

The Price for China's money

Chinese influence on rule of law
breaches by EU Member States

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CHINESE INFLUENCE ON RULE OF LAW BREACHES BY EU MEMBER STATES

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EXECUTIVE SUMMARY

The European Union has seen a democratic backsliding in some of its Member States, with the rights of citizens being under threat, as governmental corruption has grown, independent institutions have been eroded, and political rights and civil liberties have been disregarded. While Hungary is often used as a paradigmatic example for such rule of law violations, breaches at a smaller scale and in specific instances are happening in many Member States, related to non-implementation of EU regulations and directives, lack of proper oversight, transparency and civil participation, and corruption. A case where some of these petty violations can be observed is Greece. However, to what extent are these rule of law breaches influenced by these Member States' relations with China, if at all? These paper finds that China's political system, investment culture and modes of governance can have a perverse influence on rule of law in the EU if the current regulatory framework is not amended accordingly.

Social Media summary

How has China's influence impacted rule of law in EU Member States? The cases of Hungary and Greece.

Keywords

#Chineseinfluence #BeltandRoad #Piraeusport #Greece #Hungary
#ruleoflawviolations

Short bio

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TABLE OF ACRONYMS

BRI:	Belt and Road Initiative
CAP:	Common Agricultural Policy
COVID-19:	Coronavirus disease of 2019.
ECHR:	European Court of Human Rights
ECJ:	European Court of Justice
EIB:	European Investment Bank
EP:	European Parliament
EC:	European Commission
EU:	European Union
EUR:	Euro
MFF:	Multiannual Financial Framework
ND:	Νέα Δημοκρατία (New Democracy)
PASOK:	Πανελλήνιο Σοσιαλιστικό Κίνημα (Panhellenic Socialist Movement)
PPA:	Piraeus Port Authority
SEIA:	Strategic Environmental Impact Assessment
SOEs:	State-Owned Enterprises
SYRIZA:	Συνασπισμός Ριζοσπαστικής Αριστεράς (Coalition of the Radical Left)
TEU:	Treaty on European Union
UN:	United Nations
WJP:	World Justice Project

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Introduction

The rule of law is the backbone of a modern constitutional democracy.¹ As such, it is a founding principle of the European Union, as recalled by Article 2 of the Treaty on European Union. When rule of law violations are spoken of, they are normally used to refer to a blatant violation of the fundamental values and democratic principles upon which the EU is built. These not only harm the functioning of European Union's politics, but they also crucially undermine its reputation as a power based on the values of freedom, democracy, and human rights at the global level, and thus its power to safeguard the liberal internationalist regime. However, and equally damaging to the EU's performance are rule of law violations at a smaller scale that happen in Member States that are not normally talked about as rule of law violators, but who nonetheless breach and disobey EU regulations and standards, bringing harm to their citizens, at more specific instances, such as on the environment, labour rights or transparency and public participation. These violations are conceptualised as “output” violations, and include non-notification of measures, not properly incorporating or applying European law, or not complying with ECJ judgements (Börzel *et al.*, 2003).

In parallel, while the rise of China as an investor in the global political economy was perceived in the beginning of the 2010s as a welcome source of capital, by the end of decade the perception begun to change, being seen as a threat to national and economic security in strategically important sectors of the EU Member States' economies (Babic and Dixon, 2022). This has resulted in the “geopolitisation” of trade and investment policies in the EU, and the “securitisation” of Chinese investment. During this decade, the Belt and Road Initiative made inroads in Europe, with many Member States signing memoranda of understanding by which they joined the BRI. This was supposed to create a friendlier environment for Chinese investment in Europe, which is mostly realised by state-owned enterprises, with strong political backing and financial support from state-owned banks (Svetlicinii, 2019). Traditional competition tests failed to assess SOEs activities in Europe, which contributed to raising the level of perceived threat and alarm related to Chinese investment. In this context, it is relevant to ask whether this heightened level of Chinese activity in Europe has in any way incentivised or contributed to the increase in challenges to the rule of law among its Member States, especially among those that have joined the BRI, have a ‘friendlier’ foreign policy towards China and are more open to its investment. Nonetheless, it is important to point out that it is often not analytically possible to distinguish and isolate the impact of Chinese capital from the effect of structural limitations emanating from the institutional configuration of these Member States, such as weak bureaucracies and corruption (Tsimonis *et al.*, 2020). Still, taking Hungary and Greece as a representative of each of the cases of rule of law offender mentioned above, this paper will present the case of Hungary and Greece, and analyse how their breaches of EU rule of law relate to China and its economic and political activity in Europe.

