>

5.8 Hungary, Poland and Romania

The most serious and far reaching abuses of human rights since the foundation of the EEC in 1958 have taken place in Hungary, ever since the country's strongman Viktor Orban took power with his conservative political party Fidez in 2010¹⁴⁵. The list of breaches is long, ranging from assaults on the media, independence of the judiciary, the electoral system and discrimination against minorities. In other words, Orban have systematically defied the foundations and values of the EU while he has enjoyed tremendous amounts of EU funding to flow into his government.

Poland

Poland's ruling party, the Law and Justice party (PIS) have systematically breached human rights and the rule of law, most notably the interference with the Constitutional court and the attempt to limit free speech¹⁴⁶. The European Commission launched Article 7 against the country in 2018, "due to violations of the principle of judicial independence"¹⁴⁷. The Commission stated that Poland was not fulfilling Article 19 (1), which states that "the principle of judicial independence, including the irremovability of judges". Launching Article 7 was not the immediate reaction from the Commission, it was done after several attempt to halt the illiberal developments in Poland since 2016. After dialogue and change on the ground failed, Article 7 was a last resort for the Commission.

Romania

On 29th of March 2019, the European Commission criticized Romanian on their democratic backsliding and violations of Rule of Law¹⁴⁸. Commission vice president Frans Timmermans voiced concern over the growing backsliding in Romania¹⁴⁹, based on changes made to

¹⁴⁵ Oliver & Stefanelli, *Strengthening the rule of law in the EU: The council's inaction*, (Journal of Common Market Studies, volume 54, 2016), page 1075-1084

¹⁴⁶ Ibid, page 1081

¹⁴⁷ European Commission. "Rule of Law: European Commission refers Poland to the European Court of Justice to protect the independence of the Polish Supreme Court Brussels", (24 September 2018)

¹⁴⁸ Strupczewski, Jan. "EU Commission: Romania backsliding on Rule of Law". *Reuters*, 29th of March 2019. Available at:

<https://www.reuters.com/article/us-eu-romania-rule-of-law/eu-commission-romania-backsliding-on-rule-of-law-idUSKCN1RA1AT>

¹⁴⁹ European Parliament, "The rule of law in Romania European Parliament resolution of 13 November 2018 on the rule of law in Romania", P8_TA-PROV(2018)0446 (2018/2844(RSP)), 2018

Romania's justice system and criminal code¹⁵⁰. This concern is shared by other Western governments, but Romania is backed by other countries the Commission deems as backsliding on rule of law issues themselves, namely Hungary and Poland. The concerns are particularly centered around the Romanian dismissal of Laura Codruța Kövesi, Romania's anti-corruption prosecutor. Other concerns are the proposed changes to the Romanian constitutions, redefining "marriage" to just include marriage between a man and a woman.

5.9 Failure of traditional mechanism

Article 7 was introduced as a tool in the Treaty of Amsterdam of 1997 which made references to Article 2 - "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities"¹⁵¹. Council's legal service expressed in an opinion that Article 7 is the European Union's only empowering tool for the EU to use against Member States in the case of systematic breaches of Article 2¹⁵². Before 2012, Article 7 had never been used before. European Commission found in 2017 reasonable grounds for that Poland was systematically breaching the rule of law and for the first time they activated Article 7¹⁵³. The Commission had tried to mediate the situation but after several years of failed negotiation the EC triggered Article 7 against Poland. Just one year later, the European Parliament triggered Article 7 against Hungary for the same reasons, systematic breach of rule of law, among other issues. However, in order for Article 7 to go through, as explained above, it needs a unanimous vote by the European Council, which is very unlikely to happen, considering that Hungary will probably vote against the article, considering they face the same charges and vice versa¹⁵⁴.

¹⁵⁰ Maïa de La Baume. "Romanian PM clashes with Commission over Rule of Law". *Politico*, November 2018, last updated 19/4/19.

<https://www.politico.eu/article/romanian-prime-minister-Victoria-dancila-clashes-with-commission-over-rule-of-law/>

¹⁵¹ Sedelmeier, Ulrich, "Anchoring democracy from above? The European Union and democratic backsliding in Hungary and Romania after Accession", in *Journal of Common Market Studies*, volume 52, number 1. Pp. 105-2012 (2014)

¹⁵²PETER OLIVERI and JUSTINE STEFANELLI, *Strengthening the Rule of Law in the EU: The Council's Inaction*, Bingham Centre for the Rule of Law, Université Libre de Bruxelles, Bingham Centre for the Rule of Law, Common Market studies 2016, page 1076

¹⁵³ Carlos Closa. The politics of guarding the Treaties: Commission scrutiny of rule of law compliance, *Journal of European Public Policy*, 26:5, (2019), page 696

¹⁵⁴ Heinemann, Friedrich. "Going for the Wallet? Rule-of-Law Conditionality in the Next EU Multiannual Financial Framework." *Intereconomics* 53, no. 6, (2018)

6. Is the Cohesion policy politicized?

Having looked at how and the rationale behind why the EU have attached numerous internal spending conditionalities in the Cohesion Policy, an overview of the EU's usage and experience of conditionalities and EU Rule of Law and failure of current mechanisms, we will begin the investigation that aims to answer: "*Is the Cohesion policy politicized, and if so, what does that signify for European Integration?*". To answer this, I will analyze, as explained in chapter I, the most legally and politically powerful tool, the proposed Rule of Law conditionality attached to EU funding through Schimmelfennig and Sedelmeier's four conditionality criteria's to gain a better understanding of why certain Member States oppose the RoL proposal and why some would welcome it, together with the voting patterns that took place on 17th of January 2019 on the RoL proposal and media statements, which together will make a solid fundament to highlight politicization. Lastly, we will have a discussion of what this politicization signifies for European integration.

6.1 Conditionality framework analysis

As stated in earlier chapters, politicization usually occurs when there is a transfer of power, i.e. the EU gains power vis-a-vis Member States and Rauh's theory that the Commission acts on issues that are publicly salient to serve a broad public interest.

The European Commission's proposal on the "*Proposal for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the member states*" was put to a vote in The European Parliament in plenary sessions on the 17th of January 2019. The proposal passed with 397 in favor, 158 against and 69 abstentions¹⁵⁵. Accompanied with the MFF, this proposed regulation is a "self-standing" regulation and is introduced in a separate financial regulation entitled "the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States" (COM 2018/383)¹⁵⁶. If passed, the Commission can suspend funds in Member States. Such a decision will have to pass through the Parliament, where they would have to pass it with a majority and then pass through the Council of the European Union with a QMV. In order to launch such a mechanism,

¹⁵⁵ European Parliament vote call, 17th of January 2019:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+PV+20190117+RES-VOT+DOC+PDF+V0//EN&language=EN>

¹⁵⁶ Bachtler, Mendez and Wishlade, "proposals for the MFF and Cohesion Policy 2021-27: a preliminary assessment", *European Policies research centre*, (University of Strathclyde, 2018), page 26

a reversed qualified majority is required to dismiss the proposal. In a reversed qualified majority, the proposal is passed unless there is a QVM vote against it¹⁵⁷. Within the budget, a self-standing regulation is based on Article 322 (1)(a) on the TEU and Article 106a of the Treaty establishing the European Atomic Energy Community¹⁵⁸.

