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THE RULE OF LAW AND FUNDAMENTAL RIGHTS.

## EU HAS TO ADDRESS RULE OF LAW CHALLENGES

**There is now plenty of evidence that EU money aided the rise of authoritarian politics in places like Hungary. But cutting it off will not - by itself - contain democratic backsliding in Europe. It is time for the EU to finally stop playing defence and turn the protection of its values into a full-fledged policy agenda.**

Linking EU funds to the rule of law is a necessity. For years, an implicit bargain between net contributors and net recipients - we pay for market access, you are free to abuse funds - has governed money flows in the EU. But with 1.7 trillion in the upcoming MFF and the Recovery instrument, this perverse equilibrium must be broken. From January 2021, all eyes will be on the Commission and the Council - will they have the courage to trigger the rule of law conditionality regulation or will they leave backsliding and corruption unpunished?

But ad-hoc suspension of funds is but one element of a larger project needed to restore and protect the EU's democratic identity. The rationale for acting on such a sensitive issue has never been stronger than today.

Sometimes we hear that one government's economic choices affect others in the Eurozone and the single market, which makes it everyone's business; whereas, by contrast, its handling of the judiciary does not. This is myopic and plain wrong. A politically subjugated judiciary in Poland distorts the entire single market. When EU compa-

nies - or EU citizens - are constrained in their access to a fair trial in Poland, it is everyone's business. The same logic applies to other common EU projects, such as law enforcement cooperation. When EU members pool security assets and share sensitive data, it matters to everyone whether Hungarian prosecutors are independent, or whether Polish security chiefs operate under proper oversight.

The effects of rule of law backsliding on European cooperation have been most acutely felt in the area of law enforcement. We are now at a point where a growing number of national judges refuses to extradite criminals to Poland on account of the destruction of judicial independence in that country. It is very difficult to enhance security cooperation between Member States when credible concerns exist about how new tools would be exercised or whether individual rights and due process would be respected.

Then there is the broader issue of European democracy. The EU does at the moment not inspect nor care much about national electoral processes. Yet national elections bear crucially on the making of EU-wide legislation, by determining the composition of the EU's key decision-making and legislative bodies - the European Council and the Council. Hence, citizens in, say, Portugal, have an obvious stake in the integrity of the Finnish electoral process, inasmuch as Finland's representatives in the Council shape legislation that affects almost every aspect of Portuguese

life. In other words, changes to Hungarian electoral law benefiting Fidesz at the expense of the opposition, or even just distortion of media pluralism, should concern all EU citizens, given that Viktor Orban is not only a national but also a European legislator.

I was once approached by an American diplomat who asked me: why do you care so much about these backsliding Member States? A third or so of states in the US have for several decades effectively maintained apartheid policies and the US turned out just fine (according to him). Leaving aside how healthy US democracy currently looks and the role of the southern states in existing challenges, this is not a sustainable model for the EU. The EU does not have a strong central government that can keep the system together with a few recalcitrant individuals. On the contrary, almost all European policies depend on trust and cooperation of the Member States. Even if only one of these Member States begins to systematically undermine the fundamental tenets of liberal democratic governance, the entire system as it currently exists is liable to collapse, because of the prevalent of consensual decision-making. There is no better example of this than the winter budget crisis in which Hungary and Poland threatened to blow up unprecedented economic relief because of the rule of law conditionality mechanism.

For these reasons, EU institutions have attempted to enhance European oversight of constitutional values. In 2020, the European Commission introduced annual rule of law monitoring of all 27 Member States conducted by the European Commission. It has been a long-standing desire of the Parliament to create some such mechanism in place. In a report for which I served as the rapporteur, the Parliament set the parameters of how it envisages the monitoring to look in the long-run. We proposed the creation of a legally binding Interinstitutional Agreement on Reinforcing Union Values, signed by the Parliament, the Council and the Commission. This Agreement would

create a comprehensive Annual Monitoring Cycle as part of which the state of democracy, rule of law and fundamental rights in all EU Member States would be monitored according to a single set of objective criteria. All Member States would be treated equally and fairly. Each year, the Commission, assisted by an interinstitutional working group and independent experts would draft an annual report on Union values which would be subsequently followed-up by the Parliament and the Council. The report would reflect on both positive and negative developments and include country-specific recommendations aimed to reinforce Union values. The findings from the Annual Monitoring Cycle would subsequently guide the use of enforcement tools, including infringement proceedings, Article 7 TEU and budgetary conditionality.

What the Commission has done this year with its rule of law report goes some way towards fulfilling our demands but there are three key differences between how they approach this and how the Parliament thinks the process should look. First, the Annual Monitoring Cycle we propose would cover all the values in Article 2 TEU. We believe this is the most sensible approach, given that the list in Article 2 is comprehensive, legally binding and agreed upon by the Member States. Second, we suggest that the monitoring report is accompanied by country-specific recommendations with concrete deadlines and benchmarks for implementation to make the results of the monitoring more immediately actionable. Third, our proposal would be, if adopted, legally binding on the three institutions; we are looking to create a more permanent framework that should survive changing political winds.

Undoubtedly, there is room for improvement on the part of the EU when it comes to addressing rule of law challenges. Its action should be more timely and proactive. Nevertheless, important steps are being taken to develop the EU's capacity to fulfil its role as a democratic guarantor. Whether the EU will be able to play that role effectively will ultimately depend on EU citizens. They will steer the course of history through voting and democratic participation. However, given the current lack of enthusiasm for advancing EU integration in broad strokes, I would not be surprised if a more fundamental moment, akin to 1989, was needed to re-energize European values. What is clear though is that the Union cannot survive long-term but as a club of democratic and law-respecting states. ●