The EU toolbox for Rule of Law enforcement

It is important to understand first what does the EU mean by ‘rule of law.’ In this regard, its definition of the rule of law closely follows the set of standards set by the

¹ Communication from the Commission to the European Parliament and the Council ‘A new EU Framework to strengthen the Rule of Law’, COM/2014/0158 final. Available at: <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52014DC0158>>

Council of Europe's European Commission for Democracy through Law (also known as the Venice Commission). Here, rule of law was understood as having six formal and substantial components: legality, legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, respect for human rights, and non-discrimination and equality before the law (Skóra, 2023). However, Regulation 2020/2092² provided the first legally binding definition of rule of law in EU legislation, which reads:

"[T]he rule of law" refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic, and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU."

The EU **Rule of Law Framework**³ aims to equip the commission to address systemic threats to the rule of law in EU countries, focusing on preventing such emerging threats from escalating to the point where the Commission must trigger the mechanisms of Article 7 of the Treaty of the European Union. The framework follows a three-stage process: an assessment by the Commission, a recommendation, and the monitoring of the Member States' follow-up on the recommendation. For these three stages, the Commission disposes of various tools that follow two approaches – prevention and correction. Within the preventive approach, the Commission publishes a yearly **Rule of Law Report**⁴, which monitors any significant development relating to the rule of law in each Member States in the four key areas of rule of law: the justice system, the anti-corruption framework, media pluralism and freedom, and other institutional issues related to checks and balances. While it is based on recommendations, it has an important signalling mechanism, and the implementation of its recommendations will be monitored on and followed up.

The second preventive tool is the **EU Justice Scoreboard**⁵, which presents an annual overview of indicators on the efficiency, quality, and independence of justice systems, as the main instrument to uphold the rule of law and European values. More focused on the judicial aspect of the rule of law, it aims to assist Member States on improving the effectiveness of their national justice systems by offering objective, reliable and comparable data. The Justice Scoreboard itself informs the Rule of Law Report of each Member State. The third and final set of instruments in the preventive toolbox are the **Rule of Law Peer Review** (FFO, 2020) within the General Affairs

² Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, *OJ L 433I*. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R2092>>.

³ European Commission (online). Rule of law framework. [Last consultation: 10 September 2023] Available at: <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en>

⁴ European Commission (online). 2023 Rule of law report. [Last consultation: 10 September 2023] Available at: <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2023-rule-law-report_en>

⁵ European Commission (online). EU Justice Scoreboard. [Last consultation: 10 September 2023] Available at: <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en>

Council, and the annual Council **Rule of Law Dialogues**, which takes place annually since 2014. The Rule of Law Dialogue includes a horizontal discussion covering general rule of law developments in the EU, and country-specific discussions addressing key developments one by one in each Member State (Wahl, 2020).

Within the corrective approach, the Commission has several instruments. The first is an **infringement procedure**⁶, which consists on the Commission sending an official communication requesting further information on a suspicion that a Member State fails to apply or violates EU law. If it concludes that such breach has taken place, it sends a reasoned opinion calling for remedial action, to which the Member State can react and fix any irregularity. If it fails to comply, the Commission can refer the Member State to the European Court of Justice and impose a fine in the form of a lump sum and penalty payment. The opposite solution to imposing a financial penalty is to **withhold payments** or suspending access to EU funds due to non-compliance. These two instruments are applied on a case-by-case basis. The third option is the **conditionality instrument**, approved in 2020 and linked to the MFF 2021-2027 and the EU Next Generation funds. It aims to protect the EU budget from violations of the rule of law in a Member State from violations that could affect the sound financial management of the budget or the financial interests of the EU. The measures imposed are approved by a decision of the Council and it establishes a deadline of two years for the breach to be remedied. If these three instruments fail, the final and more severe one is the **application of Article 7 TEU**, also known as the “nuclear option”, which consists on the Commission triggering Article 7.3 after a Member State fails to remedy a serious risk of a breach of EU rule of law, which initiates a sanctioning mechanism. The main weakness of this mechanism is that it requires unanimity (excluding the Member State in question). So far, it has been imposed to Poland in December 2017⁷ and Hungary in September 2018⁸.

