

# Confronting illiberalism in Europe

**What the EU can learn from its approach to Hungary and Poland to tackle future violations of democracy**

# EUROPEAN DEMOCRACY: THE REQUIRED INSTITUTIONAL REFORMS

## CONFRONTING ILLIBERALISM IN EUROPE WHAT THE EU CAN LEARN FROM ITS APPROACH TO HUNGARY AND POLAND TO TACKLE FUTURE VIOLATIONS OF DEMOCRACY

**Author: FUSIEK, Dawid Aristotelis**

**Brussels, October 2023**

© Institute of European Democrats, 2023  
Rue Montoyer 25 1000 Brussels Belgium  
[www.iedonline.eu](http://www.iedonline.eu)



This Research Paper was elaborated on the basis of independent research. The opinions expressed here are those of the Contractor and do not represent the point of view of the Institute of European Democrats. With the financial support of the European Parliament

## EXECUTIVE SUMMARY

Over the past years, the quality of democracy has deteriorated the most in Hungary and Poland of any other Member State in the EU. The EU has responded triggering the rule of conditionality mechanism against Hungary and imposing fines on Poland. These efforts have pushed both countries to make some reforms but have not fully addressed their illiberal tendencies. The paper thus argues that the EU should maintain pressure on Hungary and demand strict implementation of suggested remedial measures. Similarly, triggering the rule of law conditionality mechanism against Poland is necessary. The EU could continue to leverage funds strategically, as it has proven the most effective measure, and exploit the divide between Hungary and Poland over Russia's stance on Ukraine. The EU must also strengthen the rule of law mechanism by establishing clear recommendations, linking it to more EU funds, and implementing a monitoring procedure. The depoliticisation of the rule of law is also necessary as well as the revisiting of the unanimity rule in EU decision-making. The EU should also encourage Hungary and Poland to participate in independent EU institutions, support domestic catalysts of democracy, and improve funding access for independent media and civil society.

### Social Media summary

The analysis shows how the EU can improve its approach to Hungary and Poland and tackle future violations of democracy

### Keywords

#democracy #Hungary #Poland #ruleoflaw #institutionalreforms  
#democracybuilding #europeanforeignpolicy #europeangeopolitics #easterneurope

### Short bio

Alumnus of the Utrecht University and of University of Piraeus, Dawid Aristotelis Fusiek has an eclectic background in European Affairs, International Relations and History. Over the last years, he has collaborated with various think tanks all over Europe, worked with European institutions, and has published articles and research papers ranging from EU foreign policy and security studies to political philosophy.

# TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>6</b>
A brief overview of EU's approach to Poland and Hungary	6
How effective has been EU's approach to Poland and Hungary?	8
<b>Policy recommendations</b>	<b>9</b>
1. The EU should maintain the political and economic pressure on Hungary and Poland while utilizing the existing political landscape to further its goals.	9
2. The EU should reform and improve its rule of law toolbox to deal with Poland and Hungary and potential future violations	11
3. The EU needs to strengthen its instruments for the promotion and implementation of democracy and increase its support for non-state actors in Poland and Hungary	12
<b>Conclusion</b>	<b>13</b>
<b>Bibliography/ or references</b>	<b>16</b>

# TABLE OF ACRONYMS

<b>EU</b>	European Union
<b>EC</b>	European Commission
<b>ECJ</b>	European Court of Justice
<b>EP</b>	European Parliament

# INTRODUCTION

The state of democracy continued to decline in Europe throughout 2022. Annual reports issued by civil liberties groups and the International Institute for Democracy and Electoral Assistance (IDEA) revealed that most European countries made little effort to address documented rule of law issues (Butler, 2023; IDEA, 2022). Existing shortcomings persisted, and in some cases, worsened. The ongoing conflict in Ukraine exacerbated this decline, as it led to soaring inflation, sluggish economic growth, and high energy prices. Consequently, far-right parties, often championing anti-European agendas, gained increasing prominence across the continent (Henley, 2023). Notable examples include Finland, Germany, Spain, and Italy, where the political landscape has drifted towards the far right. In addition, conservative right-wing parties have continued to maintain power in the Western Balkans, while more have emerged in various regions throughout Europe (Freedom House, 2023).

