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No to a fudge on the rule of law!

The rule of law has always been a foundation of the EU. It must not give in to Poland's and Hungary's blackmailing

Read this article in German.

On Thursday, the EU's heads of state and government will meet for the last European Council of the year. It could be a historic moment. In July, they agreed on the biggest European financial aid package ever to pull us jointly out of the corona crisis. This was accompanied by an epochal step towards a new financial architecture: the European Commission will be allowed to raise its own resources on the financial markets. This is a step towards financial autonomy and sovereignty for the EU.

The EU intends to use this autonomy to provide massive support to the countries most affected by the crisis. A small but vocal minority – the governments of Poland and Hungary – are now openly threatening to use their veto to block this decision; and they are doing so purely for domestic reasons. They want to prevent the application of the Rule of Law Mechanism, one of the key conditions for approval by the EU Parliament. The heads of state and government, and the EU Parliament in particular, must not give in.

For what, after all, is at the heart of the Rule of Law Mechanism? It is about whether the EU is a union of values. A clear majority of member states answered 'yes' to this question and want to introduce this mechanism so that, in future, violations of the rule of law can be punished by a reduction in EU funds. We must decide now: we can either remain a community of solidarity, a Union based on common values and rules, or we can allow ourselves to be blackmailed by a minority consisting of two authoritarian governments that have no interest in such a community.

The rule of law is a foundation of the EU

These are governments that wish to impose further restrictions on the rights of journalists, critics, activists and minorities, and to curtail the independence of the judicial system in their countries. The logic followed by Orbán, Morawiecki and Kaczyński is: 'Yes, please, to money from the EU; no, thanks, to the rule of law.' If the EU accepts this logic, it will eventually be hollowed out. We can no longer stand by and watch this process unfold. The developments we have been witnessing for years now in Hungary and Poland are alarming.

Take the example of Hungary: since Orbán came to power for a second time in 2010, Reporters Without Borders has downgraded Hungary from 23rd to 89th place in the World Press Freedom Index. Antisemitic rhetoric, such as that directed against the Jewish entrepreneur George Soros, has also increased. Recently Manfred Weber, the leader of Fidesz's political family in the European Parliament, the European People's Party (EPP), has been compared to the Gestapo.

This is of course a difficult situation for the EU. The southern European countries in particular are dependent on funds being released quickly.

Orbán is now accusing Europeans, and the Germans in particular – myself included –, of interfering with Hungarian national sovereignty on the issue of the rule of law. This is complete nonsense. The rule of law has always been a foundation of the EU and something Hungary accepted when it joined the EU. And as recently as 2009, all member states also agreed to the EU Charter of Fundamental Rights in the Treaty of Lisbon. What the Rule of Law Mechanism is now supposed to enforce is the observance of rules that Hungary and Poland, too, have explicitly and contractually agreed to.

The existing Article 7 procedure (which says that voting rights can be withdrawn from states that fail to respect the EU's fundamental values) is one that already pursues precisely this objective. But on this issue we have been stuck in a dead end for years. As this procedure requires unanimity, Hungary and Poland block any decision by defending each other.

The EU needs to stand firm

For years, I myself have been calling for a more effective instrument, one that includes the option of financial sanctions via the EU budget. Both Poland and Hungary are in urgent need of EU money. If Orbán is faced with having to accept the rule of law as a condition of EU funding, he will accept it. Because his government and his whole system of maintaining power are absolutely dependent on EU funds. From the new recovery fund alone, €23.1bn are earmarked for Poland and €6.2bn for

Hungary.

What happens now? This is of course a difficult situation for the EU. The southern European countries in particular are dependent on funds being released quickly. The corona pandemic has caused dramatic economic damage, which we have to contain. It is also in Germany's interests that countries like Italy and Spain recover quickly. They are our neighbours, our friends. And not least they are important members of the Single Market, the main market for our products. An economically strong EU that comes through the crisis in good shape is in Germany's vital interests.

Nevertheless, we must not give in now. Even if Hungary and Poland stick to their veto, there are many alternative ways of getting corona aid off the ground. For example, as an agreement made outside the EU between the remaining 25 states, or through a financial model similar to SURE, the European programme to finance short-time work. Even the EU budget, which normally runs for seven years, would be replaced in the event of a veto by annual emergency budgets. The EU Commission is currently working on such an emergency scenario.

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All this gives me hope that Europe will stand firm this time. And whereas in the past the heads of state and government often budged at the last moment, it now looks as if the European Parliament will prevent this from happening. It has made it quite clear that there will be no compromises on the Rule of Law Mechanism. Even the EPP, the party to which Hungary's Fidesz, but also the German CDU and CSU belong, are firmly behind this decision. The watchword is: no fudge on European values.

It is also interesting to note that the Netherlands cannot agree to any deal without a Rule of Law Mechanism because the Dutch Parliament decided in the summer that any aid package must be linked to the rule of law. So the Dutch Prime Minister Rutte cannot agree to any deal without the Rule of Law Mechanism.

Don’t fudge this

The heads of state and government should be aware of the far-reaching ramifications of their actions on Thursday. This year has been a dramatic one for the European Union. Together as Europeans we have mitigated the worst social and economic consequences. Unilateral national action and populist attempts to weaken the EU's capacity to act and divide people have not been successful. It has become clear that in times of crisis we need solidarity and community, but also strong institutions and infrastructure backed by the state.

For the first time, EU member states have joined forces with the EU institutions to procure medical equipment and, more recently, to launch an EU vaccine strategy. We must use this momentum to strengthen our institutions, to work in even closer and better coordinated cooperation and to press on with European integration. This also includes calling into question the principle of unanimity.

We cannot afford to delay decision-making processes or to make compromises that are nothing more than a fudge. We cannot allow ourselves to be blackmailed and let this momentum be destroyed by two ultra-right governments. A strong EU is built on the strength of the law and must courageously enforce that law.

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