

# What should the EU do about Hungary's illiberal turn?

**Perle Petit**

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# Executive summary

Since 2010, Hungarian Prime Minister Viktor Orbán's government has followed a clear and deliberate trajectory away from democratic principles, turning Hungary into the first illiberal country in the EU.

Hungary's democratic backsliding poses two major problems for the EU. First, the country's increasingly consolidated illiberalism subverts the EU's fundamental values and diminishes the rights of Hungarian citizens. Second, since Russia's invasion of Ukraine on 24 February 2022, this illiberalism has spilled over into the international arena, hindering the EU decision-making process. The compounded effect of these problems could damage the EU's credibility irrevocably and further erode the unity among its member states.

So far, there has been limited reaction from the EU institutions, despite the democratic character of a member state being intrinsic to the effective and legitimate functioning of its decision-making process. As Hungary's leadership shows no signs of changing course, the EU should change tactics to protect and preserve democracy within its borders. The EU institutions need to address the national and international impact of Hungary's flouting of democratic norms, in both short- and long-term ways.

At the national level, the European Commission must **fully stand behind the triggering of the rule of law conditionality mechanism** against Hungary (as well as against other infringing countries), insisting that the country implement all proposed remedial measures in a legislatively binding way.

**A periodic review system** should be put in place to monitor this. Financial pressure through **suspending EU funds should be harmonised** across different funding schemes. **Increased capabilities and powers should be conferred to independent EU organisations** such as the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO), and Hungary should be required to join EPPO and other international organisations that focus on democratic checks and balances. Institutions should look into the **regional disbursement of EU budgets**, bypassing central governments to allocate certain funds on a regional basis.

In terms of addressing the international impact of Hungary's illiberalism, member states should **reconsider the Council's unanimity rule** regarding decisions on the EU's common foreign and security policy. Replacing this rule with qualified majority voting could render the EU decision-making process more effective and efficient, and prevent single member states from holding EU decisions 'hostage'.

Left to its own devices, Hungary's government will not let the country return to democratic ideals. The EU should use the full toolbox at its disposal to pressure the Hungarian government to reverse its illiberal course, restore the independence of democratic institutions, and take long-term action to prevent any further abuse of EU funds. Fundamental reform of the EU's institutional decision-making process is also necessary to defend and preserve the Union's democratic integrity.

# Introduction

Hungary's government has followed a clear and deliberate trajectory away from EU democratic principles since 2010. An illiberal government in the heart of Europe is not only problematic for the rights of Hungarian people and the state of democracy within the country, it also has wider implications for the Union. Before Russia invaded Ukraine in February this year, Hungary's illiberalism remained somewhat self-contained, at the national level. Since the start of the war, the country's democratic backsliding has spilled over into the international arena, dramatically impeding EU institutional decision-making. Hungary has broken with the general European consensus in its reaction to the war by repeatedly blocking sanctions and demanding special treatment in the form of exemptions, sitting on the fence between Putin and the West.

As the country's leadership shows no signs of changing course, the EU should change tactics to actively protect

and preserve democracy within its borders. To this end, the EU must deploy the full toolbox at its disposal, beyond simply financial 'sticks', and consider short- and long-term solutions to push for democratic reform and prevent further backsliding within the Union.

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## Hungary's illiberal turn since 2010

Since 2010, Prime Minister Viktor Orbán's government has passed increasingly stringent anti-migrant<sup>1</sup> and anti-LGBTQIA+<sup>2</sup> legislation; restricted academic<sup>3</sup> and civil society freedoms;<sup>4</sup> corrupted the independence of media<sup>5</sup> (organisations and institutions); consolidated control over supposedly independent democratic institutions (such as the judiciary);<sup>6</sup> limited the space for opposition parties and politicians (and hijacked democratic electoral processes);<sup>7</sup> abused the fundamental rights of its citizens (for example, the Pegasus scandal);<sup>8</sup> and incentivised a culture of clientelism and cronyism<sup>9</sup> within business and trade, while repeatedly misusing EU funds.<sup>10</sup>

Besides backsliding on rights through formalised legislative changes, Fidesz – Orbán's party – has also constantly undermined rights across the country on a societal level, including via increased gender-based discrimination<sup>11</sup> (as well as regressive attitudes towards gender relations and family structures), suppression of the arts,<sup>12</sup> and ethnic segregation.<sup>13</sup>