With the European elections scheduled for 2024, the growing democratic backsliding poses a significant threat to the EU's democratic foundations. This deterioration undermines the well-functioning of its instruments, the efficacy of its policies, and its reputation as a champion of democracy. It also jeopardizes Europe's foreign policy objectives and aspirations to be a major player on the global stage. There are no better examples than Hungary's persistent obstruction of ambitious sanctions against Russia or Poland's fight against the supremacy of the EU's courts (Moens, Barigazzi, & Kijewski, 2023; Erlanger, 2021). Therefore, the EU must address this democratic decline and demonstrate its intolerance towards authoritarian abuses, whether at the European or national level.

The policy paper argues that a good starting point for the EU involves confronting its two key Member States, Poland and Hungary. Having exhibited some of the most severe declines in democratic standards, these countries remain at the forefront of Brussels's agenda. In response to their rule of law violations, the EU has launched a series of proceeding and mechanism against the two states over the last decade. Indicatively, the EC decided to retain €138 billion in EU funds from both countries in 2022 and 2023 (Verseck, 2023). However, these violations persist. With Hungary to assume presidency of the Council of the EU in the late 2024, the EU must scale up its approach to this matter. Drawing from the research findings, the paper seeks to first evaluates the EU's existing strategy and then, it provides policy recommendations for its enhancement.

With the growing illiberalism in Europe, the paper outlines possible measures for the EU to manage future violations similar to those in Hungary and Poland. Hence, the paper argues that: a) the EU should maintain the political and economic pressure on Hungary and Poland while utilizing the existing political landscape to further its goals; b) the EU should reform and improve its rule of law toolbox; c) the EU needs to strengthen its instruments for the promotion and implementation of democracy and increase its support for non-state actors in Poland and Hungary

## A brief overview of EU's approach to Poland and Hungary

The democratic backslide in Poland and Hungary has been a sustained phenomenon, rather than a recent development. Over the last decade, Prime Minister Viktor Orbán

has implemented anti-migration policies, enacted legislation targeting the LGBTQIA+ community, and imposed measures that curtail academic and civil society freedoms (IDEA, 2022). Moreover, his government has undermined the independence of media, opposition parties, democratic institutions like the judiciary, and fundamental rights of citizens, exemplified by the Pegasus scandal and increased gender-based discrimination (Walker, 2022; Baczynska, 2022). Orbán has also employed nativist, xenophobic, and anti-European discourse while misusing EU funds. As a result, Hungary was deemed an electoral authoritarian regime as of 2019, becoming the first non-democratic country in the EU (EP, 2022a). Meanwhile, Poland has also followed a similar trajectory. Since the Law and Justice party (PiS) came into power in 2015, the government has systematically violated the rule of law, eroded the separation of powers, diminished judiciary authority, restricted human rights, such as the right to assembly, attacked free media, tightened the ban on abortion, exerted control over education, and repressed people and politicians who criticize the authorities. In 2020, Freedom House determined that Poland could no longer be classified as a full democracy (Freedom House, 2020).

Hungary and Poland's turn to illiberalism has brought them into a direct conflict with the EU. However, they have managed to keep afloat by utilizing their veto powers and political leverages to extract concessions from Brussels. Notably, in 2020, Warsaw and Budapest managed to delay the adoption of EU's rule of law conditionality mechanism in exchange for supporting the bloc's post-pandemic recovery fund (Bayer, 2020). Two years later, Poland temporarily halted aid to Ukraine because it disagreed with a plan for minimum EU corporate tax, included in the same negotiation package (Strupczewski, 2022). At the same time, Hungary has constantly undermined EU's response to Russia's invasion of Ukraine to advance its agenda, such as advocating for exception in certain pipeline deliveries within the context of the sixth sanctions package (Moens, Herszenhorn, & Barigazzi, 2022).