6.2 Reward

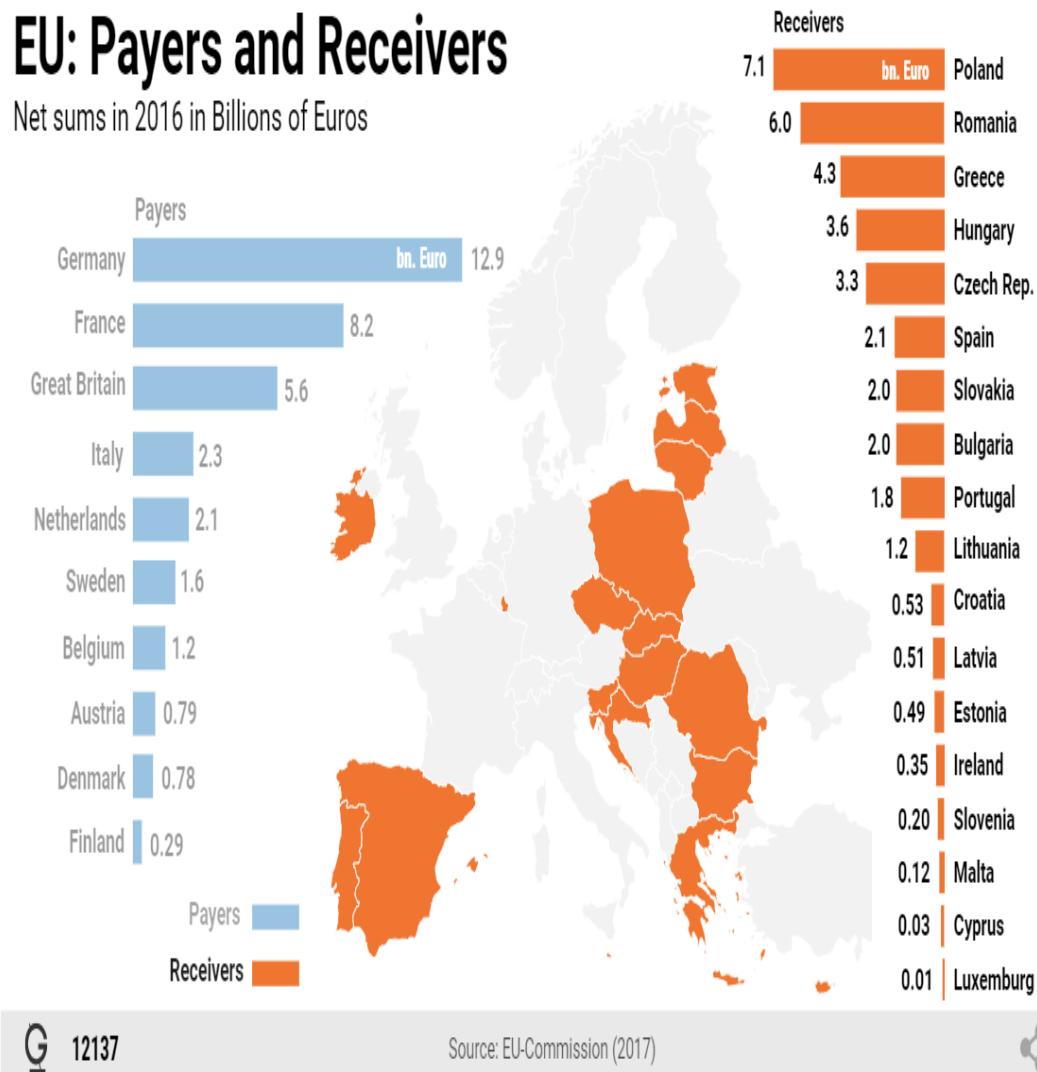
The first criteria, “reward”, refers to “The size and speed of the payment is an important factor for how willing governments are at implementing the conditionalities”. The reward will be evaluated by size of funds received from the EU's Cohesion Policy.

For net contributors such as Germany, France, the Netherlands, Sweden and Italy there are an obvious wish to make sure the funds contribute to reducing regional disparities rather than fueling illiberalism and corruption. Adding to the previously mentioned “Brexit Effect”, there is arguably a greater need to ensure and convince the EU citizens that the money they are contributing are going to sound financial managing, and not fueling illiberalism. If the EU citizens are to pay more to fill the UK financial gap, then securing rightful implementation of the Cohesion policy is therefore important.

On the other hand, the net receivers such as Poland, Hungary and Romania the argument can be seen as twofold. These countries very much count and rely on the funds granted from the EU, and therefore would go lengths to keep it. On the other hand, they are also much more likely to resist any changes in the way they are distributed because they fear the loss of funds (see Cost criteria). As illustrated in table 5 (below), there is a clear cleavage between “old” member states and “new” eastern member states, including Ireland, Portugal and Spain. Down to the very numbers, one can clearly see the importance for some of the Member States when it comes to Cohesion Policy (see appendix 4).

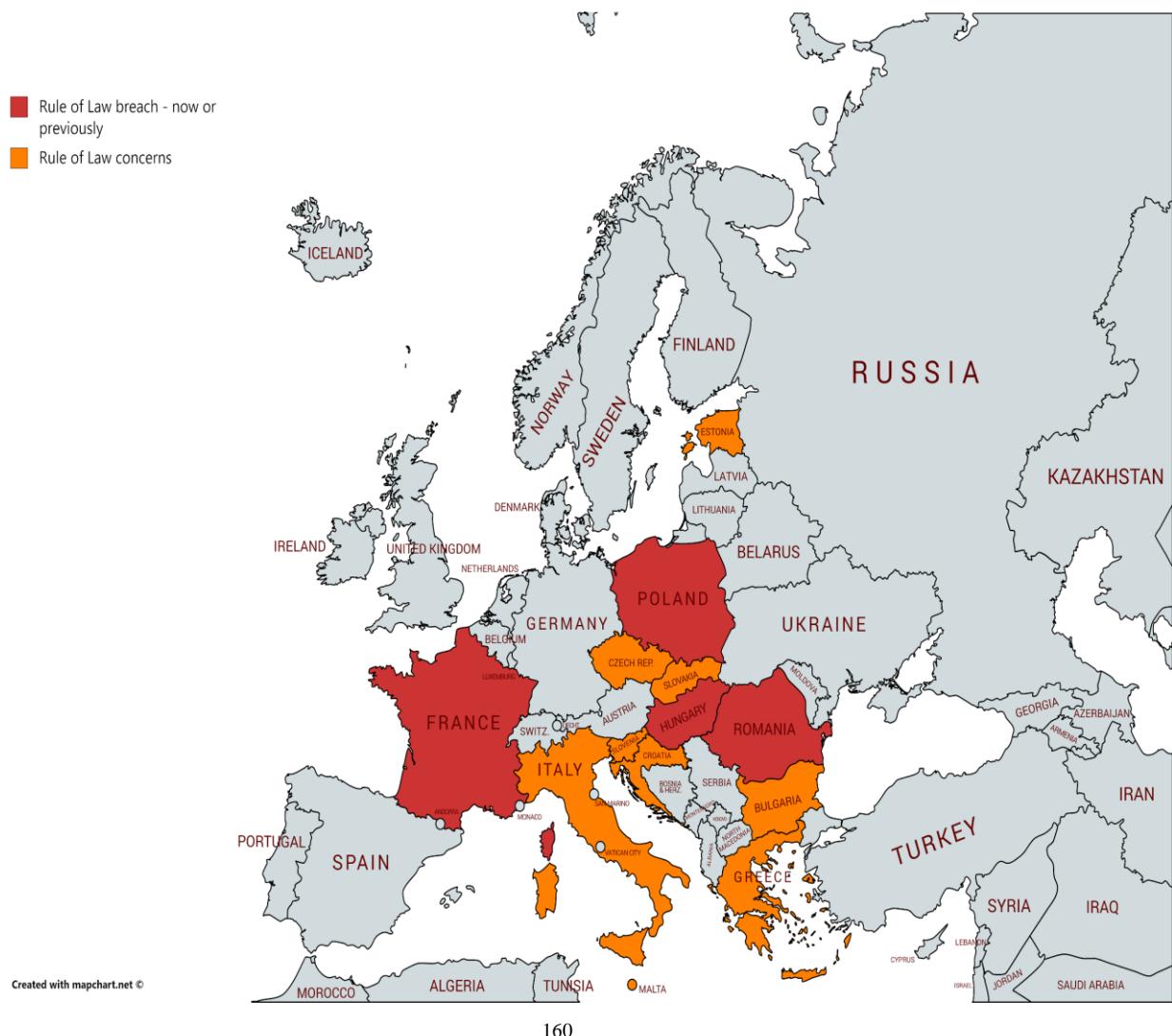
¹⁵⁷ European Commission, *Communication from the Commission, A modern budget for a union that protects, empowers and defends - The multiannual financial framework for 2021-2027*, Brussels 2018

¹⁵⁸ European Commission, proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, Brussels, 2.5.2018 COM(2018) 324 final 2018/0136 (COD), page 2



¹⁵⁹ **Table 5:** A map of Europe divided in net-contributors and net-receivers in 2016

¹⁵⁹ "EU: Payers and Receivers". EDN Hub, Deutsche presse-agentur: <https://www.ednh.news/eu-payers-and-receivers/>



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Table 6: Map of Europe. Yellow is Rule of Law concerns and Red are documented breaches of Rule of Law now or in the past¹⁶¹

As one can see in table 5 and 6, there exists a division of net-contributors and net-receivers, which can also be further divided into east and west, or west vs the rest. This illustrates how important the funding for many Member States are, and adds to the argument above, that those who benefit the most will go lengths to keep it, but also that they might strongly resist any changes that might take it away from them. This illustrates also how net-contributors might welcome any change, considering that they pay and only get illiberalism and corruption in

¹⁶⁰ Self-made map based on previous reading and knowledge of rule of law in the EU. Link to map: <https://mapchart.net/europe.html>

¹⁶¹ Armin von Bogdandy, Antpöhler & Ioannidis “Protecting EU values”. In Jakab, András, and Dimitry Kochenov. 2017. The Enforcement of EU Law and Values : Ensuring Member States’ Compliance. (Oxford : Oxford University Press, 2017)

return. As mentioned earlier, this rule of law conditionality might also help Member States convince their citizens to pay more to the EU budget. Highlighted in the tables above, the similarity of net-receivers and rule of law concerns are present, with of course some deviations. France is a net-contributor but is also currently ranked as a flawed democracy and have previously had a run-in with the Commission due to rule of law concerns in 2010. Italy is a net-contributor as well but have had long-standing issues with corruption and weak administrations. Other than that, the Rule of law “map” and the net-receiver map is pretty much the same and are there to highlight the correlations between the two.