These changes have worked towards realising Orbán's vision for Hungary, as blatantly laid out in 2014: "the new state that we are building is an illiberal state."<sup>14</sup> Indeed, as of 2019,<sup>15</sup> Hungary is considered an electoral authoritarian regime<sup>16</sup> and the first non-democratic country in the EU. The use of autocratic tactics by the political elite in Hungary is ever more brazen, with Orbán and his government demonstrating increasingly dictatorial-style tendencies (such as getting rid of anyone who criticises<sup>17</sup> or displeases<sup>18</sup> them). Orbán's controversial 'mixed races' speech<sup>19</sup> this July typifies the incumbent political elites' unashamed regression towards a nativist and xenophobic ideology. Drawing international outrage and criticism (although receiving a considerably more muted response domestically),<sup>20</sup> Orbán proudly spoke of Hungary as being distinct from the EU and of beating its own national path.

## Russia-Ukraine War: Hungary as Putin's 'Trojan horse' in Europe

With a system in place whose power is increasingly consolidated through the capture of national democratic institutions, the Hungarian government feels secure and confident in projecting these domestic messages onto the international arena. In the context of Russia's

invasion of Ukraine, Orbán has taken centre stage in EU discussions<sup>21</sup> on sanctions and arms supplies, setting himself and Hungary apart by not declaring the same level of support for Ukraine<sup>22</sup> as other member states.<sup>23</sup> By adopting an obstinate stance in discussions about

how the EU should react to Putin's invasion and by consistently halting key sanctions talks,<sup>24</sup> Orbán is almost single-handedly bringing the EU's decision-making machinery to a grinding halt.

From the very beginning of the war, the Hungarian government has done its best to maintain a neutral position between the EU (and Ukraine) and Russia. In one of Orbán's first statements about the war, only days after the start of the invasion, he stated that Hungarian policy is "neither Ukrainian-friendly nor Russian-friendly"<sup>25</sup> but is, rather, "Hungarian-friendly". This early framing of the conflict demonstrated how Hungary intended to proceed – supporting Ukraine without 'provoking' Putin – and this policy remains in place today.

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While the majority of member states have agreed on the scope of sanctions, Hungary has proved the exception – even failing to act on domestic-level issues (for example, refusing to withdraw<sup>26</sup> from the International Investment Bank, a Russian 'spy bank'<sup>27</sup> headquartered in Budapest). While Hungary has not blocked every proposal on the table, it has managed to either limit,<sup>28</sup> completely halt,<sup>29</sup> or engineer exceptions<sup>30</sup> to every EU sanctions package.

## How have EU institutions reacted to Hungary's illiberal actions?

So far, there has been limited reaction from the EU concerning Hungary's backsliding, despite the democratic character of a member state being intrinsic to the effective and legitimate functioning of the EU machinery and decision-making process. While the Parliament<sup>34</sup> and Commission<sup>35</sup> have been vocal about Hungary's repeated rule of law breaches and deteriorating levels of human and civil rights, the institutions are not whole-heartedly following through on taking action to uphold democratic commitments in the EU.

Although this year saw the institutions raising Hungary higher on the agenda, this is a late-stage change of tone from previous years, when a general air of complacency<sup>36</sup> seemed to prevail over taking action against the country.

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The most significant of these conflicts between the EU and Hungary concerns energy. Rather than limit its dependence on Russian gas over the years, Hungary has entrenched its dependence on Russian energy imports, becoming one of the member states most reliant on this type of energy, importing approximately<sup>31</sup> 80% of its gas and 65% of its oil from this source. Orbán's narrative, therefore, is that Hungarians simply cannot afford to sanction Russian energy – a concern he turned into the main message of his campaign in the most recent Hungarian general election, promising to preserve gas security across the country. As such, he domestically and internationally justifies deadlocking EU discussions by claiming that he is putting Hungary's needs first.

This was seen most clearly in the sixth EU sanctions package, in which a total oil ban was dropped<sup>32</sup> in favour of exempting certain pipeline deliveries<sup>33</sup> (referring particularly to the Druzhba pipeline, which delivers Russian crude oil to Hungary). This was after Orbán held up talks for weeks, refusing to compromise on Hungary's domestic oil needs. This concession on the part of the EU demonstrated that one member state could strong-arm the European institutions into negotiating a better overall deal for themselves, placing domestic need over international solidarity.