The EU's continuous concessions to these illiberal tendencies reveal the fragility of its functioning, with a single Member State capable of coercing favorable terms. This illiberalism also hampers both the adoption of ambitious policies and decision-making on the EU level, jeopardising the EU's credibility as a global advocate and its normative power (Fusiek, 2022). Moreover, it may set a precedent, encouraging other Member States to challenge the EU's authority. As such, the EU has taken actions against both states. Initially, the EP issued non-binding recommendations against Hungary in 2018, while the EC has launched a series of infringement procedures (EC, 2023; EC, 2022a). The Commission has also repeatedly taken both countries to ECJ for failing to comply with EU law (France24, 2021). When these measures proved ineffective in deterring their illiberal trajectory, the EC launched the conditionality regulation against Hungary in 2022 (Wahl, 2022). This mechanism empowers the EU to take measures, such as suspension of payments or financial corrections, to protect the EU budget. Despite Hungary putting forward 17 remedial measures in response to the mechanism, the EC assessment found these measures inadequate due to their not legally binding nature (EC, 2022b). Thus, it suspended 65% of the EU's financial commitments, equivalent to €7.5 billion. Furthermore, Hungary's Recovery and Resilience Facility (RRF) plan has not received Commission's approval, making it the last member state not to have its €7.2 billion plan approved (Ibid.).

When it comes to Poland, the EC has not invoked the conditionality mechanism against it. However, it has not remained idle to the PiS government's controversial

reforms over the last decade. For instance, in 2017, the Commission initiated Article 7 proceedings against Poland, a procedure that effectively excludes a Member State from the decision-making process, thereby exerting a strong deterring effect (EC, 2019). Two years later, the ECJ ruled out that the Poland's 2019 judicial reforms were unlawful, a verdict not recognized by the Polish Supreme Court. Confronted with this, the EC initiated several actions against the state, which has incurred €360 million in fines for non-compliance with ruling of the ECJ since 2021 (Bodoni, 2023). Furthermore, the EC is also withholding funding that Poland is entitled from the EU's budget, and it has refused to release €36 billion in grants and loans from its pandemic recovery fund (Simon, 2023).

### **Has the EU been effective in its approach to Poland and Hungary?**

The EU's response to the democratic backslide in Poland and Hungary has been marked by caution. The extent of this backsliding is unprecedented within the EU framework, forcing the institutions to come up with new mechanisms and legislation to deal with it. Recognizing the existing Euroscepticism in these countries, the EU has refrained from adopting policies that could further polarize the situation and fuel anti-European sentiments. Notably, the EC triggered the conditionality mechanism against Hungary after the Hungarian general election in April 2022 to evade fueling Orbán's "us-vs-them" rhetoric. This highlights the EU's intention to pursue a punitive approach that carefully considers regional and domestic factors.

Although recently implemented, the EU's approach to Hungary and Poland has yielded concrete results. Orbán has hurriedly adopted anti-corruption reforms on a parliamentary level while the Polish Sejm passed legislation that rolled back some of the controversial judiciary reforms standing in the way of the disbursement of Poland's recovery funds (Bayer, 2023; Reuters, 2023). It is the first time that the EU has been able to influence the politics of the two countries. The EU has also skillfully utilized various factors to enhance the efficiency of its approach. These factors include, the global cost-of-living crisis, Hungary's severely weakened financial status, Poland's inflation and pressing economic needs, the growing divergence between the two states over the war in Ukraine, and the distribution of the EU funds (Martinez-Mortera & Tordoir, 2023). Indeed, financial pressure has proven to be the most effective way to incentivise the implementation of democratic practices in these countries. However, it is important to note that it should not serve as the sole solution.

At the same time, Poland and Hungary have shown a total disregard for ECJ's court decisions and the EC's recommendation. Despite the EU's political and economic pressures, they have maintained mutual support, undermining ongoing proceedings against them, such as Article 7 procedures that could potentially result in Warsaw and Budapest losing their voting rights in the Council of Ministers (EP, 2020). The measures in place are insufficient to combat the deeply rooted illiberalism present in the nation, given that the mere symbolic character of the reforms. For example, amid conformation with the EU, the PiS government signed off on a bill, creating a special body to investigate Russian influence with access to all government departments and documents from 2007 to 2022 (Camut, 2023). These actions indicate that EU pressures have failed to shake the institutional and procedural foundations of these states.