6.3 Conditions

Conditions refers to the formulation and clarity of the conditionality, in this case the rule of law conditionality. This is the second criteria of the external incentives model. As we discussed in the previous chapter, the rule of law proposal is tightly connected to the Copenhagen criteria, where they are both based on article 2 of the TEU. However, as seen in the statement analysis, several comments are made regarding the EU treaties. As explained previously, the Cohesion Policy is based on article 174 to 178 in the TEU, but the articles make no reference to the fact that the Rule of Law must be respected. This fact is taken up by Member State officials who are resisting this condition as we will see in the content analysis below. Committee of budget have made comments regarding the resources the Commission will use in order to make the Rule of Law assessment, finding it currently vague¹⁶².

Furthermore, the Committee argues that the legislative bodies sets clear and defining criteria for what constitutes “general deficiencies” as regard to the rule of law. Committee of constitutional affairs rapporteur Helmut Scholz criticizes the legal basis of this proposal (article 322), stating that the proposal legal basis would not suffice carrying out its proposed purpose¹⁶³. The European parliament shared some of the same views as the committee opinions, stating that “general deficiencies” in regard to the rule of law needs to be defined more clearly. The

¹⁶² OPINION No 1/2018 (pursuant to Article 322(1)(a) TFEU) concerning the proposal of 2 May 2018 for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States (2018/C 291/01)

¹⁶³on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)0324 – C8-0178/2018 – 2018/0136(COD))

assessment of these general deficiencies also needs to include some well-defined and concrete measures¹⁶⁴. Interestingly, the proposed regulation goes in hand with the MFF for 2021-2027, but as mentioned, the self-regulation is based on Article 322, which uses the Ordinary Legislative Procedure and Qualified Voting Majority and therefore not directly connected to the MFF negotiations, which are based on Article 312 which states: “*2. The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members*”¹⁶⁵. There are already discussions regarding the validity in this choice, where there are some comments about that the regulation should be placed under the latter article. However, this is obviously very tactical for the EC and EP who can outvote “rogue” Member States who oppose it. Overruling this proposal proves therefore hard, something that RCI deems as one of Member States tools to control the agent (EU). As it is stated in the proposal, the financial rules for governing the EU budget is listed under article 322 of the TEU and therefore could not be adopted at the level of the Member States¹⁶⁶.

In the proposal, Article 2 (a) Rule of law is defined as: '*the rule of law' refers to the Union value enshrined in Article 2 of the Treaty on European Union which includes the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection by independent courts, including of fundamental rights; separation of powers and equality before the law;*'¹⁶⁷.

To summarize, there seems to be an overall concern about what constitutes “general deficiencies” regarding rule of law and how the assessments of these will be carried out.

¹⁶⁴ Wahl, Thomas, *EP Generally Supports Link Between Non-Respect of Rule of Law and Loss of EU Money*, in *Eucrim.eu*. (2019). <https://eucrim.eu/news/ep-generally-supports-link-between-non-respect-rule-law-and-loss-eu-money/>

¹⁶⁵ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on (13 December 2007) - Tables of equivalences

¹⁶⁶ European Commission, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*, (2018), page 2

¹⁶⁷ Ibid, page 8

Therefore, the clarity criteria are low, given the uncertainty of the main elements and what this conditionality implies for the Member States. This thesis would argue is a sign of discretion from the EC, where they have the power to maneuver in order to make legislation that is beneficial to their policy objectives. Also central besides discretion is the fact that the EC inhabits the power to initiate legislation, creating a power position in proposing this self-standing regulation.

6.4 Credibility

The credibility criteria, i.e. how likely payment and/or suspension from the EU are, is best measured and assessed by a brief overview of Cohesion Policy suspension/infringement history. In the overview of the Cohesion Policy in chapter 5, we reviewed the cases where the EU suspended funds to Member States. The macroeconomic conditionality has only been enforced once in 2012, against Hungary. There was, however, no suspensions of funds and was lifted after only 3 months¹⁶⁸. The enforcement received much criticism due to the belief that the Commission was unfairly targeting Hungary, where the application of the conditionality was questioned, considering it came at a time where the ruling party Fidez recently raised the EU's attentions regarding crucial rule of law concerns in the country. In the current funding period 2014-2020, the conditionalities have made certain Member States self-suspend themselves from funding, given that they realized that they were not able to complete the pre-conditions. So, to link this criterion with the current RoL proposal, one could point to the fact that Hungary, Romania and Poland do not have to fear suspensions, given the rare and uneven enforcement of this.

On the other hand, both Hungary and Poland have been accused and tried for systematic violation of Rule of Law, something that shows that the EU are willing to enforce its mechanisms when needed. A very interesting fact is that this research that through the current conditionalities in the Cohesion Policy the Commission can in fact withhold funds if the recipient is not upholding the rule of law, article 71 of Common Provisions regulation¹⁶⁹. Why

¹⁶⁸ Viță, Viorica. Research for REGI committee - Conditionalities in Cohesion Policy, *European University institute*, (2018), p 22

¹⁶⁹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European

they have not done so can be reversed for another discussion, but it is this research opinion that they have chosen not to do so on the basis that it would damage the credibility and reputation of the EU. With this proposal however, they have clearly seen many of the Member States willingness to have such a mechanism and therefore the EU can enjoy political support in the case of using this mechanism.

To conclude, there are clear signs that the Commission's enforcement of conditionalities are uneven, rare and even in clear violation cases does not withhold funds. In all other cases, funding has been distributed and therefore can be concluded that the credibility criteria are weak, i.e. weak enforcement and strong delivery of funds regardless. However, this thesis could also argue that given the willingness of the EU to curb illiberalism, something we have seen in the Article 7 procedures, this new mechanism might be used more evenly and more often than in previous cases. As this thesis will demonstrate in the following content analysis, there are officials that have voiced their concern that this proposal specifically targets some countries, which might give the indication that this is a tool the EU are specifically willing to use.

6.5 Cost

The cost of Member States accepting the Rule of Law conditionality depends on what the cost of this conditionality might be for the Member States, and laid out in chapter 3, it is a combination of all the above-mentioned criterions. This research will therefore look at how high the cost will be for Member States in terms of either upholding or violating the Rule of Law. The Economist democracy index shows that Hungary, Romania, Croatia and Slovakia are slowly deteriorating in overall democratic values and with Poland, Bulgaria and Czech Republic are all listed as flawed democracies, ranking at the bottom of the index¹⁷⁰. As explained in section 1.3, the cost of this conditionality can be determined by looking at what the cost of Rule of Law might have on the country, which can be measured by looking at The economist democracy index, where this research can see the trends and the current democratic ranks and values. Interestingly, several of western Member States have seen a deterioration of

Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

¹⁷⁰ The Economist, *Democracy Index 2018: Me too? Political participation, protest and democracy*, 2019 page 17

democratic values. France, Portugal and Italy have become flawed democracies and have recently seen a decreasing overall score as well.

Looking at the data from 2006, Eastern Europe have gradually fallen on all counts of democratic values. The 11 EU member states in the east have a weak political culture and difficulties safeguarding the rule of law and a “preferences for strongmen who bypass political institutions, all of which creates a weak foundation for democracy”¹⁷¹. Slovakia, Hungary, Croatia and Romania have recorded a deterioration of democratic values. Therefore, this research can suggest and argue that the cost of adopting the Rule of Law tied to funds for Hungary, Romania and Poland are of a so-called “high cost”, considering that it is more likely to lose funding over breach of rule of law and given the economically important size of the funds for the countries, combined with a clarity that remains vague and gives the EC much discretionary powers. It is therefore one can see a negative voting patterns from the same countries. The majority of Hungary, Poland, Romania, Slovakia, Slovenia and Czech Republic voted against it and of the Eurosceptic countries, the U.K had most votes favoring the proposal, however followed by a high percentage against and many abstentions.

Looking at the voting it offers some interesting results. Voting patterns of Member states shows that countries that are generally Eurosceptic voted against the proposal. In the EPP, 24 MEPs voted against the proposal (137 in favor), and 10 of those belongs to Viktor Orban's conservative ruling party Fidez. The last two abstained. Romania, Slovenia, Slovakia, Hungary and Croatia were those parliamentarians that also voted against, and Brice Hortefeux from France. In table 7 one can see that there is a general left/right political cleavage, Eurosceptic parties voted mostly against the proposal. S&D overwhelmingly voted for the proposal, apart from 18 parliamentarians. When looking closer at those in the party who voted against, 10 of the 18 are Romania's, three from Czech Republic, three from Bulgaria and two from Slovakia. ALDE, also a big supporter of the proposal had two that voted against it, from Estonia and Romania¹⁷².

