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The EU's lacklustre fight for Hungarian democracy

For years, the EU turned a blind eye while Viktor Orbán built his illiberal state — and its rule of law mechanism won't help protect democracy now

Over ten years ago, the political system of Hungary started to degenerate into an autocracy. Following the adoption of the new Fundamental Law in 2011 and related transitional provisions by the Hungarian parliament controlled by Viktor Orbán's Fidesz party, the European Commission launched three expediated infringement procedures in January 2011 to act on some of the most critical issues – media, judiciary, central bank –, and clearly signalled the urgency of the problem. But the European Council, then dominated by the European People's Party (EPP), turned a blind eye.

Already back then, Members of European Parliament (MEP) like social democrat Hannes Swoboda or Daniel Cohn-Bendit of the Greens saw clearly Orbán's authoritarian drive and the high risk of a slide into autocracy. In 2013, the European Parliament adopted a report sponsored by Rui Tavares, a green MEP from Portugal, on the democratic setback in Hungary. However, nothing meaningful happened until 2017, when the Commission triggered Article 7 of the EU Treaty – against Poland. The Commission action was taken in response to the infamous judicial reform promoted by the conservative nationalist Polish government.

While originally Orbán was trying to hide his objectives and maintained ambiguity, in 2014 he nailed his colours to the mast and declared that he was aiming at building an illiberal state. While this made foreign criticism easier, by that time, he was re-elected with another constitutional majority in parliament. In 2018, the European Parliament analysed and condemned again the undemocratic drift in Hungary and adopted another report, this time by Judit Sargentini, a green MEP from the Netherlands. Eventually, on 12 September 2018, the European Parliament voted for action against Hungary under Article 7, alleging breaches of core EU values.

Rule of law as a proxy

The famous Article 7, which may end with the suspension of voting rights of a country in the EU for the violation of EU values, had been much talked about for years among experts as well as decision-makers. However, some considered it to be 'a nuclear option' rather than a practical tool. This certainly was an overstatement, and once Poland's right-wing rulers decided to join Viktor Orbán in the authoritarian club, Article 7 – which requires unanimous decision among representatives of EU member states to enter into force – stopped being an option at all.

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At that point, a memorable episode in EU-Hungary relations took place when then Commission President Jean-Claude Juncker called Viktor Orbán a dictator before cameras. But nothing happened in practice. Through these years of inaction, those who wanted to prove that they were committed to a tough line on Hungary routinely pointed to the need for a 'rule of law conditionality' that would allow using the suspension of EU funds in case of the severe violation of European values.

The birth of the new tool was scheduled for the adoption of the EU's new seven-year budget, but that failed to materialise before the 2019 European Parliament elections. Only after another delay following the outbreak of the Covid-19 pandemic did it come to pass. The German presidency of the Council was eager to negotiate a tokenistic compromise to ensure that the Polish and Hungarian governments do not veto the newly created recovery fund called Next Generation EU. It required the intervention of the European Parliament, under the principled leadership of the late David Sassoli to take the matter seriously again.

However, what eventually was born under the name 'rule of law mechanism' is not about protecting the rule of law. Instead, it's about protecting the EU budget as rule of law violations that are not closely connected to the absorption of the EU budget cannot be sanctioned. Furthermore, it is unlikely that the mechanism would be allowed to change the budgetary endowment of a country, so it can only result in temporary suspensions.

For this reason, the tool just barely goes beyond what is already allowed against rogue governments in the EU: interrupting or suspending transfers to countries where there is a serious evidence or risk of abuse. The difference is that until now the Commission alone had the right to

act. With the new mechanism the decision goes to the Council (of ministers), it will inevitably be more politicised and subject to horse-trading.

Phony endgame

On 16 of February 2022, the Court of Justice of the European Union (ECJ) has given green light to the new Rule of Law mechanism. The ball was again in the Commission's court which was supposed to take the initiative when necessary. However, those who had thought this would just be a paper tiger can feel vindicated just by noticing the behaviour of Ursula von der Leyen. Since the Commission has not yet unequivocally pronounced that Hungary would be an Article 7 case, we may continue to witness a kind of inactive implementation of the mechanism.