In the face of Hungary's accelerating illiberalism, the EU has only targeted certain areas via non-binding recommendations from the Parliament (i.e., on revisions to the Hungarian constitution, the judiciary, the media, LGBTQIA+ rights, and breaches of EU law) and infringement procedures launched<sup>37</sup> by the Commission (i.e., on the independence of the central bank, independence of data protection authorities, judicial reform, and asylum laws).

This has done little to discourage Orbán's and Fidesz's illiberal trajectory, as the measures did not incur any real penalties. The level of backsliding is unprecedented in the framework of the EU, and so the institutions have been relegated to playing catch-up. The rule of law

conditionality regulation, triggered against Hungary this year, is the first real step<sup>38</sup> taken against the country by the institutions. But how much of a step is it actually?

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The regulation was proposed in December 2020, followed by legal challenges<sup>39</sup> from Hungary and Poland, which held it up until February 2022. Despite being active, the regulatory mechanism was only triggered after the Hungarian general election in April 2022. Even if the government stepped up its autocratic practices ahead of the election,<sup>40</sup> the Commission decided not to trigger the mechanism until after the vote, citing concerns that such a move would simply feed into Orbán's 'us-versus-them' campaign rhetoric. The launch of the mechanism was announced<sup>41</sup> days after Orbán's landslide victory (and after his taunts that Fidesz had "won a victory that's big enough to be seen from the moon – and certainly from Brussels.")<sup>42</sup> Senior Hungarian officials immediately claimed that the EU was attempting to penalise voters, with Orbán's chief of staff asking the Commission "not to punish Hungarian voters for expressing an opinion not to Brussels' taste."<sup>43</sup>

In response to the mechanism, the Hungarian government put forward 17 remedial measures<sup>44</sup> to address specific Commission concerns, including on anti-fraud, anti-corruption, public procurement rules, auditing mechanisms, and transparency in public spending. While the Commission's assessment<sup>45</sup> is that these measures would – in principle – be capable of addressing the concerns, doubts have been expressed<sup>46</sup> that the Hungarian government would actually implement them in a legislatively binding way. The Commission subsequently suspended 65% of the EU's financial commitments to Hungary, amounting to an estimated €7.5 billion (over one third of Hungary's Cohesion envelope). Experts have stated, however, that the measures are nowhere near effective enough to tackle the now ingrained illiberalism in the country, as the government "was careful not to introduce changes that would shake the institutional and procedural fundamentals of the captured, illiberal state."<sup>47</sup>

Hungary is susceptible to this financial pressure due to its current economic difficulties, including "soaring inflation, a gaping fiscal shortfall, a plunge in the forint and a huge sell-off in Hungarian assets,"<sup>48</sup> as well as coping with the after-effects of a pre-election spending spree<sup>49</sup> in 2021. Additionally, the Hungarian Recovery and Resilience Facility (RRF) plan has still not been given the green light by the Commission (despite being submitted in May 2021), making Hungary the last member state not to have its €7.2 billion plan approved.

Commissioner Johannes Hahn's speech announcing the suspension<sup>50</sup> was peppered with praise for the Hungarian government's willingness to reform, and included the point that if the reform measures were satisfactorily implemented within two months, the funds would be unfrozen before the end of the year. Even more surprising was that less than three weeks later,<sup>51</sup> Hahn remarked that "some things you cannot change from one day to another,"<sup>52</sup> before stating that the full suspension could be lifted before all Hungary's proposed measures were fully in place. Hahn's words essentially suggest that the Commission was considering being lenient with the timeframe for applying these measures. This severely undermines the EU's position, as it comes across as another attempt to provide Hungary with an 'out' – yet again avoiding direct confrontation with the member state.

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By not insisting on a strict implementation of these measures, the Commission is demonstrating that the EU can be placated by minimal efforts from illiberal governments. Governments such as Orbán's believe they can get away with purely symbolic gestures to meet the EU's requirements, rather than making real structural changes. Therefore, efforts to encourage Hungary to reform would essentially be in vain. There is little incentive for the government to implement the complete 17 measures, allowing them to feel that they have the upper hand<sup>53</sup> in EU-level negotiations.