Other political cleavages are visible through the voting patterns. Eurosceptical parties such as EFDD and ENF voted overwhelmingly against the proposal, while Social and Democrats,

¹⁷¹ The Economist, *Democracy Index 2018: Me too? Political participation, protest and democracy*, 2019 page 17

¹⁷² De Falco, Frederico. “Linking EU funds to compliance with the Rule of Law: An analysis of the proposal”. *EU logos Athens*, 27th of February 2019. <https://www.eu-logos.org/2019/02/27/linking-eu-funds-to-compliance-with-the-rule-of-law-an-analysis-of-the-proposal/>

ALDE and the Greens mostly voted in favor¹⁷³. This voting patterns from the compiled votes from Member States can also serve as a prediction for the Council vote, where QVM is the rule on matters relating to Article 322. The fact that this is based on article 322, a self-standing regulation points to the discretionary powers of the Commission, laying out a regulation in which they believe would have the highest chance of being voted through (see appendix 5 for the legal text).

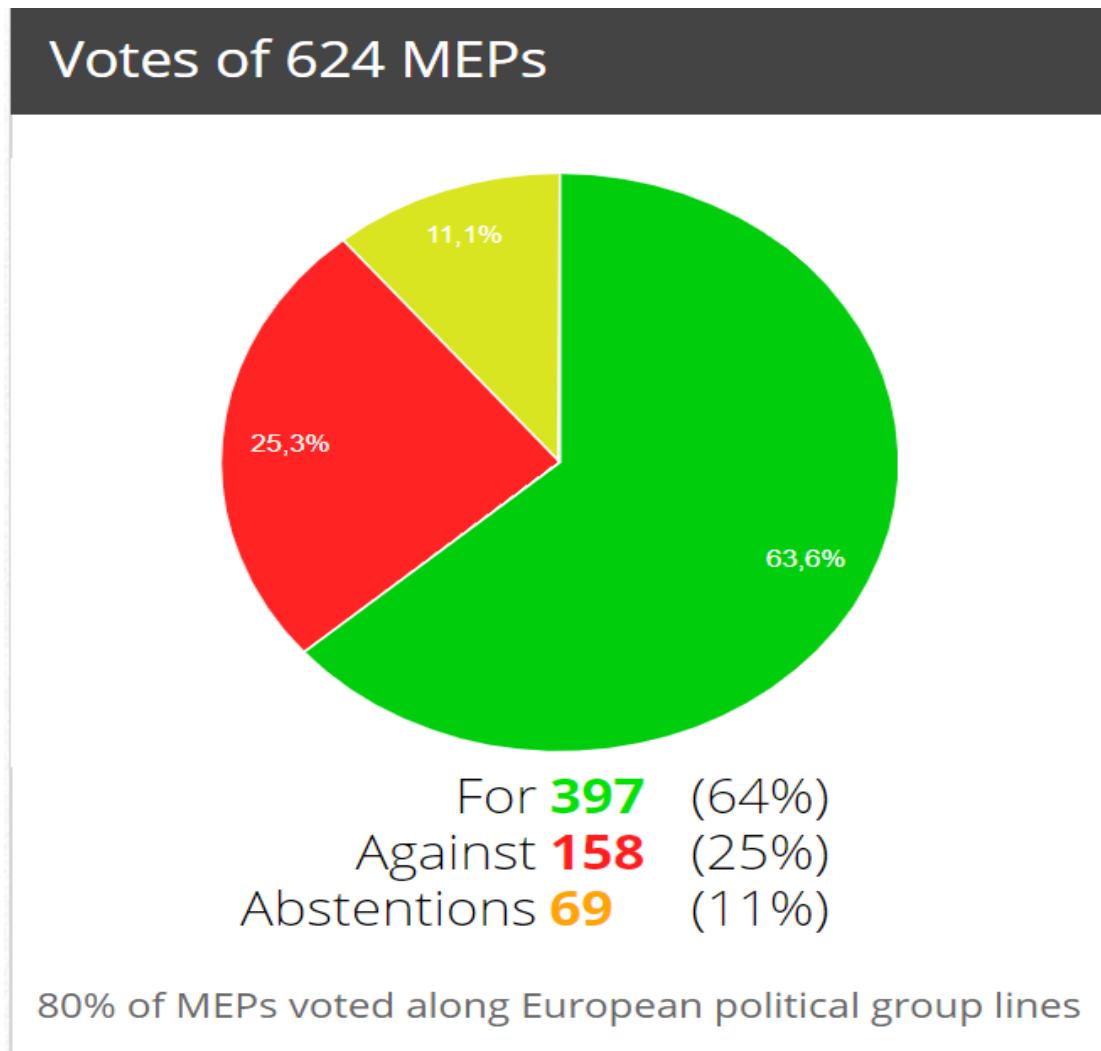


Table 6: Illustration of voting turnout and results from European Parliament plenary session 17 of January 2019 regarding the RoL proposal.

¹⁷³ Votewatch. Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in Member States, Votewatch.eu, 2019

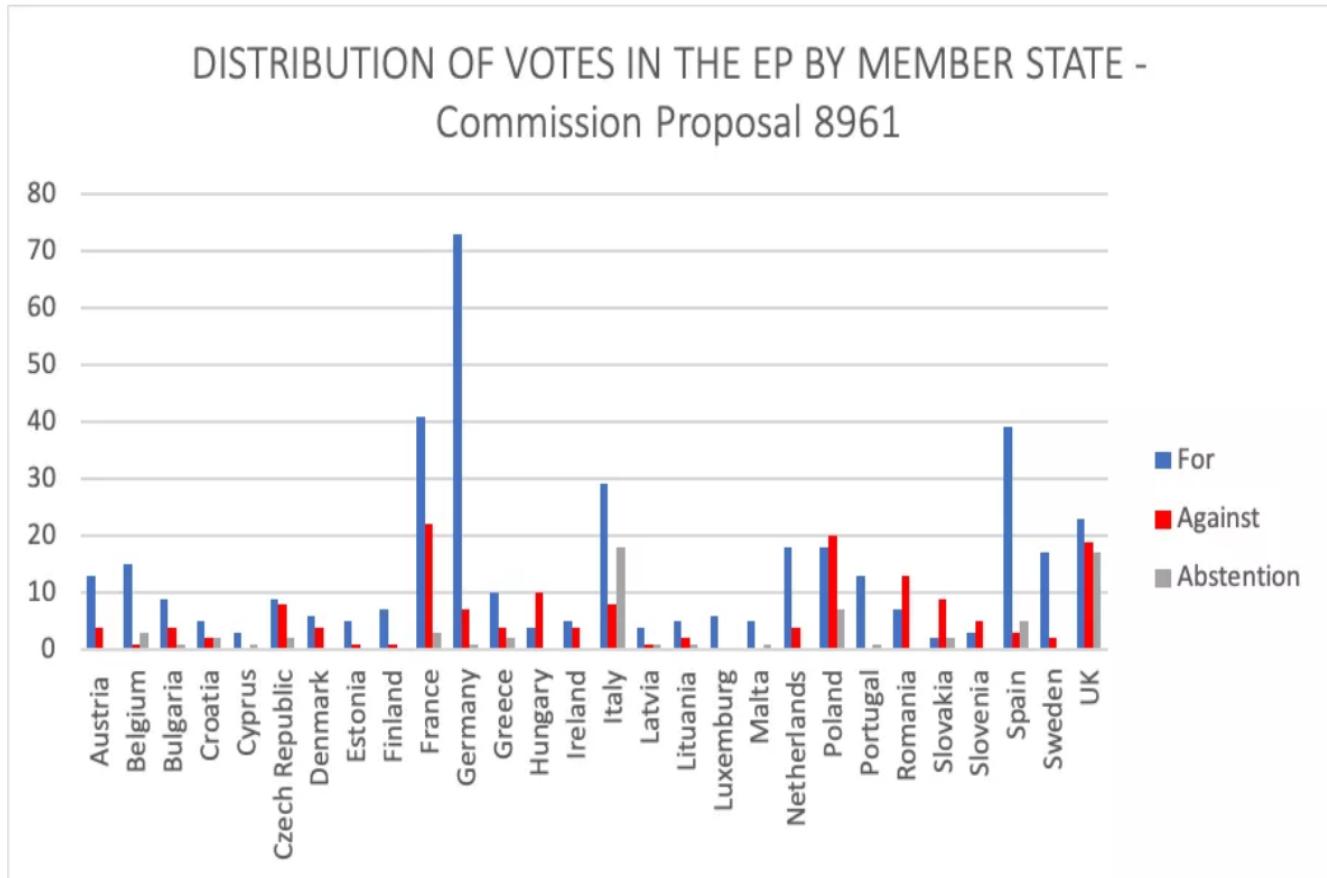
¹⁷⁴ Protection of the Union's budget in case of generalised deficiencies as regards the rule of law in Member States, Votewatch.eu, 2019. Available at: <https://www.votewatch.eu/en/term8-protection-of-the-union-s-budget-in-case-of-generalised-deficiencies-as-regards-the-rule-of-law-in-t-3.html>

Given the data assessed above, one can conclude that the cost for Poland, Hungary and Romania are high, given the evidence of further democratic deterioration and increasing breaches of rule of law, therefore suspension of funds is likely. This is reflected in the voting patterns. Other countries worth noting are Czech Republic, Croatia, Bulgaria, Slovakia and Slovenia. U.K's explanation of voting against the proposal is a longer historically debate, but it is fair to say that the U.K have been a long-time critic of increasing EU powers, mostly clear seen in the 2016 Brexit referendum. It has not so much with Rule of Law and cost, but rather strong Eurosceptic voices and a general dislike of increasing EU powers. As can be seen in the voting patterns, France also have an almost 50% opposing vote to the proposal. This can be explained by what this thesis sees as three main underlying reasons. Firstly, France is ranked as a flawed democracy, and therefore could in the future fear a loss of funding due to rule of law failings, and secondly, in 2010 France faced criticism and legal action by the EC on the basis of not respecting the EU's freedom of movement when France expelled Roma migrants¹⁷⁵. Third reason is the strong Eurosceptic movements in France, notably seen through the rise of Front National (now Rassemblement National) and its leader Marine Le Pen. We can see this more clearly in voting patterns below.

