

The Future of Europe: Questions, Concepts and Actors

Panel 2 Thursday 29 September 2022 16:45h-18:00h

Factsheet: “The Future of the Rule of Law in Europe: What does it take?”

Despite the generally pro-EU and pro-democratic views maintained by their populations, Hungary, just like Poland, continuously violates the rule of law, undermines minority rights as well as media freedom and facilitates corruption, which is also a significant problem in Bulgaria. All measures previously applied by European institutions to curb the rule of law erosion in Hungary and Poland failed. Against this backdrop, the Commission, following pressure from the European Parliament, is employing the rule of law conditionality mechanism for the first time. Announced in 2021, the conditionality will apply both to the Multiannual Financial Framework as well as for elements of the Recovery and Resilience Facility (RRF). It is a chance to reinvigorate the commitment of EU Member States to introduce financial sanctions in case of non-compliance with democratic standards. This year, funds for post-pandemic recovery programmes have been frozen for Hungary on the basis of state-captured institutions and corruption charges, while Poland got its plan accepted only tentatively, requiring numerous milestones to be met, also referring to the rule of law. Today, funds remain on hold because Poland is questioning the primacy of EU over national law. In order to defend its credibility, the EU needs to use existing instruments effectively and embark on more efforts to strengthen democratic standards more generally by developing effective anti-corruption and rule of law protection schemes at home and abroad.

- What is a realistic optimal outcome of the ongoing rule of law proceedings?
- What other levers does the EU have in view of rule of law violations, such as in Hungary?
- What would be the most important policy to strengthen the rule of law and democracy in the EU?

Goals

- Ensure that the new conditionality mechanism to protect the EU budget becomes an effective tool for countering rule of law violations in EU Member States.
- Establish a clear precedent in the current proceedings against Hungary and Poland signalling that democratic backsliding has significant repercussions for any government undermining the rule of law.
- Raise the credibility of the EU democracy and rule of law promotion in external relations by demonstrating the commitment to the rule of law and democracy at home.
- Increase the resilience of democracy and the rule of law across Member States and safeguard it against external threats.



Challenges

- Continued non-compliance is a real possibility and it remains unclear what a continued confrontation may mean for the EU's ability to act in other policy fields.
- The Polish President had proposed a new judicial law, to reverse rule of law infringements, yet it was dismissed as insufficient. Inaction on another rule of law case may undermine the broader effectiveness of the rule of law mechanism.
- The Hungarian government currently does not hesitate to block Common Foreign and Security Policy (CFSP) decisions. A situation may occur in which a log-rolling deal at the expense of the rule of law may seem attractive so as to ensure cohesion on immediate security threats.
- The threat of outside interference in our democratic processes is increasing and requires better protection at national and EU level.
- As pointed out by the President of the European Commission Ursula von der Leyen in her SOTEU Speech of 14 September 2022, credible support for democracy abroad – within and beyond the accession process – starts at with being committed to democracy and the rule of law at home.

Possible Solutions

- Pursue the rule of law conditionality mechanism vis-à-vis Hungary with rigor and support it politically on all levels.
- Further increase political pressure on the Orbán government on a bilateral level, including at the level of business actors.
- The EU needs to start early in protecting the rule of law and not just when violations have already started.
- Deepen democracy at the European level by increasing the political relevance of the Conference on the Future of Europe. While treaty change seems undesirable to many Member State governments, the role of the Conference could be heightened and its political salience increased.
- Reduce the leverage of individual countries in the Council by increasing the scope of Qualified Majority Voting.

German Dimension

Germany has presented itself as a staunch supporter of the rule of law and was among those Member States that first proposed rule of law conditionality back in 2013. At the same time, German Christian democrats have long supported the continued membership of Fidesz in the European People's Party. Germany plays a pivotal role in dealing with the Hungarian as well as the Polish governments, given the pre-eminence of German car manufacturers in both countries. Germany has fully supported the triggering of the rule of law conditionality announced by the European Commission in April 2022, but also holds other levers to pressure Hungary, Poland and other potentially non-abiding member states towards a return of academic and media freedom, civil society liberties, and respect for the rule of law.

