



No End in Sight for the EU's Democracy and Rule of Law Crisis

By Daniel Hegedüs

In the eyes of many “Old Europeans” the European Union’s democracy and rule of law crisis—that is, the ongoing autocratization in Hungary and Poland and its repercussions—still appears to be just an embarrassing proof of the backwardness of East-Central Europe with limited impact on important European matters. Accordingly, it enjoys limited attention and only limited political resources have been allocated in recent years to repair breaches of fundamental values within the EU.

But slowly, and even if unintentionally, East-Central Europe is teaching an important lesson to all the complacent Old Europeans. This is that the EU is really a political union in spite of the differences, lack of cohesion, diverging political cultures, backwardness, and complacency among its members. And that in a political union the systemic breakdown of liberal democracy at the domestic level spills over onto the European political stage.

The composition of the next European Parliament will not be determined in free and fair elections. If the coming elections are rigged in even one member state, the outcome of the whole European representative exercise will be rigged too. With already “two free but not fair” parliamentary elections behind it, this year’s European polls will not be different in Hungary. This is not a question of the country’s electoral system, which is different for European elections than for national ones, but of its media and campaign environment, and of the “pervasive overlap between state and Fidesz party resources, undermining contestants’ ability to compete on an equal basis,” as the OSCE electoral observation mission concluded after the 2018 general elections.

There is a good chance that Fidesz members will form the third-largest national group within the conservative European People’s Party (EPP) in the next European Parliament. The influence of Hungary’s ruling party will be accordingly high, unless the EPP is going to get rid of its rotten apple and expels or suspends Fidesz after March 20, now that the issue has finally led to a crisis within the conservative grouping. This shows how autocratization in one country impacts European-level democracy. The rigged elections in Hungary will not only benefit Fidesz, but the whole EPP as well if it remains in the party family, thus putting all other European parties at a disadvantage.



Worse Is Coming

Europe's democracy and rule of law crisis did not appear suddenly and unexpectedly. It developed gradually since 2010 and was exacerbated by the ineffective responses of the EU institutions, as I explain in a recent paper. Unfortunately, the political and institutional settings after the elections and the subsequent establishment of a new Commission will offer even less opportunity to enforce the compliance of member states with European values, like democracy or the rule of law.

With a greater number of Eurosceptic radical-right members and the EPP possibly perpetuating its tendency to tolerate breaches by conservative governments, the next parliament will definitely be less able to engage in defense of European values. Moreover, with not only Hungary but also Poland under an illiberal and Eurosceptic government, there will be at least two members of the European Commission chosen by parties that are at the heart of the democracy and rule of law crisis. Poland's ruling Law and Justice (PiS) party will do its best to determine who the country's commissioner for the next five years will be before the parliamentary elections this autumn.

What is more, this time troublemakers are not coming only from the east. As much headache in Brussels will be caused by the commissioners that will be selected by Italy's government, formed of the populist Five Stars Movement and the radical-right Lega, and by Austria's ruling coalition of the conservative Austrian People's Party and the radical-right Freedom Party.

The deterioration of the institutional and political environment for ensuring democracy and rule of law compliance can only be compensated by

determination, and a broad coalition of willing pro-European and pro-democracy institutions and forces. Best-case scenarios, like an electoral defeat of PiS in Poland later this year, could significantly ease the pressure on EU institutions, but hoping for and relying on positive developments at the domestic level would be a huge mistake. While national electorates and political elites bear the prime responsibility for the quality of democratic governance in their countries, the EU institutions also have their own responsibility to maintain European values, counter autocratic spillover, and guarantee the rights of citizens throughout the union. They may hope the best but have to prepare for the worst.

No Way Around a Systemic Overhaul

Short-term strategies and fixes will be important in the weeks after the elections, but even in the best case, they can only provide damage control. Until the new Parliament and Commission are in place later in the year, Finland's presidency of the EU will be of crucial importance. This will be especially so with regard to the scheduling and chairing the Article 7 hearings for Hungary and Poland in the Council. However, sustainable results can only be achieved, if the main EU institutions, and especially the Commission, reconsider their approach to the democracy and rule of law crisis.

First of all, it is not the deficiencies of its legal framework that has hampered the EU until now in addressing the crisis but rather the political settings, institutional traditions, and conflicts and role concepts among the EU institutions. And, without fixing these issues, the desperately needed improvement of the legal framework is a hopeless cause too.

The European Commission will have to acknowledge that the values embraced in Article 2 of the Treaty on European Union have distinct constitutional qualities. Therefore it will need to differentiate between Article 2 "constitutional" issues and matters of "ordinary" EU law, and develop an enhanced

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constitutional mindset that insists on substantial compliance with EU values by member states—and systematically enforce it if necessary. Furthermore, it should create via infringement procedures legal inputs that allow the Court of Justice of the European Union to unfold an interpretation of the treaties that offers enhanced protection for fundamental values.

A return to Article 2 compliance by rogue member states is very unlikely without putting pressure on autocratizing national elites and altering their political cost-benefit calculations. The proposal to impose rule-of-law conditionality on EU funds is the only current initiative that creates political issue linkage and offers solid political leverage over them. Most criticism toward the proposal's allegedly discriminatory character can easily be dispelled, and it is well tailored to the political realities of the rule of law crisis. This initiative must remain in the political forefront and put through the current negotiations over the EU's multiannual financial framework without any weakening.

The complementary character of rule-of-law conditionality and existing proposals for an objective and comprehensive monitoring mechanism for Article 2 values should be better recognized too.

Creating such a mechanism could not only render obsolete the main objection against conditionality, namely the lack of benchmarks on which to base it, it could also ease the European Commission's burden, as it is currently responsible for monitoring and the enforcement of value compliance. Last but not least, the parallel introduction of rule-of-law conditionality and a comprehensive Article 2 monitoring mechanism would represent a genuine compromise among the diverging interests of the various EU institutions and member states.

The EU is at crossroads. Due to the increasing political fragmentation of the European Parliament and the advance of sovereigntist forces, it will be tempting to keep pushing the differences over the systemic breach of democracy and rule of law in the background to enable desperately needed compromises in other fields. This might bring practical results in the short term, but it will only result in weaker and more unstable European integration in the long term. No political union can exist without fundamental political principles. For the sake of a functioning European integration, the EU institutions must take the gloves off and defend European values.

About the Author

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