Political conditionalities in cohesion policy – a way to stop democratic backsliding?

András Bíró-Nagy advocates measures for the European Union to address member state violations

Democratic backsliding has become a top issue in European politics in the last few years, not just among leaders who have started to realize recently that inaction might undermine the credibility of the European Union, but also in the international media as for now it seems evident that the construction of illiberal regimes in Hungary and Poland is fuelled by EU money. Fidesz and PiS are not only 'accused' of the systematic disassembling of the rule of law and hollowing out the democratic institutions, but also that they are boosting the economy through contracts to favoured insiders, thus they largely finance their anti-democratic rule from EU funds.

In terms of going back on the commitments to the fundamental values of the EU, it has already turned out that the EU institutions lack the necessary legal instruments to tackle systemic threats to democracy. Infringement proceedings can target specific legal issues but they are not an appropriate tool to address challenges to the wider democratic framework.

At the same time, the EU's Rule of Law mechanism – the so-called Article 7 TEU procedure which allows for the (unanimously supported) suspension of voting rights of member states for the 'serious and persistent breach' of EU values – is most likely leading nowhere in the case of Poland, since the governing PiS party can feel safe that invoking Article 7 will not lead to sanctions due to Hungary's veto. While Poland ignores the European Commission's Rule of Law procedure, there has not been similar action against Viktor Orbán's government in Budapest. This means that the EU tries to sanction the follower, but not the trendsetter. The Orbán government started to move towards a soft autocracy five years earlier; in other words, the Hungarian 'situation' is in a much more advanced state, and the tools applied by the Hungarian government have been also more diverse. The main reason behind the inaction against Hungary is a party political one: Orbán's Fidesz is a valuable member of the leading centre-right party family, the European People's Party (Fidesz contibutes 12 mandates to the EPP group in the European Parliament), while PiS is not, and their main domestic rival (PO) is. This fact in itself ensures that Fidesz avoids the same treatment that PiS receives. Based on the EU level responses to backsliding in these two countries, the limits of the EU's legal capacity are obvious – and leaders in Hungary and Poland are well aware of them.

Therefore, it is hardly surprising that the brainstorming has intensified in Brussels and other European capitals about finding new and more efficient instruments to deal with current and future backsliding. The ideas floating around are formulated in a language that illiberal leaders also understand: the language of money. There are two major developments at the EU level that favour such debates: Brexit and the planning of the next Multiannual Financial Framework, the EU's budget. From a budgetary point of view, Brexit means that the EU loses a net contributing country. This either leads to a smaller EU budget or the member states need to be persuaded to increase their payments. Since the latter seems to be the likelier scenario during the EU budget negotiations, it is vital that all European leaders, from Germany to Cyprus can explain to their electorates that their money is delivering public goods rather than serving private interests.

As a consequence, new tools to eradicate waste and abuse will be important. In this context, the widely reported stories about István Tiborcz, Viktor Orbán's son-in-law, and Lörinc Mészáros, the prime minister's friend and mayor of Felcsút, the village where Orbán was born, make it all the more likely that new political conditionalities in cohesion policy will be introduced. In the Tiborcz case, the EU's anti-fraud office, OLAF, called on Brussels to recoup €40m[1] after it found 'serious irregularities' and a 'conflict of interest' following a two-year investigation into EU-funded street-lighting contracts. A former gas fitter, Mészáros now owns hundreds of companies, in construction, real estate, media, wine, farming and beyond. According to estimates by the Hungarian transparency website Átlátszó, 83 per cent of Mészáros family companies' earnings comes from EU sources.[2] At the same time, the Hungarian government has attacked Brussels for years, and it even launched a 'Stop Brussels' billboard campaign last year.[3]

It is unlikely that net contributors will continue tolerating this kind of behaviour in the next budgetary cycle. The wish of several member states to link EU funds to the Community's fundamental values is understandable. However, it is far from evident how a direct link between EU money and rule of law can be established in practice. It can be seen from the debates over the last few years that it is a huge challenge and may take several years to decide what exactly is the point at which a country crosses the red line in terms of the quality of democracy. Even if there was agreement on what 'quality of democracy' means, expect endless debates in each individual case should this link between democracy and finance be applied in the future EU budget.

What seems to be more feasible is the establishment of an EU prosecutor with powers beyond OLAF, and linking the EU funds to joining the European Public Prosecutor's Office for all EU member states. Another potential way to prevent the abuse of EU funds would be a more active role of the European Commission in the allocation of structural funds. More direct management by the Commission would mean that EU funds would be distributed without the involvement of local networks in cases where suspicion of corruption is strong. According to the current rules, the Commission can suspend programmes when it finds irregularities, but the member state does not lose the resources. The combination of the threat of losing funds and transfering them to the European Commission's direct management, and an EU prosecutor who would investigate fraud and corruption cases involving cohesion and agricultural funds, has the potential to become a powerful policy mix. These two instruments could contribute to stopping financing the oligarchs of illiberal democracies, and increase the probability of reaching the original goal of cohesion policy: to help poorer regions and countries catching up.

REFERENCES

1 'EU fraud office funds irregularities in projects linked to Hungarian leader's son-in-law' *Wall Street Journal*, 12 January 2018, https://www.wsj.com/articles/eu-fraud-office-finds-irregularities-in-projects-linked-to-hungarian-leaders-son-in-law-1515744340 (last accessed 19 April 2018).

2 'Companies connected to PM Orban's friend won public tenders worth €= 1.56 billion, most of it funded by the EU' Atlatszo.hu, https://english.atlatszo.hu/2018/01/16/companies-connected-to-pm-orbans-friend-won-public-tenders-worth-e1-56-billion-most-of-it-funded-by-the-eu/ (last accessed 19 April 2018).

3 '"Let's stop Brussels!": Here is the new national constitution' *The Budapest Beacon*, https://budapestbeacon.com/lets-stop-brussels-new-national-consultation/ (last accessed 19 April 2018).

AUTHOR

András Bíró-Nagy is Co-director of Policy Solutions and a Research Fellow at the Hungarian Academy of Sciences (MTA TK PTI).