Regarding the rule of law mechanism, Article 7 has not proven to be effective in the long run. The Commission initiated proceedings against Poland in 2017, and Hungary faced a similar process in 2018 (EP, 2022a). However, the full-scale implementation of Article 7 has been unsuccessful, partly due to temporary political dynamics and enduring conflicts of interest within the EU, which have compromised the technical and legal criteria for its application. Despite the persistent pressure from EP and EC, the European Council generally leans towards consensus and avoids isolating Member States to prevent jeopardizing future crucial votes. As such, it is highly unlikely that Article 7 will be invoked as a primary resort, before eliminating other political and economic means. Additionally, the unanimity requirement makes it challenging for the vote to pass due to the political calculations of Member States that might not align with the Commission's stance. By utilizing the veto right, other Member States can obstruct the suspension of targeted state rights, ensuring their protection from future prosecution. Therefore, as long as Article 7 remains politicized and susceptible to shifts in the political landscape, it is likely to fall short in safeguarding the rule of law.

Furthermore, the recommendations issued by the EC do not exert any influence on the implementation of judicial and democratic reforms since they are not legally binding. By insisting on a non-binding approach, the EC is proving that illiberal governments, such as Orbán's, can appease the EU with symbolic gestures rather than substantial structural changes. Indeed, there is a little incentive for Orbán's government to implement the complete 17 measures, granting them an advantage in EU-level negotiations. Moreover, the rule of law conditionality regulation could prove unfruitful in the case of Poland, as the government has not mishandled EU funds. Without tying judicial independence to budget management in its argument, the Commission may lack the authority to withhold funding from Warsaw, losing a vital punitive tool in its arsenal.

## POLICY RECOMMENDATIONS

### **1. The EU should maintain its political and economic pressure on Hungary and Poland while utilizing the existing political landscape to further its goals.**

The EU should continue to exert pressure on Hungary and Poland by using political and economic means. In the case of Hungary, the Union must prioritize the effective implementation of existing instruments rather than introducing new ones. This strategy avoids unnecessary delays that might undermine the current momentum. Although the rule of law conditionality mechanism needs reform (see more: p. 11-13), it is still an important weapon in the EU's arsenal. Hence, the Commission should insist that all 17 remedial measures proposed by the Hungarian government be fully implemented and legally incorporated. The EC must put forward a strict deadline for the Hungary's implementation of the measures, in lieu of the possible scenarios of flexible deadline (Tidey, 2022). Retracting from the freezing of funds at this juncture would risk conveying the impression that EU requirements can be manipulated to suit Hungary's preferences, and this must be avoided.

The EU should also trigger the rule of law conditionality mechanism against Poland. While Poland plays a vital role in addressing the situation in Ukraine, its history of persistent rule of law violations and interference with judicial independence, along with the lack of improvement in recent policies by the PiS government, necessitates this action. By initiating the rule of law conditionality mechanism, the Commission will demonstrate its unwavering commitment to upholding democratic principles and preventing any backsliding, irrespective of a country's public image or institutional relationships. This approach will counter Orbán's narrative of EU opportunism and underscore the EU's dedication to preserving democracy within its borders.

One of the most effective ways to encourage democratic practices in Poland and Hungary is through financial pressure. The Commission's decision to suspend the disbursement of EU budget funds has compelled these states to consider necessary reforms and remedial measures. Given that, the EU needs to uphold its “carrot and stick approach” to extract even more concession from Budapest and Warsaw. Disbursing EU funds prematurely would substantially diminish the Commission's negotiating leverage. Current economic challenges in Poland and Hungary, characterized by high inflation rates, pose an opportune environment for this approach. Notably, Hungary is also experiencing a stagnation in its growth, a technical recession, and the exit of many foreign investments following the swelling current account deficit (OECD, 2023). With the freezing of EU funds, Hungary's public finances and economic growth are at risk since one-third of their public investment comes from EU money (Urban, 2022). Poland, though in a relatively less severe economic situation, requires EU funds to support ambitious national policies, including the “Polish Deal,” aimed at securing PiS' re-election in 2023 (Makowski, 2022). As such, it should continue to leverage EU funds strategically. However, it is important to acknowledge that, while financial penalties may offer a short-term solution to the EU's rule of law crisis, they could cause adverse long-term consequences, potentially precipitating an economic crisis in Hungary or Poland.