The challenge to EU Rule of Law

The case of Greece

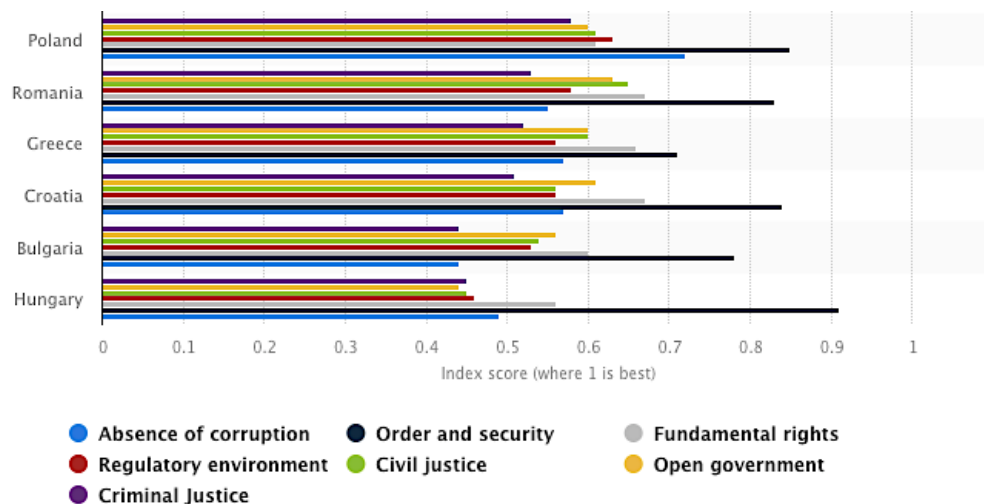
Greece has traditionally had a friendly relationship with China, not because of political closeness but because of economic circumstances. Greece is the best example of the traditional approach of economic opportunism that the European Union had followed towards China until the previous decade. With a slight variation depending on political winds, as some political parties in Greece have a more sceptical approach towards China, Greece has benefitted from Chinese investment, especially during the hard years of the 2010 financial crisis, as the paradigmatic example of the Port of Piraeus illustrates. More specifically, while Greece's violations to the EU rule of law are in a way ‘softer’ than those of Hungary, as it does not challenge the core democratic values or overtly confront EU institutions, but instead it consists on pettier violations. As Graph 1 illustrates, Greece ranks among the most

⁶ European Commission (online). Infringement procedure. [Last consultation: 10 September 2023] Available at: <https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure_en>

⁷ Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, COM/2017/0835 final. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0835>>

⁸ European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, 2017/2131(INL). Available at: <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html>

poorly performing countries across a range of rule of law indicators. It also ranks 24 out of the 27 EU Member States on the WJP Rule of Law Index 2022 and last on the RSF World Press Freedom Index 2023 ranking; and 34% of the leading ECHR rulings are pending implementation (Tsereteli, 2023).



Graph 1: Total scores in select rule of law indicators in 2022 by EU Member States (bottom 6 by ranking score). Source: Statista.

An example of Greece's close relationship with China is the fact that it blocked an EU statement related to China in June 2017 at the United Nations, which criticised China's human right records. This undermined the European Union's position, as it made it unable to show a collective voice and act as a unified coalition during the UN Human Rights Council. A Greek foreign ministry official described the proposed statement as "unconstructive criticism of China" and favoured separate EU talks with China outside the UN framework (Denyer, 2017). This case is significant from two perspectives: first, it prevented international criticism of China on its human rights record in two relevant for a – the UN in its Human Rights Council – and the EU in its summit of Council presidents, who did not condemn China's human rights record either. Second, it undermined the EU from achieving a 'single voice' or a unified position on China, which would have meant a stronger position, and showed instead a divided European Union. In this case, we cannot assume that China's preference is for a divided Europe, at least from the economic perspective, as it is in its interest to have a strong single market and a prosperous Europe to give way to Chinese exports. However, a divided Europe from a political perspective gives China a stronger hand to block undermining statements like the one on human rights that harm its reputation at the global arena, and which it can prevent by persuading only one Member State who, as per the EU's institutional design in matters of foreign policy, can block any decision that needs to be voted unanimously.

The main rule of law violations in Greece relate to environmental protection regulations, and transparency laws.⁹ To start with, the first concession agreement between the Greek government and COSCO by which it leased Cargo Terminals II and III in 2008 (Law 3755/2009) included vague references to environment protection and stipulated no penalties. More recently, since COSCO acquired the management of the Piraeus Port Authority in 2016, it committed itself to present a

⁹ The following discussion is based on the findings by Tsimonis et al. (2020).

Master Plan to cover all existing port operations and future infrastructure upgrades. While several versions of it have been submitted, all have been rejected on technical, financial and environmental grounds.

