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Defending European liberal democracy in times of crisis

The EU must tackle Covid-19 and defend liberal democracy at the same time — if necessary with financial sanctions

Read this article in German.

The reply could barely have been more humiliating: Of course the Hungarian government wished to echo the call for democracy and the rule of law, announced Justice Minister Judit Varga. In a joint declaration, 14 EU member states – including Germany – had issued an appeal to 'uphold our European principles and values', particularly in this time of crisis.

This was intended as a clear message to Hungary, where the government of Prime Minister Viktor Orbán stripped parliament of power to an unprecedented extent last week, allowing it to rule by decree for an indefinite period. Just one thing was missing from the member states' shot across the bows to Hungary: any mention of the country's name. So Orbán pulled the cunning trick of instantly associating himself with the declaration.

This episode is further proof of the danger of not putting anti-democratic, populist governments firmly in their place. The coronavirus crisis gives them the perfect excuse to pursue their insidious strategy of grabbing power at all levels of the political and societal system. A closer look at the strategy of these populist governments shows why it is so important for the European Union to take concerted action.

After all, Orbán simply doesn't see himself as an enemy of democracy. Instead, he points out that in all other member states, the executives have assumed greater decision-making authority in the name of beating the crisis. His message is that instead of wasting time dealing with such petty accusations, he must devote his full attention to fighting the pandemic.

Poland's election goes ahead

The PiS-led government in Poland is another blatant example for this tactic of normalising the erosion of democracy. It is determined to ensure that the presidential election will go ahead in May as planned. This is inconceivable in the midst of the coronavirus crisis, as no one standing for election in the country can travel except office-holders and candidates of Andrzej Duda's PiS party. A free and fair election campaign is currently impossible.

Even so, PiS now insists that the election must be held by postal vote. The fact that millions of Poles living abroad will not be allowed to vote suits PiS. The head of the Polish post office's belief that a postal election would not be feasible in the current circumstances prompted PiS to swiftly replace him with the deputy defence minister. And the party was undeterred by the fact that changing electoral law to facilitate this so close to the election date is against the Polish constitution.

After all, it has little cause to fear, having already appointed supportive judges to the Constitutional Tribunal as well as the Control Committee of the Supreme Court, which could declare the election invalid. And when accused of breaching the fundamental European values of democracy and the rule of law, PiS cites the precedent of the recent Bavarian local elections, partly conducted by postal vote. Out comes the narrative again: The Europeans are accusing Poland of double standards, yet what Poland is doing is customary European practice. Of course, PiS neglects to mention that the Bavarian election was constitutional and the election campaign did not take place during the pandemic.

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There is great temptation to use the fight against coronavirus as a pretext to obtain unlimited executive power to the detriment of fundamental rights and democracy. The appropriateness and proportionality of executive powers in times of crisis are rightly being debated in many European countries. Yet it is important to draw a clear distinction between governments that are now sharpening the authoritarian tendencies already apparent before the crisis and those that are legitimately expanding certain executive powers for a limited period and under parliamentary control.

The latter point is particularly important: Even in times of crisis, there must be an effective separation of powers and the democratic practice of

checks and balances must be maintained. Where national governments challenge this, the European Union must act. Article 2 of the Treaty on European Union clearly states that democracy and the rule of law are central to the values that underpin the EU. Article 10 of the Treaty sets out that the governments of member states must be subject to parliamentary control. If the rule of law and the separation of powers are overridden, the foundations of our European Union are weakened.

The EU must safeguard fundamental values

What can the European Commission do now as the guardian of the treaties? First of all, as mentioned earlier, it must explicitly mention the infringements and take the relevant states to the European Court of Justice (ECJ) for breach of the Treaty. In the past, the ECJ has shown the capacity to respond swiftly to breaches of European law. The ECJ could introduce interim measures to immediately suspend laws that contravene European legislation.

It is essential to disrupt the populists' narrative, which claims that their approach is in line with European values. Voters in the countries concerned must be left in no doubt that if they choose Orbán and those like him, they are voting against Europe. Most of the population in the countries concerned are pro-European. Despite the nationalistic policies of their governments, they are keen to maintain the benefits of European integration. Their governments are funding their philanthropy with European subsidies.

This takes us to the next point at which fundamental European values can be effectively defended: those who infringe them must have their EU subsidies cut. As yet, there is no mechanism for this. It must be resolved in the course of negotiations on the next Multiannual Financial Framework. Just how seriously the member states are about this will become apparent here. In their last draft of the EU budget, the link between EU funds and compliance with principles of the rule of law called for by the Commission and the Parliament was diluted. Given the events in the coronavirus crisis, this is real cause for concern. One thing is certain: the next EU budget will be fully geared towards overcoming the crisis. However, to overcome the crisis, we also need to have more robust European instruments to protect our fundamental values in future.

Both things need to happen quickly: decisive action by the European Commission and opportunities to impose financial sanctions. After all, the coronavirus crisis must not give rise to a crisis of democracy in

Europe. We will be able to quell the allure of authoritarianism inside and outside the EU only if we prove, especially in these challenging times, that successfully overcoming the pandemic goes hand in hand with our model of a liberal democracy.



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