To enhance the effectiveness of its approach, the EU should also exploit the emerging discord in the relations between Budapest and Warsaw exposed by the war in Ukraine. While the two nations were previously closely aligned, their diverging views on Russian aggression have created a rift. Poland, concerned about Russia's expansionist ambitions, has emerged as a major supporter of Ukraine, offering refuge to millions of Ukrainian refugees and providing political and economic support to Ukraine's military efforts. In contrast, Orbán's government in Hungary leans towards ideological alignment with Russia, exhibiting doubts about Ukraine's sovereignty and obstructing the adoption of robust EU aid packages and sanctions against Russia. These divergent views have chilled diplomatic relations, resulting in Orbán and Morawiecki publicly stating the end of the Polish-Hungarian friendship, cancelling ministerial meetings and visits (Tamma, 2022; Zgut-Przybylska, 2023).

A similar schism is observable within the Visegrad Group, a cultural and political alliance comprising Czechia, Hungary, Poland, and Slovakia. The democratic backslide in Poland and Hungary has led the Czech and Slovakian governments to realign themselves more closely with the EU (Boyse, 2023). Given these dynamics, the Commission and Member States should capitalize on Hungary's increasing isolation to expedite the implementation of rule of law reforms. Nonetheless, while Poland may differ from Hungary regarding their response to the Ukraine crisis, they are likely to maintain mutual support on rule of law matters. For instance, Poland

opposed the use of the conditionality mechanism against Budapest, a decision that was adopted regardless by qualified majority in the Council of the EU. Moreover, Poland and Hungary have persistently influenced EU policies, as seen in the European Council's conclusions on migration in July 2023 (Liboreiro, 2023). Ultimately, as the conflict in Ukraine continues, public support for Ukraine may wane among European countries, potentially leading to increased backing for Orbán's stance on sanctions.

## **2. The EU should reform and improve its rule of law toolbox to deal with Poland and Hungary and potential future violations**

The rule of law plays a crucial role in ensuring the effective operation of the EU as a legally integrated union, resolving issues in accordance with EU jurisprudence and upholding Member States' responsibility. However, Poland and Hungary's democratic backslide have not only unveiled the limitations of EU institutions but also underscored the inadequacies inherent in the existing rule of law mechanisms. Furthermore, the latter has proven highly vulnerable to political pressures. The rule of law disputes within the EU has evolved into a deeply politicised matter, exacerbated by several measures that directly imperil the core interests of the affected Member States. Thus, before analysing the ways to improve the existing toolbox, it is crucial to comprehend the politics surrounding the rule of law.

Structural loopholes have played a crucial role in the erosion of the rule of law. First and foremost, within the EU institutions, there is no consensus on how to implement the existing toolbox. For instance, the Commission primarily emphasises the formal and substantive dimensions, while the ECJ places its focus on ensuring access to independent and impartial judicial systems (Pech, 2022). As a result, a broad approach has been adopted, one that has repeatedly proven ineffectual in halting political crises and paralysing the EU's decision-making apparatus. A good example is the use of the existing ambiguity by Hungary and Poland to obstruct the adoption of the final agreement on the 2021-2027 EU budget (BBC, 2020).

Secondly, the EU institutions have shown a lack of unity and political will when applying the rule of law toolbox. The EC has faced substantial criticism for failing to restrain the ongoing illiberal trends, its miscalculation of the magnitude of the problem, and its perceived lack of political will (McCourt, 2022). The Commission's delayed reaction revealed its lack of vision and weakness in dealing with a crisis undermining its legal order. Moreover, it often succumbs to political pressures. A notable example of this occurred in June 2023 when von der Leyen approved Poland's recovery plan despite the objections of five Commissioners (Bayer, 2022). Additionally, the Parliament has emerged as a vocal critic of Orbán and Morawiecki, as evidenced by its adoption of a resolution labelling Hungary as a hybrid regime of electoral autocracy (EP, 2022b). It also often collides with the Commission. For instance, it threatened to sue to the EC for inaction because of its delayed application of the Rule of Law Conditionality Regulation (Euractiv, 2021).