In fact, it has been acknowledged that “the Chinese management lacked the necessary know-how on compliance processes, treating it as a bureaucratic box-ticking exercise. This was partly because the conservative government, under which the 2008 Concession agreement was signed, imposed regulatory standards with laxity.” (Tsimonis et al. 2020) The 2015 SYRIZA government changed that, but this left COSCO “unprepared and unwilling to comply with the existing regulatory framework” (*ibid.*) This is because COSCO understood environmental issues as of secondary importance, with profitability and efficiency taking precedence, and treated them as matters of bilateral negotiation. The laxity of the Greek government that signed the 2008 deal, which was under strong pressure to privatise its infrastructure under the EU bailout agreement, derived in COSCO not familiarising itself with EU and national environmental standards and made its management unwilling to adapt to a more regulated, transparent *modus operandi* after 2016.

Since then, considering that Greece changed its government once again in 2019, when Nea Demokratia came back to power, it is relevant then to wonder whether this trend towards more strict enforcement of regulatory standards and transparency has continued. The main concerns related to labour standards and the ‘sinicisation of labour’ (Neilson, 2019), referring to the degree of deregulation and precarity among the employees of COSCO as compared to those of the PPA, especially after the privatisation of the PPA in 2016, which raised fears about the future of its contracts and working standards under COSCO. The second main issue relates to the environmental conditions, as air, noise and sea pollution increased as the traffic in the port raised together with productivity, illustrating the negative externalities of the port’s economic success under COSCO. With regard to those two main political issues, Mitsotakis’ government has not offered yet a solution, fearing alienating such an important economic partner for the prosperity of a key national infrastructure.

In 2018 as in 2013, the various Ministers of Environment, both from the ND-PASOK coalition and the subsequent SYRIZA government have approved excavations from the sea in the port for the construction of new and deeper docks for cargo vessels, even though the excavation material has been deemed to be highly toxic, as the maritime environment of the Piraeus port has been severely polluted by urban and industrial waste (Tsimonis et al., 2023). Moreover, violating European as well as Greek law, no information was available about these plans and no public consultation took place (*ibid.*), which undermines European rule of law on the environment. Already the “PPA Privatisation Law (4404/2016), which ratified the agreement between COSCO and the Greek government, had limited the scope and weakened the compulsory character of the consultation process” (Tsimonis et al., 2020). In April 2020, Prime Minister Mitsotakis inaugurated the cruise terminal construction, accepting the controversial 2018 decision that the construction of the terminal could go ahead, while the use and disposal of dredging material would be decided by a future Strategic Environmental Impact Assessment. While the decision was issued in March 2022 that there can be no construction without a complete masterplan for the port that includes the SEIA, “COSCO and the Greek government have continued to look for ways around this decision” (Tsimonis et al., 2023), indicating that while the international position of the Greek government has changed to adjust to the EU position and facilitate the so-called ‘single voice’ on

China, its preference to accommodate Chinese economic interest in Greece has not shifted.

Fundamentally, the main way in which the Greek government together with COSCO violated EU rule of law was by exploiting grey areas and sometimes by blatantly violating European directives.

Fundamentally, the main way in which the Greek government together with COSCO violated EU rule of law was by “exploiting grey areas and sometimes by blatantly violating European directives, which were facilitated by the Ministry of the Environment, which was eager to accept ‘creative’ and ‘inventive’ interpretations of Greek and EU legislation.” Once COSCO took over the management of the PPA, not only it inherited substantial EU funding, amounting to 120 million EUR, but it also “continued in the same

direction of evading legal procedures and requirements while attempting to give some semblance of legality to the terminal project to move forward with its construction.” (Tsimonis *et al.*, 2023). In this sense, the EU shares part of the blame as a facilitator for these violations to happen, as it has provided “free money” to the perpetrators, to the point that without EU funding, the cruise terminal where the major environmental violations have taken place is of no major commercial interest to COSCO (*ibid.*). This is because the European Commission “passed the funds and the supervision responsibility to the authorities of the Region of Attica and has not interfered in the process since” (*ibid.*), instead of acting as a watchdog and the last authority, and designated the European Investment Bank as the financial consultant of the Commission for this project. Since the EIB is a competent authority to exercise environmental oversight but it has not done so, it shares part of the responsibility, indicating that the related procedures should be revised to avoid such situations of lack of oversight.

