

Four Reasons Why EU Sanctions against Hungary Do Not Work

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26 January 2024

Too Little, Too Late

All signs indicate that the various procedures and instruments invented and used by the European Commission to improve the situation of the rule of law in Hungary have so far not been successful: the Article 7 TEU procedure, launched at the initiative of the European Parliament and which could lead to the suspension of a country's voting rights in EU institutions in the event of a systemic breach of the rule of law, has been frozen for years; the European Commission's monitoring reports on the situation of the rule of law in the member states, including Hungary, prepared under the so-called Rule of Law Mechanism, which have always indicated serious problems in this country, have been consistently denied by the Hungarian government. Then, in 2022, the European Commission suspended several payments from the Cohesion Fund and the Recovery and Resilience Fund until Hungary had met the so-called horizontal conditions and 27 milestones respectively; but freezing these funds has not made significant progress in restoring the rule of law so far. In fact, apart from a few sham measures, democracy and rule of law, in their simplest definitions (the possibility to overthrow the incumbent government through free and fair elections, and the limitation of political power by law) are in a worse situation in Hungary today than when the various mechanisms for protecting the rule of law were launched or payments were suspended.

Why have the tools used by the European Union so far proven ineffective? Finding the causes of a complex phenomenon is never easy, but the experience of recent years makes it possible to identify some that can explain this failure.

Delays and Mismanagement

The first reason is the delay in sanctions (which are not really sanctions, but merely the result of conditionality conditions of payments, setting conditions whose compliance should be self-evident for a EU member state). The procedure under Article 7 TEU was only launched in autumn 2018 and it was already known that it could take years. By that time, the populist Orbán government, based on its constitution-making majority in Parliament, had already adopted a new constitution, and no less than seven amendments to it, transformed

the whole legal system, and put all state bodies under political control, with the exception of the supreme court (which was captured a year later). When the Article 7 procedure started, the country had already gone through two unfair parliamentary elections (in 2014 and 2018), which gave the government full power in both constitutional and political terms. As such, when some payments were suspended in 2022 following the conditionality procedure, the authoritarian system had already been fully established.

In fact, the EU institutions have mismanaged developments in Hungary all along; already in 2013, after the flagrant Fourth Amendment of the 2011 Fundamental Law, it was clear that what was happening in Hungary was not a “rule of law deficit”, but a definite and one-way development to establish an autocracy. This could not be obscured by the characteristic of modern populism, which maintains the appearance of constitutional democracy and formally preserves the institutional system of checks and balances. The true nature of the changes in Hungary was highlighted by dozens of independent organisations and commentators. It was probably easier to believe that only rule of law shortcomings were the problem than to face the systematic construction of a modern autocracy in a member state. The last five years (and eight more before that) have not been enough for the EU to see and understand what is happening in the middle of Europe; formally, it is still only being examined whether there is a systemic threat to the rule of law. This framing is increasingly difficult to understand, given the capture of all state institutions, including the highest judicial forums, three successive unfair parliamentary elections, the total instrumentalisation of the constitution and the legislature, almost four years of a state of emergency, and the ongoing campaigns and restrictions on the rights of members of certain vulnerable groups (e.g. migrants, gays). This cannot be explained away by the fact that it has required a political decision based on a consensus: what kind of democratic political decision-making system is it that, for more than ten years, has failed to recognise the ongoing, step-by-step erosion of democracy?

A Tepid and Limited Response

The second reason is that the European Commission’s activities have remained limited. First, it limited itself to making objections (waiting for the emerging autocratic regime to restore the rule of law). Later on, it imposed only formal, institutional-procedural conditions that can be easily met by legislation for the government which has an overwhelming parliamentary majority. Formal guarantees of institutional independence are worthless if the institutions concerned are invariably run by people loyal to the ruling party. Moreover, while the selection, immunity and conflict of interest rules as well as the guarantees of institutional autonomy can be effective under normal circumstances, they can have a counterproductive effect in the case of captured state bodies, because they protect those who are already in possession. Some scholars ([Scheppele et al.](#)) and independent [NGOs](#) have already shown that some requirements set by the EU, such as anti-corruption measures, did not help and in some cases even made things worse. In such a situation, formal measures only serve to legitimise the autocratic exercise of power.

What is more, expecting changes in formal law-making to improve the situation is a bizarre idea in a country where the government has, through a constitution-making majority and a permanent exceptional (emergency) power, a constitutional omnipotence and where, therefore, it can make or break any law whenever it wants.

Unserious Sanctions

The third reason is that the EU itself has not taken its own sanctions seriously.