Thirdly, Member States have also displayed a certain apathy towards Hungary and Poland's disregard of the rule of law standards. Indicatively, in 2020, only five EU Member States backed the EC at the ECJ in 2020, against Poland's assault on judicial independence (Baczynks, 2023). A similar pattern emerged in 2023, when only 15 Member States supported the Commission's legal case against the Hungarian government to protect the LGBTQIA+ community in the country (Fox, 2023).

To tackle the existing loopholes, the EU must enhance the effectiveness of the rule of law mechanism. To this end, the EU should establish concrete and coherent recommendations for Member States to follow in order to comply with the EU's Rule of Law Report. This approach would facilitate the work of both the EU and the targeted states. On the one hand, the Union would guide the state toward adopting recommendations aligning with its policies, while on the other hand, the state would have a clear roadmap to achieve optimal outcomes. Moreover, the EU needs to advance the rule of law mechanisms by making it easier and faster to execute and attaching it to more EU programmes, grants, and loans. Considering that Article 7 and Rule of Law conditionality regulation require unanimity, the EU should push for qualified majority as a prerequisite for their adoption. This way, it can counter Hungary and Poland's strategy to veto each other's suspension.

The EU should also develop a monitoring procedure to evaluate the effectiveness of the implemented rule of law instruments. Given the unprecedented of the situation, an ongoing and systematic review of these tools can aid in identifying shortcomings and ascertaining the functionality of policies and measures. By leveraging existing internal evaluation instruments, the EC can develop operational recommendations, ensuring more transparent decision-making processes grounded in available data.

To increase the efficacy of the rule of law mechanism, it must be depoliticized and implemented in a consistent and harmonious way. Hence, the EU should formulate a clear European definition of the rule of law, which will be then ratified by all the institutions and Member States. Apart from that, it should create common standards that will guide its political practice while adapting the existing tools accordingly, such as the Rule of Law Report. Finally, if a breach occurs, the EU should not hesitate to deploy the rule of law mechanism, regardless of the political landscape. Whereas the common standards and definition will aid its execution, the whole mechanism will remain ineffective if not applied consistently.

### **3. The EU needs to strengthen its instruments for the promotion and implementation of democracy and increase its support for non-state actors in Poland and Hungary**

The democratic decline in Poland and Hungary has exposed flaws in both the EU's current rule of law mechanisms and decision-making process, emphasizing the necessity of more significant institutional-level reforms. A possible starting point could be to rethink the unanimity rule, especially in the context of the European Council and the EU Common Foreign and Security Policy decisions. The need for unanimity has often resulted in a stalemate over urgent and acute issues. There is no better example than Hungary's month-long veto of the sixth package of sanctions against Kremlin (Moens, Barigazzi, & Kijewski, 2022). This incident clearly demonstrated the dangers of unanimity: the ability of a Member State to undermine the adoption of a majority supported decision, hindering the EU's efficacy in responding to crises and diminishing its credibility as a global leader. It also renders the EU more susceptible to external influences and pressures exerted by self-serving states like Hungary and Poland.

It is thus not surprising that the question of unanimity “haunts” the European politics. For instance, von der Leyen proposed that the Member States should have the courage to “finally move to qualified majority voting” either through treaty change or by activating the existing *passerelle clause* (EC, 2020). The issue resurfaced at the Conference on the Future of Europe (CoFoE), a citizen-led series of debates and discussions, which recommended abolishing unanimity in favor of qualified majority voting in almost all instances (Rybacki, 2022). At the same time, there are voices of opposition to qualified majority voting, pointing out the potential for a more fractured and weakened Union. Yet, it remains undeniable that the EU's decision-making process could become more efficient through the adoption of a qualified majority voting by averting the obstruction of EU decision-making by individual Member States. With the CoFoE recommendations and the recurring problem of vetoes in the context of the war in Ukraine, there has been a surge of interest and momentum in favor of this reform, rendering it a more pragmatic prospect than before the conflict.