The case of Hungary

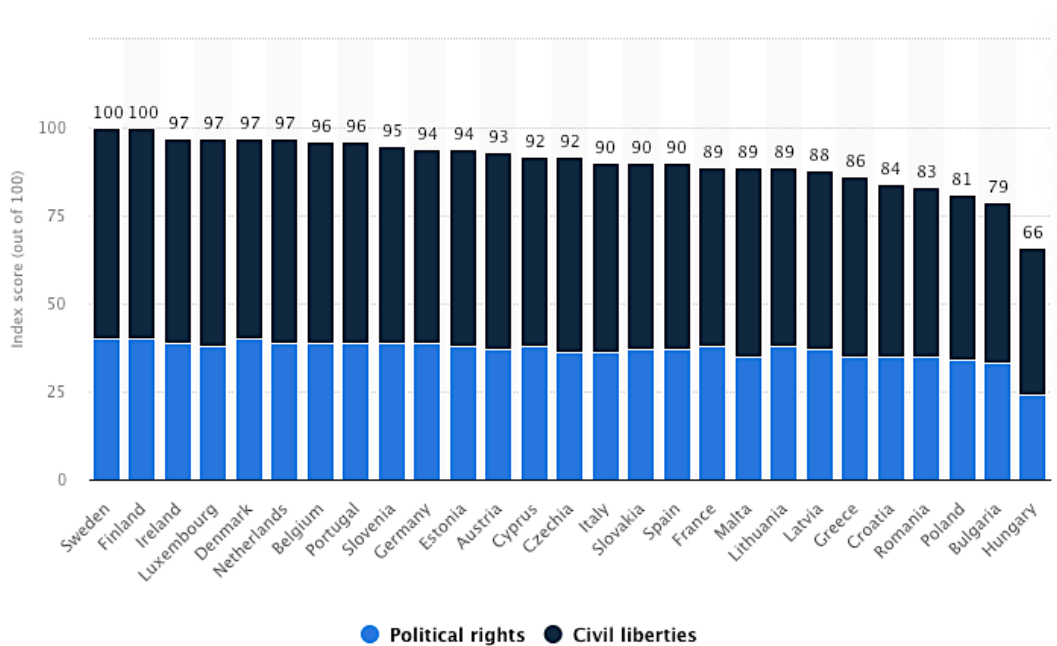
Hungary is today China's closest ally in the European Union. The fact that most of foreign policy decisions require unanimous voting at the Council of the European Union gives China a strong incentive to keep Hungary close so that it can block, when necessary, policies and statements that might harm China's reputation or business in Europe. Therefore, it is relevant to study Hungary's violations of the rule of law and consider if and up to what extent this is influence or incentivized by its close relationship with China.

As is the case with Greece, Hungary also blocked an EU statement criticising China's new security law in Hong Kong in April 2021. This prevented the EU from condemning Beijing's curbing of freedoms in the special administration and its disregard for the ‘One Country, Two Systems’ that was meant to protect democracy in Hong Kong. Also, it undermined the EU's position internationally as a global power by preventing it from supporting the United Kingdom and the United States in a pro-democracy coalition to uphold human rights in Hong Kong. Hungary's argument was that “the EU already has too many issues with China” (Chalmers and

Emmott, 2021), as the EU was already involved in tit-for-tat sanctions over human rights abuses in Xinjiang. On top of that, it overtly shows again that the European Union had not achieved a unified policy towards China and that strong divisions persisted among its member states, as illustrated by the fact that Germany's foreign minister called Hungary's blockage an "absolutely incomprehensible" decision (Von der Burchard and Barigazzi, 2021) and called for the need to "speak with one voice", even more considering that Germany does not count among the most hawkish countries towards China.

Some of Hungary's rule of law violations under Orbán include, first, abuse of EU subsidies to fund "a system of patronage linked to land leases" (Teichmann et al., 2020). According to the New York Times' survey, Orbán's government sold and auctioned hundreds of thousands of hectares at cut price rates, creating a system of "modern feudalism", as small farmers became beholden to the "barons" who received land eligible for European subsidies based on their loyalty to Orbán. In 2018, farmers received €58.82 bn from the EU (*ibid.*). On this issue, the Commission has denied the New York Times' accusations, re-stating its zero-tolerance policy regarding CAP subsidy fraud, while acknowledging that the key lies with the Member States as EU funds are administered under the shared management principle, which makes member states the prime responsible for the sound management of the subsidies.

A second violation relates to a much more central issue of the EU's rule of law, and it is Orbán's challenge to the very notion of the EU as a "union of democracies", as it defines his government as an "illiberal democracy", which goes against the traditional and universal definition of democracy as listed in the foundational EU treaties and the Copenhagen Criteria. This regime under Orbán has been labelled as 'competitive authoritarianism' (Levitsky and Way, 2010), that is, a hybrid regime that maintains the formal democratic institutions but fails to meet the minimal standards for democracy. As a response, the EU Parliament and the Council triggered the sanctioning procedure Article 7 TEU in September 2018. The country has experienced a democratic backsliding, with the rights of citizens being under threat, as governmental corruption has grown, independent institutions have been eroded, and political rights and civil liberties have been disregarded (see Graph 2). For instance, 72% of the leading ECHR judgements from the last decade are pending implementation, and Hungary ranks last place in the EU on the Freedom in the World 2022 index, and 26th on Transparency International's Corruption Perception Index 2021 (Jaraczewski, 2022).