In the very same week that the European Commission decided to release €10.2 billion (about a third of the frozen amount), saying that the Hungarian government had successfully met a number of conditions, the government majority passed the so-called Sovereignty Protection Act. This law, reminiscent of dictatorships, allows for the public stigmatisation of any organisation or individual for threatening Hungary's sovereignty, by a government agency that has unlimited access to any personal data and against whose decisions there is no appeal. As the whole public media and a large part of the media market is a propaganda tool of the government, a nationwide smear campaign can be organised against anyone – something the government has a wealth of experience in, as the ongoing nationwide campaign against von der Leyen shows ([see here](#)). Some argued that the 'Sovereignty Protection Authority' will have no power to impose legal sanctions. But why should it have such sanctioning power if anyone can be discredited by a concerted smear campaign triggered by this authority? This new public body will be headed by a front-line pro-government propagandist who was editor-in-chief of the magazine that a few years ago listed the so-called 'Soros agents' as public enemies ([here](#)).

What is more, in the same week, the Hungarian State Audit Office, which has been serving the government's political goals for more than ten years, announced, based on obviously false arguments, that it was withholding a significant part of the budgetary support for the opposition parties. It is hardly fair to have an election in which the financial resources and media appearances of the opposition politicians are extremely limited, while the government can use all public funds for its own campaign, and where the voters have been hearing about the opposition betraying the country for years, day and night, and about the government that alone can save the country.

Many commentators think that when the EU Commission decided to pay out part of the suspended funds, the rule of law conditions were sacrificed in order to prevent Hungary from vetoing the start of accession negotiations with Ukraine in the EU Council in December 2023 ([Pavone](#)). If this is true, what about the rule of law? Then does the EU Commission still credibly represent its values?

The Essence of Orbán's Regime

The fourth reason why the use of the EU toolbox, including the blocking of the payment of EU subsidies to Hungary will not lead to the restoration of the rule of law, or at least to an improvement in its situation, is the very essence of the Orbán regime. The current political and constitutional system is indeed a 'system', with established power relations, patronage and legal order. Its maintenance in its current form cannot be imagined with independent institutions and autonomous decision-making centres. The suspension of a significant part of EU funds has serious consequences for the government, but even more serious would be the abandonment or loss of its power positions. It cannot risk this, so it centralises everything and keeps them under political control. For an autocracy, external resources are extremely important; but not so important that it would dismantle its own institutional foundations and the positions it has already acquired for them.

Of course, the authoritarian transition in Hungary since 2010 is not the responsibility of the European Union, nor can it be expected to restore the rule of law in this member state. Nevertheless, this does not mean that the EU has no responsibility for the current situation or its future development. The current modern autocratic regime could not have been built in Hungary without EU subsidies and the benefits of EU membership. Indeed, the release of some of the frozen subsidies is a huge boost for the Orbán government ahead of this year's EP and municipal elections. Thus, the government can now campaign with the message that the Hungarian government was right after all in the debate with the EU institutions, and that the EU has now recognised that there is no problem with the situation of the rule of law in Hungary.

What Now?

While it is true that Hungary has not been honouring its commitment to upholding the EU's values for some time, the European Union also claims to be a community of democracies of the member states, a commitment which it seems to be unable to fulfil today. But then, what can the EU do now, in this situation? As far as Hungary is concerned, not much really. Expelling the country from the European Union is not legally possible ([de Búrca](#)), nor would it be desirable for anyone.

For these reasons, the chances of the EU making any significant changes to improve the rule of law in Hungary are now slim. In this country, the autocratic transition has probably gone too far and may therefore persist for a long time (the Horthy era between the two wars lasted 24 years, the Kádár regime after 1956 lasted 32-33 years). But the EU – and the member states – can learn from the Hungarian case. The lesson may be that respect for fundamental values in the member states is not unconditional and is not guaranteed forever, and that they should therefore always be insisted upon in all circumstances (that's why they are called 'core' values). The EU has already paid a high price for its failings, and not just a

symbolic one: it can no longer claim to be a community of exclusively democratic states. But it must endeavour to become one again, and today, unfortunately, even to avoid becoming an alliance of hybrid regimes.

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SUGGESTED CITATION Szenté, Zoltán: *Too Little, Too Late: Four Reasons Why EU Sanctions against Hungary Do Not Work*, *VerfBlog*, 2024/1/26,
<https://verfassungsblog.de/too-little-too-late-3/>, DOI: [10.59704/5be61141f4c771f2](https://doi.org/10.59704/5be61141f4c771f2).

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