On the other hand, the countries that are supporting the proposal, Germany, The Netherlands, Sweden and others can be seen as opposite to the formerly discussed countries. These countries are net-contributors, implying that they are much keener on gaining maximum productivity and added value for their contribution. As can be seen in Appendix 1, these countries enjoy a high democratic ranking and as can be seen in table 1, and do not rely much on the Cohesion Policy as the Eastern and central European countries does. Another important matter is the already controversial topic of the EU budget and the fact that countries are presumably required to contribute more to fill the financial hole left by the departure of the UK. Through the analysis of the voting patterns, this thesis uncovered interesting cleavages that clearly states that net-receivers of Cohesion funds are in fact also Rule of Law and as shown above, they are also voting "no" to the proposal, which also supports the External incentive model's criteria. Therefore, this research also argues that the cost is very low for net-contributors, where they have the possibility to legitimize the increased contribution to the budget while also not having to fear the freezing or withholding of funds, in which they do not rely too much on. This also

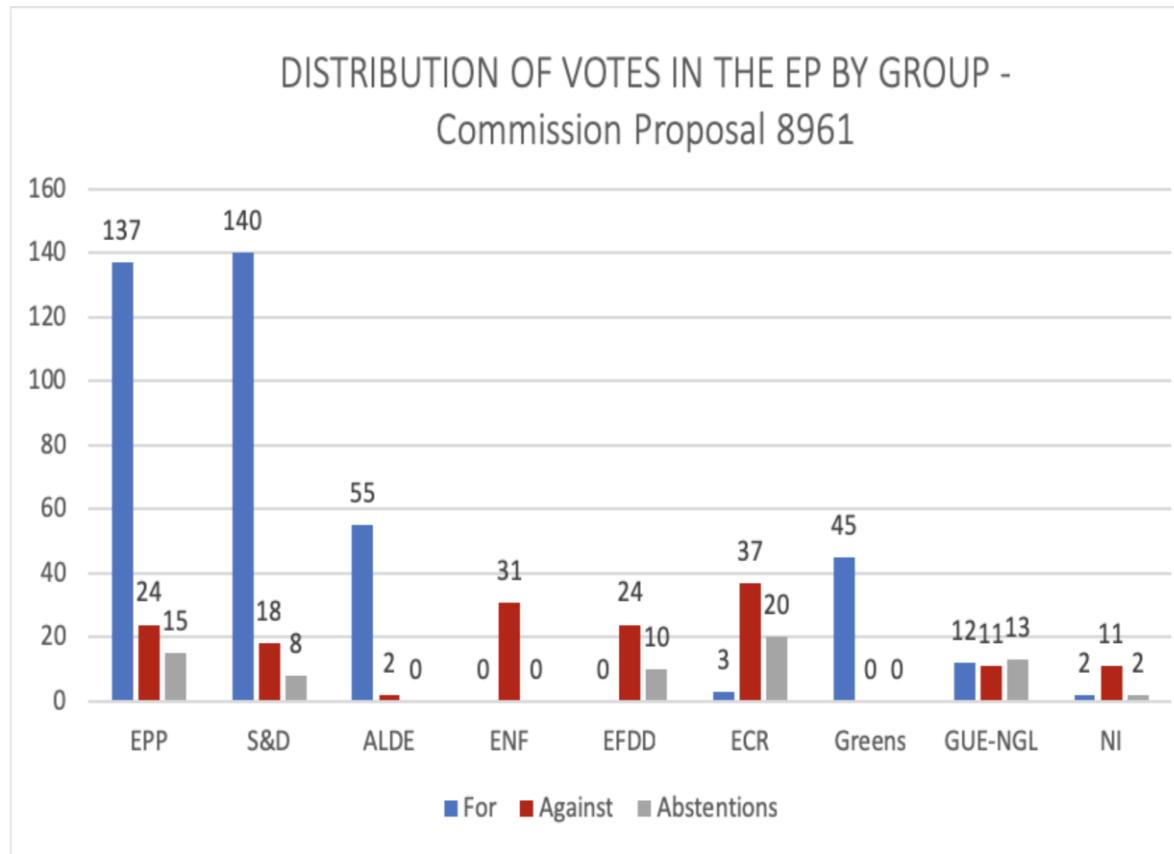
¹⁷⁵ "EU warns France of action over Roma". BBC, September 2010. Available at: <https://www.bbc.com/news/world-europe-11437361>

resonates with the Liberal IG argumentation, where certain Member States are willing to give EU sanction and suspension powers, especially if they deem these powers of no concern to themselves. Now that this thesis has covered the criteria's, this thesis will do a qualitative content analysis to see if we can find similar signs of polarization of interest, opinions and values.



¹⁷⁶ **Table 7** illustrates the voting patterns of parliamentarian Member States.

¹⁷⁶ De Falco, Frederico. "Linking EU funds to compliance with the Rule of Law: An analysis of the proposal". *EU logos Athens*



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Table 8: Voting patterns from the RoL proposal vote in plenary session. Y axis are number of parliamentarians.

6.6 Qualitative content analysis

Now that this research has highlighted the voting patterns in the plenary regarding the proposed regulation, combined with an analysis of the four criteria's for adopting conditionalities, this thesis will make the politicization further evident through a qualitative content analysis of official statements of the actors involved. As the European election looms, the debate regarding the rule of law proposal is increasingly escalating. Similar as in the 2013 reform, it is a battle between the net-contributors and net-receivers, with countries such as the Netherlands are loudly proclaiming their support for the Commission's proposal. The link between funding and rule of law becomes clear in the 2017 Commission reflection paper, stating that "*Respect for the rule of law is important for European Citizens, but also for business initiative, innovation and investment, which will flourish most where the legal and institutional framework adheres*

¹⁷⁷ De Falco, Frederico. "Linking EU funds to compliance with the Rule of Law: An analysis of the proposal". EU logos Athens

*fully to the common values of the Union. There is hence a clear relationship between the rule of law and an efficient implementation of the private and public investments supported by the EU budget*¹⁷⁸.

French president Macron proclaimed before the proposal of the new budget for 2020-2027, that he would reject any budget that kept funding Member States that wanted to socially and financially diverge from EU standards and that had different values than those EU promotes. Macron also went as far as saying that countries that take EU funding but does not care about EU values or laws are making the rest of the EU look like idiots¹⁷⁹. The EPP spitzenkandidat Manfred Weber is also in favor of the proposal, saying recently that he agrees with “the idea to link penalties in such procedures to European funds” and that he wanted to upgrade the rule of law mechanism in light of the EU’s inability to prevent illiberal developments in Poland, Hungary or Romania¹⁸⁰.

One EU diplomat said the following: "*There are certainly enough member states that will push for a link between cohesion funds and the rule of law. In any case it will be very difficult for governments to oppose a link between cohesion funds and the rule of law and to explain this political stance successfully to their respective voters*"¹⁸¹. The link the diplomat is referring to is the fact that opposing to upholding rule of law is difficult, considering that arguably very few citizens find opposing RoL is a positive thing. Vivian Reding, a European parliamentarian and former Commissioner for justice and fundamental rights, stated that linking money to Rule of Law is the most effective way of influencing government behavior, stating further that "*making a link with the money. It's the only thing they understand*"¹⁸². Vivian is referring to the fact that traditional mechanisms have failed in the case of Poland and that the countries in question are the biggest beneficiaries of EU funding and therefore would only listen if their national wealth was threatened. This comment can be seen as correct, given the outrage from net-receivers

¹⁷⁸ Halmai, Gábor. 2019. “The Possibility and Desirability of Rule of Law Conditionality.” Hague Journal on the Rule of Law 11 (1): 171–88

¹⁷⁹ Briancon, Pierre. “France wants more ambitious, tougher EU budget”. *Politico*, 13/4/2018

¹⁸⁰ EU commission frontrunner back slashing EU funding for rule of law breaches. France 24, 26/04/2019

¹⁸¹ Bayer, Lili & Kaleta, Philip. “EU cash-for-values fight intensifies as election looms”. *Politico*, 2/15/19, <https://www.politico.eu/article/eu-cash-for-values-fight-intensifies-as-election-looms-funds/>

¹⁸² Halmai, Gábor. 2019. “The Possibility and Desirability of Rule of Law Conditionality.” Hague Journal on the Rule of Law 11 (1): 171–88

regarding the proposal. Adding to this, Ann Linde, the Swedish minister of trade said that she thought it was very reasonable to link funds to rule of law¹⁸³.