Graph 2: Total index scores in the EU for political rights and civil liberties in 2023 by Member State. Source: Statista.

Relatedly, going against the value of ‘solidarity’ and ‘European identity’, and the principle of free movement of people within the single market, Orbán amended the Hungarian constitution to include constitutional identity provisions under which it has the duty to protect Hungarian self-identity, and providing an escapeway from EU obligations when it deems that Hungary’s territorial integrity, population, form of government and governmental organisation are at stake. Moreover, it does not provide any definition of ‘Hungary’s constitutional self-identity’, making it whatever might be more convenient for Orbán’s policy interests at any given time. Finally, it enacted a series of national reforms that endangered judicial independence, putting the judiciary under political pressure by “instituting a procedure though which any government official could take any decision by an ordinary court directly to the politically captured Constitutional Court to overturn that decision.” (Scheppele et al., 2020) The scope of the illiberal reforms has included assaults on academic freedom, the destruction of the political opposition, pressures on civil society, infringements on data privacy rights, and the curtailment of media freedom (*ibid.*), in a comprehensive and unprecedented attack to EU rule of law, values and democratic system.

In all, Orbán’s illiberal regime agenda has “transformed Hungary into a ‘grey zone between democracy and dictatorship’ and a ‘mafia state’.” (Pech and Scheppele, 2017). In part, while some policy recommendations to improve the EU’s toolbox to counter these situations will be presented later, the European Union is itself liable for the conditions that allowed these violations. First, the EU has politicised enough that there are now strong incentives for Europarties to protect the national member parties of autocrats that deliver them votes, but it has not politicised sufficiently that autocrats’ Europarty allies pay meaningful reputational costs for supporting them or that the autocrats’ EU-level opponents can intervene in ways that might help dislodge them (Kelemen, 2020). Thus, it is stuck midway towards a political union. And second, EU funds help sustain national autocracies by giving them control over the distribution of the funds, which they can use to promote their regimes (*ibid.*).

These are core issues stemming from the EU's institutional configuration that call for a deep reform if the EU is to stand as a global power in the face of rising authoritarian regimes such as China. As an example, on the response to Russia's invasion of Ukraine, Hungary has often echoed China's view that Western support for Ukraine is fuelling the conflict at Europe's expense, with Orbán stating that "there is no chance to win this war" and blocking accordingly a \$540m package of EU financial aid to Ukraine. The following section will expand on the relationship between these two Member State's rule of law violations and China, but it is clear from the above discussion that if the EU is to maintain its status as a global power and its reputation as a normative power based on its respect for liberal democratic values, it needs to reform its existing toolbox to prevent violations such as those presented, resulting or not from foreign influence.

Is the toolbox effective to tackle the perverse influence of China?

The main tool for influencing the policies of EU member states, as any other country does, is diplomacy, but China's has a specificity and it is that, at least until 2023 (Harper, 2023), it enacted a more assertive, even aggressive diplomatic style combined with "hard line propaganda" that has been labelled as "wolf-warrior diplomacy" (Martin, 2020). They were talked with representing China's "confident rise" and protect the harming effects of the COVID-19 pandemic on its international reputation as a benevolent power. However, neither Greece nor Hungary have been the hosts of one of those reputed wolf warriors, what discards the possibility that the influence was caused by these more aggressive diplomatic style by Chinese diplomats, as even if Chinese diplomatic representatives in those countries tried to advance the interests of China and Chinese companies operating in Greece, this would not fall outside the scope of ordinary diplomacy.

Moreover, it needs to be pointed out that the rule of law violations and the negative externalities of Chinese projects in Hungary and Greece cannot be fully attributed to the perception of Chinese investors as inherently "bad" and of host states as "weak" (Tsimonis et al., 2020). Instead, we need to recognise the actorship of the host European states and recognise that these rule of law violations were either the results of intended actions or intentional omission of oversight and enforcement, and they thus profited from China's presence in the country, especially as a source of revenue and investment. Therefore, this created a synergy of regulatory failures between Chinese investors, European host states and the European institutions that resulted in poor regulations and compliance.