The EU must strengthen its monitoring mechanisms to uphold the democratic standards of its institutions and shield them from any manipulations or reversals. This is particularly important given the recent Parliament's corruption scandals and the continuous efforts of Warsaw and Budapest to undermine the well-functioning of independent institutions. The EU's monitoring mechanisms, such as European Anti-Fraud Office (OLAF) and European Public Prosecutor's Office (EPPO), could play a crucial role in keeping track of the proposed democratic reforms in Poland and Hungary, especially their implementation, and in protecting highly vulnerable sectors, such as the judiciary, media, electoral institutions, and civil society, from further backsliding. However, they are powerless as Hungary and Poland refuse to recognize their authority. Hence, the EU needs to push Hungary and Poland to join them. Besides membership, the EU needs to strengthen their capabilities and power. These entities could be responsible for evaluating the strength of democratic institutions within their fields and making recommendations for reforming problematic national institutions.

To ensure the efficacy of its approach, the EU needs also to support the social pillars in Poland and Hungary. Addressing the erosion of the rule of law necessitates bolstering domestic catalysts of democracy. Media and civil society can put additional pressures on the government to adopt the reforms and facilitate the EU's efforts. For this reason, they are also frequently targeted by both Fidesz and PiS, suffering from lack of funds and rule of law violations (Wojcik, 2022). The EU should thus improve the access of independent media and civil society organizations to EU funds via grants, evading national intermediary institutions. At the same time, it should expand the scope of available grants, technical assistance, or loans to empower non-state actors. Furthermore, the EU must adopt European legislation to safeguard the work of independent media and civil societies.

## CONCLUSION

Over the past years, the quality of democracy has declined the most in Hungary and Poland of any other Member State in the EU. The two states have sought continuously to undermine European policies in order to promote their own

interests, halting EU's integration and the adoption of important legislation and initiatives. Faced with an unprecedented crisis, the EU responded with a series of measures: from non-binding recommendations and infringement procedures to launching Article 7. An important step in the EU's approach was the triggering of the rule of conditionality mechanism against Hungary, suspending billions of EU funds from the state. When it comes to Poland, the EU has followed a divergent approach that has focused on initiating several proceedings against the state, which has already paid €360 million in fines for non-compliance with ruling of the ECJ since 2021. In addition, the Commission is withholding Poland's EU budget funding and rejecting the release of €36 billion in grants and loans from the pandemic recovery fund.

As the research has shown, the EU's approach to Poland and Hungary has been partially successful. Indeed, withholding the EU funds from both states has pushed them to adopt new reforms (for example, Hungary's 17 remedial measures and Poland's judicial reforms). This marks the first time the EU couldn't influence these countries' politics. Leveraging global economic challenges, financial vulnerabilities, and differences over Ukraine and EU funds, the EU has enhanced its approach. At the same time, Poland and Hungary have, however, consistently ignored the ECJ's decisions and EU recommendations, maintaining support for each other and resisting measures like Article 7 procedures. These efforts to pressure them have proven insufficient in addressing their illiberalism. Article 7's effectiveness is compromised by political dynamics, conflicts of interest, and the unanimity requirement, making it unlikely to be invoked as a primary solution. Additionally, the Commission's non-binding recommendations lack influence in safeguarding democratic institutions and judicial independence. The rule of law conditionality regulation may also be ineffective in Poland, as it does not tie judicial independence to budget management, limiting the Commission's authority to withhold funding.

To improve its approach to Hungary and Poland, the EU should maintain its pressure on both states through political and economic means. The Commission should demand Hungary to fully implement all 17 suggested remedial measures with strict deadlines, refusing to back down and risking the impression of flexibility. Triggering the rule of law conditionality mechanism against Poland is also necessary to demonstrate the EU's commitment to preserving democracy. Financial pressure has proven effective, with the freezing of EU funds pushing both states toward reforms, but the EU should continue this approach cautiously to avoid long-term economic crises. Additionally, exploiting the growing divide between Hungary and Poland due to differing views on Russia's aggression in Ukraine can work in the EU's favor. Leveraging Hungary's growing isolation could aid in pushing forward rule of law reforms, although Poland and Hungary may still support each other on this issue despite their differences.