The specific division of labour and lack of clear responsibilities within the von der Leyen Commission is another factor that have hindered more robust action.

In Juncker's times, the mirage of rule of law conditionality was used to explain – and excuse – inaction and deflect the Hungarian question. Since 2019, Orbán – whose vote was necessary to elect the new Commission president – has consistently outmanoeuvred von der Leyen, starting with the nomination of the Hungarian member of the Commission. Originally, he proposed professor and former justice minister László Trócsányi, but eventually managed to install a real hardliner, the former ambassador Olivér Várhelyi. Given the growing illiberal network in the Western Balkans, he insisted on the enlargement portfolio. Now, this is the playing field for Várhelyi to create as much confusion as possible regarding the rule of law, which is among the EU entry criteria.

The specific division of labour and lack of clear responsibilities within the von der Leyen Commission is another factor that have hindered more robust action. The commissioner who was previously responsible for rule of law matters, Frans Timmermans, was moved to the super-portfolio on climate change. The Commission has a member for justice, another one for values and transparency, and again another one for democracy and demography – the latter was probably least heard on the Hungarian question. Where the buck stops is unclear, except for the overall responsibility of Ursula von der Leyen. And when the Court's announcement had to be commented on, it was a 4th commissioner, Johannes Hahn, who is responsible for the EU budget, coming out with statements, signalling that eventually the issue is not about democracy,

values or justice but the budget.

While the money from the EU recovery fund is not flowing to Hungary because of concerns about corruption, the problem is that the Commission is not even prepared to talk the talk. What would have helped in the past year is to at least state clearly that in Hungary the rule of law and democracy has been undermined by Orbán and the constitutional arrangement in Hungary is not compliant with EU norms and standards. The failure to do so might complicate the process of restoring the rule of law once pro-democracy forces will have an opportunity to form a government.

Political arithmetic in Hungary

Western ignorance, inaction, and affection for faux support have caused substantial disillusionment among the pro-EU circles of Hungarian politics. It was understood well before the ECJ decision that pro-democracy forces in Hungary can only rely on themselves, and even talking the talk is sometimes too much for certain EU leaders. And since rule of law violations in Hungary often don't directly affect the EU budget, the mechanism cannot be helpful in most cases. This means the democratic opposition will continue to consider the EU on Orbán's side.

While the rule of law mechanism – especially in the shadow of Russia's war on Ukraine – will have no major impact on Hungarian politics, the long-term effect at EU level might be slightly different.

From a Hungarian or Polish point of view, it has never been easy to support a rule of law conditionality as it threatens with cutting EU funds that Eastern member states desperately need. Besides, it was always connected with the problem of double standards, to the extent it might be effective vis-à-vis countries that are dependent on structural funds, but not so useful in a hypothetical case if a far-right breakthrough happens in a country that is net contributor to the EU budget, like the Netherlands, France, or Italy. At the same time, direct support to pro-democracy groups or media organisation has never been seriously considered by EU actors.

This extraordinary political deformation has brought some unusual formations to life. In 2018, a unified opposition – back then without the formerly far-right Jobbik party – would have been sufficient to prevent another constitutional majority for Viktor Orbán. In 2022, a broad alliance of six political parties that includes Jobbik, together with the movement of the conservative Spitzenkandidat Péter Márki-Zay, is needed to avoid another two-third majority for Orbán, let alone have a

chance for the democratic block to achieve a razor-thin victory over the authoritarian right-wing government.

While the rule of law mechanism – especially in the shadow of Russia's war on Ukraine – will have no major impact on Hungarian politics, the long-term effect at EU level might be slightly different. The EU has made a significant step forward since respect for EU values like democracy, the rule of law, human rights, and respect for and protection of minorities have functioned as entry criteria. Yes, they will now be continuously monitored. That does not mean, however, that the new mechanism can necessarily be very quickly put into action. Orbán can still say what his mentor Vladimir Putin said on the 21 February: 'The dogs bark, but the caravan goes on'.



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