Keeping this nuance in mind, the two main factors by which China has influenced these rule of law violations by Greece and Hungary are the following¹⁰. On the one hand, there is no universal definition of corruption, as even Transparency International includes different types of corruption, such as "grand", "petty" and "political corruption. This lack of definition might be partly due to the fact that what is considered as corrupt differs from culture to culture. In the Chinese culture, for instance, giving gifts to one's superiors is customary, as most decisions are made based on a network of personal relationships called *guanxi* (關係) (Teichmann et al., 2020). This implies that individuals with better connections – or better *guanxi* – receive better opportunities, including contracts and agreements, which is not seen

¹⁰ The China Index captures in a more detailed manner China's influence on Hungary (<https://china-index.io/country/hungary>) and Greece (<https://china-index.io/country/greece>).

as corrupt. On the opposite, China expects its “friends” to act in this way, and accommodate its interests if they consider themselves as a friendly country towards China and want to benefit from its investment. Hungary and Greece blocking statements that undermined China’s reputation is such a show of friendship, which for China is very important and appreciated, even if not demanded. In this regard, China’s influence is only indirect, resulting from its political culture, its own conception of what corruption means, and a more accommodating and less regulated public procurement system.

China’s influence is only indirect, resulting from its political culture, its own conception of what corruption means, resulting from its political culture, its own conception of what corruption means, and a more accommodating and less regulated public procurement system.

This relates to the second factor, which is the fact that China has a different mode of investment and political governance. China’s governance culture is more flexible and some matters are understood as subject to negotiation, as standards are more lenient and enforcement softer to non-existent. A clear illustration of these are environmental and labour standards, which have precisely been the subject of biggest disturbance in the European Union, as European standards are the opposite, accounting among the most stringent in the world. In the cases where Chinese projects have violated European governance standards and rule of law, the host states, Hungary and China in this case, are on the most part responsible, as they not only failed to enforce regulations and standards to which they are accountable as EU Member States, but they failed to socialise China in the initial stages of negotiations on those governance standards and regulations, when expectations and the rules of interactions are set from each side, fearing that they would make its investment less appealing and burdening. This resulted in an ineffective socialisation of Chinese investors into European regulations, norms and best practices on environmental protection and labour standards, for instance, as the case of Piraeus illustrates, and made political and societal efforts to enforce compliance at a second stage more difficult (Tsimonis et al., 2020), even resulting in backlash and cases of Chinese investors directly lobbying to find ways around EU regulations.

Finally, on Hungary’s more fundamental violations of EU rule of law, while China can in no way be attributed responsibility for the illiberal turn under Orbán and its reforms, China has contributed to the acceptability and popularisation of his rhetoric in two very specific ways. First, it has advanced the **de-universalisation of the concept of democracy**. Democracy had been conceived under the liberal internationalist regime as a universal concept of categorial value. No qualifiers or nuances were accepted. Either a country was a democracy or it was not, and the only option was to quantify how close it was to becoming a democracy. However, China has contributed to the popularisation and global acceptance of alternative forms of democracy, such as “democracy with Chinese characteristics” or “illiberal democracy”, that from the universalist perspective would not count as democracies at all. Second, it has bolstered **political nationalism as a fundamental goal of governments**, understanding nationalism as that of an exclusionary kind, of “us” versus “them”, which defines a national identity to be protected from a foreign other and becomes supremacist and isolationist. It is important to note here that these two trends have the potential to not only undermine the European political project and

its rule of law, but to represent a fundamental shift in global governance and universal rules and principles that had governed international politics since the end of the Second World War. This is especially relevant in the context of the elections to the EP that will take place in June 2024 and the popularisation of the 'de-risking' strategy of the European Commission, which *de facto* revisits the EU's current multifaceted approach to China (TEPSA, 2023). President Von der Leyen's 2023 State of the Union speech gave a preeminent focus to the de-risking strategy, motivated by "China's unfair trade practices", and announced that "the Commission [would launch] an anti-subsidy investigation into electric vehicles coming from China. Europe is open for competition. Not for a race to the bottom." (EC, 2023) This still follows however the approach of the 2019 Strategic Outlook¹¹, which on the one side treats China as an economic competitor but on the other side wants to "keep open lines of communication and dialogue with China" (*ibid.*) as a strategic partner, especially as the EU-China Summit scheduled to take place in late 2023 approaches.