# What can or should the EU institutions do?

Not only does Hungary's increasingly consolidated illiberalism subvert the liberal democratic foundations of the EU, it also diminishes the rights of Hungarian citizens that are ostensibly guaranteed by the EU's fundamental values. And, as we have seen, this illiberalism is spilling over to the international arena and hindering EU decision-making. The potential compounded effect is irrevocable damage to the credibility of the EU's decision-making, and possibly further erosion of the EU membership base itself. In addition, it could cause a domino effect in which other 'illiberalising' member states use Hungary as an example of a 'successful' (in the sense of functional within the EU structure) member state and backslide (further). This problem is especially pertinent to Eastern Europe,<sup>54</sup> which has shown vulnerability in this respect. Greece<sup>55</sup> and Croatia<sup>56</sup> have also shown signs of backsliding in recent years.

So, how should the EU institutions address these problems?

## HUNGARY'S (INTERNAL) ILLIBERALISM

For the first time, Hungary's government has made concessions regarding the European institutions' demands on democratic standards in order to unblock frozen EU funding. At present, financial pressure seems to be the most effective way to encourage the (re)implementation of democratic practices in the country. However, while it currently seems to be the best tool at the EU's disposal – all the more relevant now given the worldwide cost-of-living crisis and Hungary's severely weakened financial status – it is not, and should not be, the only solution. Financial pressure can lead to short-term improvements, but simultaneous and deep legislative change is needed to ensure lasting support for, and the protection of, democratic institutions.

Two aspects must be considered: i) what should be done immediately to address the current state of affairs, and ii) what should be implemented to prepare for any future further democratic backsliding in Hungary or elsewhere in the EU?

### ► Immediate next steps

Rather than create new mechanisms, the EU should concentrate on fully implementing those already at its disposal. As regards the rule of law conditionality mechanism, **the Commission must insist that all 17 remedial measures put forward by the Hungarian government be fully implemented, as well as incorporated into the legislation in a binding way.** Commissioner Hahn's comments<sup>57</sup> about the Commission possibly being flexible with the timeline for Hungary's implementation of the measures (as opposed to the original deadline of two months) must under no

circumstances become a reality. Any capitulation by the Commission at this crucial stage of the process will negate the decisive step made in freezing the funds, allowing Orbán and his government to believe they can adapt EU demands to suit their own purpose.

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**A periodic review system must be put in place** by the Commission, to ensure that in future years there are no reversals of these measures, or manipulation of independent public bodies (such as the proposed<sup>58</sup> independent Integrity Authority and the Anti-Corruption Task Force). This is particularly relevant as the Fidesz government has been known to use this illiberal tactic to corrupt the impartiality of independent authorities. For example, the Media Council of the National Media and Infocommunications Authority<sup>59</sup> and the National Cultural Council<sup>60</sup> are almost exclusively responsible for their respective industries and both have leadership boards that are directly appointed by the government. This review process should start after the implementation of the measures, with regular follow-ups to gauge how much Hungary has respected the integrity of their proposed measures. Close attention should be paid to how the new measures and oversight bodies are being consolidated.<sup>61</sup>

Any reversal or manipulation of the measures or oversight bodies should result in the immediate cessation of planned payments. Following this, the mechanism should be re-triggered and an across-the-board review of all payments that have already been disbursed should be conducted, with the view to potentially requesting a return of the funds. Any re-triggering of the mechanism should insist on a wider scope of reform areas, including areas of concern which were not addressed by the 17 proposed measures (which are primarily focused on fraud, corruption, and public procurement).

Highly vulnerable and critical areas, such as the judiciary, the media landscape, competition regulation, electoral institutions, and the space for civil society should be reformed, as their supposedly independent institutions (an integral part of the democratic process) suffer from governmental interference. An additional

expectation should be that Hungary joins the European Public Prosecutor's Office (EPPO), which would have an immediate impact on the democratic oversight issues Hungary faces.

In addition, the **financial pressure exerted through the suspension of EU funds from different funding schemes should be harmonised** (for example, the €7.2 billion that Hungary has requested from the RRF), so that the Commission can avoid becoming compromised by disconnected conditionality mechanisms.