Former Austrian Chancellor Christian Kern commented on the linkage of funds to rule of law, saying that solidarity is not a one-way street. “*If countries continue to duck away from resolving the issue of migration, they will no longer be able to receive net payments of billions from Brussels*”¹⁸⁴. Kern’s comment is one based on solidarity, where Hungary refused to help resolve the migration crisis of 2015, shutting down their border. Macron, at that time he was presidential candidate, also said that “*You cannot have a European Union which argues over every single decimal place on the issue of budget with each countries, and which, when you have an EU member which acts like Poland or Hungary on issues linked to universities and learning, or refugees, or fundamental values, decides to do nothing*”¹⁸⁵. Macron is again referring to the fact that some Member States receives huge amounts of EU funding and are not in line with the Union’s values or principles, and that the EU are unable to do anything about it. Gajus Scheltema, who was an ambassador of the Netherlands to Hungary added to this rhetoric, stating that the Member States cannot keep financing corruption through the EU Cohesion funds¹⁸⁶.

On the other hand, Hungary, Romania, Bulgaria and Poland are very much against the proposal, or in other terms, the biggest recipients of funding and the biggest rule of law breakers. As one polish minister said, that Poland refuses any attempt from the Commission to politicize the Cohesion Policy and its funds¹⁸⁷. The most recurring argument against the rule of law proposal is that several central and eastern European countries feel specifically targeted and stating that this is a tactical attack from the EU institutions, even though the Commission assures that they would treat each Member State equally.

Some governments officials have even commented that this is a massive “power grab” from the Commission and is a part of a grander plan¹⁸⁸. Commission president Jean-Claude Juncker have stated that he was of the opinion that the EU should not attach rule of law conditionality

¹⁸³ Zalan, Eszter. “Poland, Hungary push back at EU budget “conditionality””. *EUobserver*, Brussels 14 may 2018.: <https://euobserver.com/institutional/141808>

¹⁸⁴ Ibid

¹⁸⁵ Halmai, Gábor. “The Possibility and Desirability of Rule of Law Conditionality.” *Hague Journal on the Rule of Law* 11 (1): 171–88 (2019)

¹⁸⁶ Ibid

¹⁸⁷ Maurice, Eric. «Poland ready to be EU budget net contributor». *EU observer*. 12. October 2017

¹⁸⁸ Peel & Shotter. “Brussels heads for showdown with Poland over Rule of law”. *Financial Times*. June 18, 2018

to Cohesion funding, saying that he “believed it would be poison for the Continent”¹⁸⁹. The statement refers to the potential division of the EU that this conditionality would expose and reinforce, potentially creating greater territorial division than territorial cohesion. Both in terms of contributors against receivers, which is also a stark west and east division, but also in fact that withholding funds for region that need it the most will not create long-term cohesion and create a battle between Member States.

Hungarian Foreign Minister Péter Szijjártó have been vocal regarding the proposal, saying that the proposal would “*provide the potential for blackmail of anyone with regard to the payment of the EU funds that are due to be given to countries based on the treaties*”¹⁹⁰. Hungary was backed by another rule of law violator, Poland, where Poland's Deputy European Affairs minister Konrad Szymanski argued that The Commission is trying to override rulings from the ECJ and that «*the proposal seems like a massive power grab with too high of a discretion in the Commissions hand*”¹⁹¹. What Szymanski is referring to is the fact that the Commission can evaluate these “general deficiencies” and withhold or freeze funds through only a reversed QMV process in the Council. Szymanski also stated that Poland is unwilling to accept “*arbitrary mechanisms which will make funds an instrument of political pressure*”¹⁹². These countries continue to back each other just as they swore to do in case of an article 7 procedure. The EC’s discretionary powers in the policy initiative has this time made it more difficult than just two countries such as Hungary and Poland to back each other in order to make the proposal fail.

Bulgaria sees this proposal as a political motivated attack on Member States. Bulgarian Finance Minister Vladislav Goranov states that “*not normal that rule of law becomes a criterion for allocation of cohesion funds, because in his words this would become an instrument for political intrusion and unequal treatment of member states, which contradicts EU treaties*”¹⁹³.

¹⁸⁹ Eder, Florian. “Juncker: German plan to link funds and rules would be poison”. *Politico*, 6/1/2017, <https://www.politico.eu/article/juncker-german-plan-to-link-funds-and-rules-would-be-poison/>

¹⁹⁰ Wróbel, Aleksandra. “Hungary rejects “blackmail” through EU funds”. *Politico*, 5/3/18. Available at: <https://www.politico.eu/article/hungary-rejects-blackmail-through-eu-funds/>

¹⁹¹ Zalan, Eszter. “Poland, Hungary push back at EU budget “conditionality””. *EUobserver*, Brussels 14 may 2018. <https://euobserver.com/institutional/141808>

¹⁹² “Brussels begins big battle on post-brexit budget”. *Euractiv*, April 2018.

<https://www.euractiv.com/section/eu-priorities-2020/news/brussels-begins-big-battle-on-post-brexit-budget/>

¹⁹³ “Bulgaria is against the conditionality linking EU funding to Rule of Law”. *Bulgarian Presidency.eu*, 3 May 2018.

<http://bulgarianpresidency.eu/bulgaria-is-against-the-conditionality-linking-eu-funding-to-rule-of-law/>

Romanian Foreign minister Teodor Melescanu stated something similar, saying that linking funding with other elements is a “gross violation of EU’s fundamental principles” and added that the funds are based on solidarity and convergence between Member States¹⁹⁴.

One can clearly see a polarization of opinions, interest and values. The polarization we witness here makes a clear distinction between Rule of Law breakers, net-receivers versus the rule of law upholders and net-contributors, as we have previously seen by the voting patterns and criterions analyzed above. As can be seen in the statements made, the countries in question are feeling threatened and feel targeted by the proposal. Politicization of funds, political pressure and power grab are words used by official politicians from Hungary, Romania, Bulgaria and Poland. A Commission that pursue to legislate an issue that is publicly salient is evident here, where several Member States have politicized the Cohesion Policy and found an ally in the Commission, that have pursued to legislate this issue for input legitimacy.

6.7 What does this politicization signify regarding European Integration?

Clearly seen above, the analysis has provided empirical and theoretical links that finds that the Cohesion Policy is politicized by the Rule of law conditionality. In last part of the analysis, this research will provide some insight into what this politicization of the Cohesion Policy signifies regarding the larger picture of European integration. Although this topic is large and deserving of a discussion on its own, it is imperative to discuss it to some extent here, as I believe this case serves as a valuable insight into the dynamics and power relations in the EU. As demonstrated in the research, we have seen a EU commission that seeks to empowering itself by far-reaching sanctioning powers and “the power of the purse”, but more importantly, the proposal came from the EU Member State Germany, with a support from French president Macron alongside other Western Member States, who have been pushing for a link between rule of law and funding since 2015-2016. The same dynamics can also be seen in the contextual background in chapter 5 and the 2013 reform of Cohesion Policy, where several Member States shared the same preferences to overhaul the policy. Although that debate flew under the public radar, there was again a clear division between Eastern “cohesion friends” and Western “less

¹⁹⁴ “Romania backs Poland in rejecting EU funding conditionality”. *Euractiv*, 2nd February 2018.

spending” blocs and a Commission that acted on influential Member State’s and stakeholder’s preferences, known as the Barca Report.

What explains the Member States willingness to grant the Commission these far-reaching powers? Can it be explained by a push from powerful Member States or from the power of discretion from the Commission? Perhaps both? First, the general increase of conditionalities internally attached to EU funding is a sign of decreasing solidarity between Member States and EU institutions and tighter top-down control of EU funds, giving Member States less wiggle room. So, what does this proposal say about European Integration and Member States?

Germany has historically been a pivotal Member State regarding agenda-setting at the EU-level¹⁹⁵. There are many EU policy initiatives that originally came from German or Franco-German proposals and ended up on the Commissions table. The reasons for this are multifaceted, but one of the major ones are the fact that Germany and France have great political weight in Europe. Germany is by far the biggest country in terms of size of population and by economic power, where German is at the top of the list by some margins. It is also worth noting that the German governance model is closely related to that of the EU, both having federal governance features and therefore German are more likely to import their governance structure on the EU. Liberal IG, as well as Rational Choice, deems that Member States delegate power for the impartial and efficient role of the supranational institutions - but also when Member States form same preferences to avoid negative interdependence and must take it to the supranational level.