CONCLUSION

The previous discussion illustrates the challenge that the European Union faces in order to maintain the rule of law from its own Member States through two representative cases. Hungary, from one side, presents a more comprehensive, fundamental breach of the rule of law, which has culminated in a sanctioning procedure under Article 7; Greece, on the other side, illustrates how pettier violations can also represent a challenge to rule of law if they become common or entrenched enough. In this case, the paper has focused on how these rule of law violations are taken advantage of and thus perpetuated by a foreign power that follows a different set of governance rules and values as is the case of China, which is especially relevant because of its global significance and the exponential increase in its economic presence in Europe. It is especially relevant to consider how Chinese economic and political ties with EU Member States influence their rule of law framework and good governance if we consider that several of those member states joined the Belt and Road Initiative in the 2010s and have BRI projects – which are mostly managed by Chinese state-owned companies and financed by Chinese state-owned banks – being implemented in EU soil.

We have seen those violations of European laws, especially with regards to labour rights and environmental regulations, take place in BRI projects, as documented by the case of the Port of Piraeus in Greece and, to a lesser extent, in Hungary, because of lower transparency and space for public scrutiny. This indicates that, on the one hand, the EU needs to strengthen its rule of law framework to be able to swiftly respond to these kinds of violations more effectively and prevent foreign powers from promoting malpractices and bad governance; and, on the other hand, if the EU better enforces rule of law in its member states, they will be compelled to abide by those rules and thus will need to socialise China on these regulations and governance practices if it is to invest in EU Member States and profit from the EU single market. To this important aim, the following section will offer specific policy recommendations.

¹¹ This document defines China as a "strategic partner, economic competitor and systemic rival" for the first time. For more information, see: European Commission and HR/VP contribution to the European Council (2019). EU-China – A strategic Outlook. Available at: <https://commission.europa.eu/system/files/2019-03/communication-eu-china-a-strategic-outlook.pdf>.

POLICY RECOMMENDATIONS

With all the above-mentioned in mind, the European Union should consider the following recommendations:

- *Empower citizens as watchdogs*: As the case of Piraeus clearly illustrates, civil society organisations, local communities and NGOs can have a key contribution if enabled to do so, to identify breaches of rule of law, as those breaches have a direct impact into their lifestyles and wellbeing.
- *EU-level protection of whistle-blowers*: The European Parliament should explore whether systematic protection for whistle-blowers could be introduced in the EU legal framework, with strong guarantees of immunity and asylum. This framework should include financial incentives and channels that ensure anonymity for whistle-blowers.
- *Independent agency for EU funds*: The administration of EU funds and their supervision should be the responsibility of an independent EU body and not of Member States, as it otherwise incentivises the creation of patronage networks and the formation of a clientelist state in cases of weaker democracies. This would result in a fairer allocation of EU subsidies, and checks and balances could be integrated into the decision process.
- *Deep reform of the Rule of Law Framework*: While dialogue is a commendable and necessary first step to bring a rule of law violator back into compliance, it can often reach stalemate if this compliance goes against the violator's political project, as it happened with Orbán's strategy of creating an 'illiberal state'. In this case, first, *Article 7 should be voted by a qualified majority of states in the Council*, to avoid sympathy coalitions as it happened between Poland and Hungary. Second, *the Commission should then have a clear mandate and procedure to move towards a sanctioning procedure* that would impose the proportionate sticks necessary to bring the sanctioned state towards compliance, including both financial (i.e. withholding of payments) and political sanctions, such as temporarily losing their voting power in the Council. Giving this power to the Commission would also mitigate the effect of partisan loyalties. Finally, Rule of Law Dialogue should be based on *independent reports from the Commission* on each Member State's rule of law record, instead of being based on EU countries reporting on themselves without an independent check, which makes it ineffective, subjective and self-congratulatory.
- *Reform of the common infringement procedure*: The ECJ should be able to analyse cases of Article 2 TEU violations not in the piecemeal way that they are currently presented but recognising the systemic nature of the violations involved. It should be combined with accelerated procedures and the use of interim measures, so as to

maximize the chances to bring the Member State into compliance and stop the constitutional backsliding.

- *Add transparency as a mandatory requirement for EU subsidies:* over their distribution and use. This would increase accountability. The EU could establish the rule that all countries must report back on a yearly basis and disclose detailed protocols of how they have distributed their subsidies. In case of inconsistencies, the amount of financial aid a country receives should be reduced significantly.
- *Better oversight of BRI and Chinese investment projects in the EU:* The European Union should require a rigorous, comprehensive and transparent preparation process of each BRI project in the EU, with the proper environmental, financial and sustainability assessments. It should ensure that an open and transparent project procurement process takes place, and the required environmental and social investment assessment should engage the community, be transparent and publicly available. This would contribute to engaging all relevant stakeholders in the project preparation and implementation cycle. To limit negative externalities on local communities, a mechanism to communicate local grievances could be considered, as well as training and reskilling programs when there is tangible risk of loss of jobs.

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