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**The purpose is to demonstrate the resolve of EU institutions in upholding the democratic foundation of the Union and to contradict the current Fidesz rhetoric that the Commission is conducting a 'witch-hunt' against Hungary.**

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**The Commission should also trigger the rule of law conditionality mechanism against other infringing countries**, such as Poland (which has a similar history of compromising on rule of law, particularly the impartiality of the judiciary since 2015),<sup>62</sup> and, more generally, to have a zero-tolerance approach to democratic backsliding. Any breaches of the rule of law should automatically trigger the mechanism – it should not be based on the country's current relationship with the EU institutions or its public image (as has happened with Poland in regard to their response to the Ukrainian war).<sup>63</sup> The purpose is to demonstrate the resolve of EU institutions in upholding the democratic foundation of the Union and to contradict the current Fidesz rhetoric that the Commission is conducting a 'witch-hunt'<sup>64</sup> against Hungary. In doing so, the EU would show Hungary's political leadership that it is committed to preserving democracy in a comprehensive manner within its borders.

► *Long-term steps*

As EU funding is directly under the purview of the EU institutions, they should prevent future financing being misused by the Hungarian government. To this end, the institutions should look into the **regional disbursement of budgets**, bypassing central governments to allocate certain funds (as a proportion of the member state's budgeted funding) on a regional basis. Awarding EU funds to municipalities that fulfil democratic criteria on a local level for specific measurable projects, with ample EU oversight over spending and public procurement contracts in place, could break the chain of top-down misuse of EU funds in Hungary by ensuring greater control over tracking how the money is used and by whom. Additionally,

this would allay concerns that simply relying on financial sanctions does little but penalise citizens. Such a situation potentially further pushes citizens into the arms of autocratic leaders who use state-sponsored disinformation and/or propaganda to point to any hardships in the country as being the fault of international institutions,<sup>65</sup> rather than the actions of the government.<sup>66</sup>

Another avenue should be that Hungary **joins independent EU organisations** which focus on democratic checks and balances. In addition to requiring membership, EU institutions should confer **increased capabilities and powers to independent EU organisations** like the European Anti-Fraud Office (OLAF) and EPPO. These should be tasked with reviewing the strength of democratic institutions in their respective fields, and with providing recommendations to reform problematic national institutions. In the case of Hungary, these recommendations could form the basis for any future remedial measures in the event of re-triggering the conditionality mechanism.

## THE INTERNATIONAL EFFECT OF HUNGARY'S ILLIBERALISM

Diverging interests and the placing of certain national (or political) concerns over EU obligations are causing a rift in the decision-making process and can bring the EU machinery to a grinding halt. Moreover, these internal conflicts are portraying the EU as a divided and ineffective actor, leading to larger questions about the future of the Union. Hungary's illiberal turn not only affects internal issues, but – partially due to Russia's war against Ukraine – can be seen to have spilled over into the international arena, causing the Union to question its own ability and capacity to act.

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To prevent the possibility of one country becoming a contrary and uncooperative voice within negotiations and discussions on the EU level, particularly in terms of sanctions, member states should reconsider the **unanimity rule of the Council** in terms of decisions on EU Common Foreign and Security Policy (CFSP). Although not a new debate, replacing this rule with qualified majority voting (QMV) would have made a substantial difference in the sanctions package

negotiations up to this point, and could render the decision-making process in the EU considerably more effective and efficient, also in other policy fields (e.g., enlargement), preventing single member states from holding EU decisions 'hostage'.

This reform is supported by the conclusions of the Conference on the Future of Europe (CoFoE), in which citizens clearly called for: "issues decided by way

of unanimity [to] be decided by way of a qualified majority."<sup>67</sup> Despite previous attempts to implement QMV (e.g., an initiative by the Juncker Commission in 2018),<sup>68</sup> progress has been limited. However, there has been increased interest and momentum recently due to these CoFoE recommendations and the recurring problem of vetoes in the context of the war in Ukraine, making this reform a more realistic possibility than before the war.

## Conclusion

Left to its own devices, the Hungarian government will not allow the country to return to higher levels of democracy unless it is motivated to do so, including by the EU institutions. In order to halt the country's illiberal trajectory, the EU should use its full toolbox to financially pressure the Hungarian government to reverse illiberal developments, restore the independence of democratic institutions, and take long-term steps to prevent any further abuse of EU funds in the country.

In addition, a more fundamental reform of the EU's decision-making process needs to take place to defend and preserve the democratic integrity of the Union, particularly as it is being threatened both internally and externally. Action must be taken swiftly, before Hungary's illiberalism becomes irreversible.

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