Is it so that Member States are willing to let the EU gain additional federal attributes in order to protect their national welfare and the EU? Or is just that Franco-German alliance are generally inclined to enhance EU powers, especially given the German federal governance structure? These statements add to a well-known discussion regarding “Who” controls the EU. This question is more relevant now than ever, given one of EU’s biggest economy and Member States are leaving the Union (probably). As Bulmer points out, what will happen to the intergovernmental power balance after Brexit, who will take the lead¹⁹⁶? Although Germany have historically been reluctant to take a lead in EU cooperation, they demonstrated strong

¹⁹⁵ Bulmer and Paterson. “Germany and the European Union: “tamed power” to normalized power?” *International affairs (royal institute of international affairs)* 86 (5) (2010)

¹⁹⁶ Bulmer, Simon. “Germany and the European Union: Post-Brexit Hegemon?” *Insight Turkey* 20 (3): 11–28, (2018), page 11

leadership in the euro crisis in 2010¹⁹⁷. This reveals a deeper underlying theory, that France and Germany, alongside other western countries are willing to make EU expenditure more federal in nature, which this governing through the budget would testify to. As set out in the theoretical framework, Member States are often more willing to delegate power if policy areas have suffered due to previous decentralized features that caused failings. As RCI explains, Member States see the Commission as a powerful ally in which they could achieve the object they prefer. One could see that western Member States are personally unable to tackle the root of illiberalism themselves and therefore are willing to enforce supranational institutions with more powers to create a solution which would make them less likely to suffer national welfare losses in the future. As Liberal IG argues, in times of crisis, and this is an illiberal and fundamental EU crisis, governments are more willing to delegate power to supranational institutions in order to secure their national welfare. This thesis also argues that given the Commissions politically sensitive situation, they saw this proposal and other vocal Member States as a push to pursue a more efficient and powerful tool in dealing with rule of law-breaking member states. This argument goes hand in hand in what Rauh predicted, that the EC are acting to implement issues which they perceive to be publicly salient and to serve a broad public interest.

Looking beyond liberal intergovernmentalism, this research also showcases Member States want the Commission to have a much stronger role in the expenditure of EU's Member States, and will use its power of discretion in order to safeguard Rule of Law in the EU and are seeking to politicize the Cohesion Policy in order to reach that goal. This research has also highlighted how the Commission can act on both public pressure but also in an interventionist and publicly responsible way. Although this research is not looking at other policy areas, there is reason to believe that Member States have different bargaining powers in different areas, where in this case Germany is the most powerful economic Member State and contributes the most to the budget, therefore giving the country more political pull on the CP. It is obvious that net-contributor's have more of a say and influence than net-receivers do.

Looking at the current Cohesion Policy, this research argues that the EC already have the powers to withhold funds from Member States that do not respect the rule of law, stated in the Common Provisions Regulation. However, given the political sensitivity to this act, the EC have not chosen to do so. Political sensitivity means that the Commission have previously been

¹⁹⁷ Bulmer, Simon. "Germany and the European Union: Post-Brexit Hegemon?" *Insight Turkey* 20 (3): 11–28, (2018), page 11

careful in suspending or sanctioning Member States and thus appear to be a supranational power which might create EU resentment. But now, with vocal French, German and Dutch Member States explicitly asking for some form of mechanism, the EC drafted such a mechanism proposal, seeing the issues as publicly salient. Net-contributing Member States does not need to fear this mechanism, as they are not currently rule of law breakers, nor are they net-receivers of Cohesion funds. This can, however, change in time.

7. Summary

Coming back to the research question: Is the Cohesion Policy being politicized, and if so, what does that mean for European Integration? With the theoretical framework discussed in chapter 2, whereas a combination of Liberal intergovernmentalism, rational choice institutionalism and principal-agent theory was found best suited to answer this question, this thesis have laid out the contextual background for the introduction of the Rule of Law conditionality in Cohesion policy, in which the research have established several important internal and external factors that have contributed to this proposal. After an overview of the main features of the EU budget, The Cohesion Policy, we started looking at the Brexit-effect, which highlights that the EC have been emboldened by the high percentage of EU support from Member States, as well as the UK leaving which would need the current Member States to contribute more. Consequently, countries who must contribute more feel the need to legitimize the increase to their citizens, for example by demonstrating that funding goes to upholding the rule of law, rather than in the pockets of corrupt politicians. This thesis also highlighted the liberal intergovernmentalism part of this research, how Member States form same preferences in trying to avoid negative interdependence and therefore delegates powers to the European Commission, which the Member States believes can solve this. Furthermore, we looked at the current status of the Rule of Law in the EU and what Hungary, Poland and Romania have specifically failed to comply with, or that have systematically violated.

With that in mind, the analysis of this thesis have looked at if the voting patterns on the RoL proposal display signs of politicization, i.e. polarization of interest, values and/or opinions, and in order to assess that this thesis have employed the four criteria's for Member States to adopt conditionalities which includes reward, conditions, credibility and cost. Thourgh a analysis of

these criteria's we have been able to show a polarization of interests and political and geographical cleavages which entails a politicization. Furthermore, there is a strong correlation between those who violate the rule of law, those Member States that receive the most Cohesion funding and opposing the proposed regulation. To further strengthen the analysis, I performed a qualitative content analysis, and through the statements found a polarization of interests, opinions and values, and manifested itself as a west and east divide, rule of law upholder vs rule of law breaker and finally a clear cleavage in net-contributor and net-receiver, as also seen in the conditionality criteria analysis.

In the last part, this research shed some light on what this politicization of funds indicates for European Integration. I argue that Liberal IG gives a valid reason that Member States are the drivers of European Integration, but important to understand what extent that delegated power, where RCI and Principal-agent theory can shed some light on once the powers are delegated, the agent might use its powers of discretion in order to enhance its own position. The power of discretion is evident in the way the proposal is legally embedded, where the EC would enjoy the highest chance of success. The research also found valid grounds in Rauh's theory that the EC acts to legislate issues that they believe serves a broad public interest, rather than pleasing other Member States' government.

All in all, one could argue that Member States favor a more federal structure for the EU budget, spearheaded by Germany, to safeguard their economic gains and avoid negative interdependence, and that in times of crisis are willing to delegate more power to the EU which they see as better suited to deal with such a task. I believe this research highlights the extent to which the Commission is willing to do to safeguard the Rule of Law and the willingness of Member States to make that happen, either by wanting a more federal structure or by delegating in times of crisis. As seen in the voting patterns from the plenary sessions regarding this proposal, it might serve as an indicator for how the Council voting will proceed. However, it is important to bear in mind that the scrutiny of the proposal is not only from net-receivers and rule of law breakers, but from the EU institutions itself and a compromise or heavy amendment might be the case for this financial regulation. Member States that does not favor this regulation might also threaten to veto the MFF, considering that this policy is still decided by unanimity rule in the Council.

8. Conclusion

The purpose of this research has been to investigate whether the Cohesion Policy is politicized by the proposal of the most encompassing internal conditionality, i.e. the Rule of Law conditionality, and if so, what this signifies for European Integration. To investigate this, this research has applied politicization theory and analyzed empirical findings through Schimmelfennig and Sedelmeier's external incentive model. When looking at what this signifies for European Integration, this research has found Liberal IG as best suitable approach to investigate this, complimented by Rational Choice Institutionalism. To successfully examine the research question of this thesis, I have provided a theoretical framework that is suited to investigate the power relationship of the EU, dynamics of the EU budget, the Cohesion Policy and the theoretical underpinnings and history of internal conditionalities. The results show that the Cohesion Policy is indeed politicized, and this politicization are the result of powerful Member States such as Germany and France's wish to provide a link between rule of law and EU funding in order to punish and prevent illiberal Member States. As Rauh's conception of politicization defines, we have also witnessed The European Commission that acts to legislate on an issue it considers serves a publicly broad interest, using its power of discretion to draft a legislation that have the highest chance of succeeding and thus avoiding an intergovernmental stalemate. Therefore, this research has argued that Member States are willing to give the Commission power in times of crisis, due to the fact that they deem the EU best suited to handle this on the supranational level and that they are the main drivers of this Rule of Law conditionality. One could also conclude that there is a general wish to have a more federal structure in EU expenditure, seeing that it would protect national welfare from illiberal and corrupt Member States. The voting patterns can be to some extent used to foresee the Council voting, however, there are several issues pointed out with the proposal. Consequently, a compromise might be the result. However the outcome of the proposal, the fact remains that this case have proven to be very useful in analyzing forces in European Integration, adds to the academic research on politicization and a deeper understand of internal spending conditionalities in the EU, a mechanism I am sure we will see more of.

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9. Appendix

Appendix 1:



FRÅGA 8 AV 33

EU ska ekonomiskt straffa medlemsländer som kränker mediernas oberoende

EU-kommissionen och en majoritet i EU-parlamentet har kritiserat Ungern och Polen för att regeringarna stärkt den politiska kontrollen av public service-radio- och tv, och att flera mindre medier tagits över av regeringarna närmaststående mediebolag. Inför EU:s nya långtidsbudget har det kommit förslag att länder som inte följer grundläggande demokratiska regler ska kunna bestaffas med att en del av EU:s regional- och jordbruksstöd dras in.

Visa vad partierna tycker ▾

Mycket dåligt förslag



Ganska dåligt förslag



Ganska bra förslag



Mycket bra förslag



[Hoppa över frågan](#)

¹⁹⁸ Appendix 1: Swedish vote compass shows question 8 which is regarding the Rule of Law condition in Cohesion Funds.

¹⁹⁸ SVT nyheter. "EU ska ekonomiskt straffa medlemsländer som kränker mediernas oberoende". EU valkompass 2019, fråga 8. <https://valkompassen.svt.se/eu-2019/fraga/eu-ska-ekonomiskt-straffa-medlemslander-som-kranker-mediernas-oberoende>

Appendix 2

Western Europe 2018

	Overall score	Global Rank	Regional rank	I Electoral process and pluralism	II Functioning of government	III Political participation	IV Political culture	V Civil liberties	Regime type
Norway	9.87	1	1	10.00	9.64	10.00	10.00	9.71	Full democracy
Iceland	9.58	2	2	10.00	9.29	8.89	10.00	9.71	Full democracy
Sweden	9.39	3	3	9.58	9.64	8.33	10.00	9.41	Full democracy
Denmark	9.22	5	4	10.00	9.29	8.33	9.38	9.12	Full democracy
Ireland	9.15	6=	5	9.58	7.86	8.33	10.00	10.00	Full democracy
Finland	9.14	8	6	10.00	8.93	8.33	8.75	9.71	Full democracy
Switzerland	9.03	10	7	9.58	9.29	7.78	9.38	9.12	Full democracy
Netherlands	8.89	11	8	9.58	9.29	8.33	8.13	9.12	Full democracy
Luxembourg	8.81	12	9	10.00	8.93	6.67	8.75	9.71	Full democracy
Germany	8.68	13	10	9.58	8.57	8.33	7.50	9.41	Full democracy
United Kingdom	8.53	14	11	9.58	7.50	8.33	8.13	9.12	Full democracy
Austria	8.29	16	12	9.58	7.86	8.33	6.88	8.82	Full democracy
Malta	8.21	18	13	9.17	8.21	6.11	8.75	8.82	Full democracy
Spain	8.08	19	14	9.17	7.14	7.78	7.50	8.82	Full democracy
Portugal	7.84	27	15	9.58	7.50	6.11	6.88	9.12	Flawed democracy
France	7.80	29	16	9.58	7.50	7.78	5.63	8.53	Flawed democracy
Belgium	7.78	31	17	9.58	8.93	5.00	6.88	8.53	Flawed democracy
Italy	7.71	33	18	9.58	6.07	7.78	6.88	8.24	Flawed democracy
Cyprus	7.59	35	19	9.17	6.43	6.67	6.88	8.82	Flawed democracy
Greece	7.29	39	20	9.58	5.36	6.11	6.88	8.53	Flawed democracy
Turkey	4.37	110	21	4.50	5.00	5.00	5.00	2.35	Hybrid regime

Source: The Economist Intelligence Unit.

¹⁹⁹ Appendix 2: Table from the democracy index 2018 on democratic standings in Western Europe 2018

¹⁹⁹ The Economist, *Democracy Index 2018: Me too? Political participation, protest and democracy*, 2019

Appendix 3.

Eastern Europe 2018

	Overall score	Global Rank	Regional rank	I Electoral process and pluralism	II Functioning of government	III Political participation	IV Political culture	V Civil liberties	Regime type
Estonia	7.97	23=	1	9.58	8.21	6.67	6.88	8.53	Flawed democracy
Czech Republic	7.69	34	2	9.58	6.79	6.67	6.88	8.53	Flawed democracy
Slovenia	7.50	36=	3=	9.58	6.79	6.67	6.25	8.24	Flawed democracy
Lithuania	7.50	36=	3=	9.58	6.43	6.11	6.25	9.12	Flawed democracy
Latvia	7.38	38	5	9.58	6.07	5.56	6.88	8.82	Flawed democracy
Slovakia	7.10	44	6	9.58	6.79	5.56	5.63	7.94	Flawed democracy
Bulgaria	7.03	46	7	9.17	6.43	7.22	4.38	7.94	Flawed democracy
Poland	6.67	54=	8	9.17	6.07	6.11	4.38	7.65	Flawed democracy
Hungary	6.63	57=	9	8.75	6.07	5.00	6.25	7.06	Flawed democracy
Croatia	6.57	60	10	9.17	6.07	5.56	5.00	7.06	Flawed democracy
Serbia	6.41	63=	11	8.25	5.36	6.11	5.00	7.35	Flawed democracy
Romania	6.38	66=	12	9.17	5.71	5.00	4.38	7.65	Flawed democracy
Albania	5.98	76	13	7.00	4.71	5.56	5.00	7.65	Hybrid regime
Macedonia	5.87	78	14	6.50	5.36	6.67	3.75	7.06	Hybrid regime
Moldova	5.85	79=	15	7.08	4.64	6.11	4.38	7.06	Hybrid regime
Montenegro	5.74	81=	16	6.08	5.36	6.11	4.38	6.76	Hybrid regime
Ukraine	5.69	84	17	6.17	3.21	6.67	6.25	6.18	Hybrid regime
Georgia	5.50	89	18	7.83	3.57	6.11	4.38	5.59	Hybrid regime
Kyrgyz Republic	5.11	98=	19	6.58	2.93	6.67	4.38	5.00	Hybrid regime
Bosnia and Herzegovina	4.98	101	20	6.50	2.93	5.56	3.75	6.18	Hybrid regime
Armenia	4.79	103	21	5.67	4.64	5.56	2.50	5.59	Hybrid regime
Belarus	3.13	137	22	0.92	2.86	3.89	5.63	2.35	Authoritarian
Kazakhstan	2.94	144=	23=	0.50	2.14	4.44	4.38	3.24	Authoritarian
Russia	2.94	144=	23=	2.17	1.79	5.00	2.50	3.24	Authoritarian
Azerbaijan	2.65	149	25	0.50	2.14	3.33	3.75	3.53	Authoritarian
Uzbekistan	2.01	156	26	0.08	1.86	2.22	5.00	0.88	Authoritarian
Tajikistan	1.93	159=	27	0.08	0.79	1.67	6.25	0.88	Authoritarian
Turkmenistan	1.72	162	28	0.00	0.79	2.22	5.00	0.59	Authoritarian

Source: The Economist Intelligence Unit.

²⁰⁰: Appendix 3: Table from the democracy index 2018 on democratic standings in Eastern Europe 2018

²⁰⁰ The Economist, *Democracy Index 2018: Me too? Political participation, protest and democracy*, (2019)

Appendix 4: A table of Cohesion Policy allocation in Euros for 2014-2020 per the 28 Member States of the EU.

Country	Cohesion policy ¹
Austria	978 349 432
Belgium	2 020 742 087
Bulgaria	7 422 791 277
Croatia	8 463 255 776
Cyprus	702 401 708
Czech Republic	21 643 218 575
Denmark	413 231 682
Estonia	3 534 560 285
Finland	1 304 456 595
France	14 763 176 455
Germany	18 269 459 134
Greece	15 275 247 163
Hungary	21 544 112 983
Ireland	1 019 788 509
Italy	31 686 254 105
Latvia	4 418 233 214
Lithuania	6 709 396 130
Luxembourg	39 558 626
Malta	707 989 554
Netherlands	1 014 636 456
Poland	76 866 461 337
Portugal	21 342 542 314
Romania	22 541 107 909
Slovakia	13 768 317 148
Slovenia	3 011 899 768
Spain	27 941 949 230
Sweden	1 763 510 980
United Kingdom	10 974 276 104

201

²⁰¹ Piattoni, Simona & Polverari, Laura. *Handbook on Cohesion Policy in the EU*, 2016

Appendix 5: Text from TEU regarding how the rule of law conditionality is legally based and how the MFF is legally based.

Article 312

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources. It shall be established for a period of at least five years. The annual budget of the Union shall comply with the multiannual financial framework.
2. The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act **unanimously** after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

The European Council may, unanimously, adopt a decision authorising the Council to act by a qualified majority when adopting the regulation referred to in the first subparagraph.

3. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity. The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.
4. Where no Council regulation determining a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that act is adopted.
5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption²⁰².

²⁰² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences

Article 322 of the TFEU:

1. The European Parliament and the Council, acting in accordance with the **ordinary legislative procedure**, and after consulting the Court of Auditors, shall adopt by means of regulations:
 - (a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
 - (b) rules providing for checks on the responsibility of financial actors, authorizing officers and accounting officers.
2. The Council, acting on a proposal from the Commission and after consulting the European Parliament and the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements²⁰³.

²⁰³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences *Official Journal C 326, 26/10/2012 P. 0001 - 0390*

Appendix: 6

List of abbreviations

CP - Cohesion Policy

EC - European Commission

ESI - European Structural and Investments Fund

EP - European Parliament

EPP – European’s People Party

ExAC - Ex-ante Conditionalities

IG - Intergovernmentalism

Liberal IG - Liberal Intergovernmentalism

QMV – Qualified majority voting

RCI - Rational Choice Institutionalism

RoL - Rule of Law

TEU – Treaty of the European Union

U.K - United Kingdom