The erosion of democratic principles in Poland and Hungary has also highlighted the inadequacy of their existing tools in countering rule of law violations, which have proven to be highly susceptible to political pressures. To enhance the rule of law mechanism, concrete and coherent recommendations should be established for Member States to follow, aligning them with the EU's Rule of Law Report and linking recommendations to EU funds. Furthermore, by implementing a monitoring procedure, the EU could assess the effectiveness of rule of law instruments systematically can identify deficiencies and successful policies. The European Commission can build on existing evaluation instruments to provide operational

recommendations, ensuring transparent decision-making based on evidence-based indicators. It is also essential to depoliticize the rule of law. The EU should define the rule of law clearly, ratified by all institutions and Member States, and establish common standards to guide political practices and adapt existing tools like the Rule of Law Report accordingly. Consistent application of the rule of law mechanism is crucial, irrespective of the political landscape, to ensure its effectiveness in safeguarding democratic values within the EU.

The ongoing conflict between the EU and Poland and Hungary has also exposed significant deficiencies in the decision-making processes, thus highlighting the need for reforms. The EU should revisit the unanimity rule, especially within the context of the European Council and the EU Common Foreign and Security Policy. The EU's decision-making process could become more efficient and prevent individual Member States from obstructing EU decisions if qualified majority voting was adopted, particularly considering recurrent veto problems during the Ukraine crisis. Moreover, the EU should bolster its monitoring instruments to protect them from manipulation or regression. Monitoring mechanisms can play a pivotal role in tracking proposed democratic reforms in Poland and Hungary, especially their implementation, and safeguard vulnerable areas like the judiciary, media, electoral institutions, and civil society. The EU should also pressure these countries to join independent EU institutions like EPPO and OLAF, which can evaluate reforms and recommend reforms for problematic national institutions. Finally, the EU should support social pillars in Poland and Hungary, as reinforcing domestic catalysts of democracy is crucial to combating the erosion of the rule of law. Independent media and civil society can exert additional pressure on governments to adopt reforms, but they are frequently targeted and face funding shortages. Hence, the EU should improve the access of these entities to EU funds through grants and increase the available grants, technical assistance, or loans to empower non-state actors.

# BIBLIOGRAPHY

- Baczynska, G. (2021) "Poland, Hungary block "gender equality" from EU social summit". *Reuters*. Retrieved from: <https://www.reuters.com/world/europe/poland-hungary-push-against-gender-equality-eu-social-summit-2021-05-07/> [Accessed 9 September 2023]
- Bayer, L. (2020). "EU budget plan lets Hungary, Poland off the rule-of-law hook (for now)". *POLITICO*. Retrieved from: <https://www.politico.eu/article/eu-budget-plan-lets-hungary-poland-off-the-rule-of-law-hook-for-now/> [Accessed 9 September 2023]
- Bayer, L. (2022) "Amid Commission rebellion, von der Leyen defends Polish recovery cash plan". *POLITICO*. Retrieved from: <https://www.politico.eu/article/amid-commission-rebellion-von-der-leyen-defends-polish-recovery-cash-plan/> [Accessed 9 September 2023]
- Bayer, L. (2023) "Viktor Orbán's battle for EU funds reveals existential clash". *POLITICO*. Retrieved from: <https://www.politico.eu/article/viktor-orban-battle-eu-funds-reveal-existential-clash/> [Accessed 9 September 2023]
- Bodoni, 2023. "Poland Loses EU Top Court Fight Over Curbs on Judges". *Bloomberg*. Retrieved from: <https://www.bloomberg.com/news/articles/2023-06-05/poland-loses-eu-top-court-fight-over-curbs-on-judges#xj4y7vzkg> [Accessed 9 September 2023]
- Boyse, M. "Visegrad 4 is limping along". *GIS*. Retrieved from: <https://www.gisreportsonline.com/r/visegrad-4-political/> [Accessed 9 September 2023]
- Butler, I. (2023) "Governments Continue Weakening Democracy: EU Rule of Law Report By 45 NGOs Liberties Rule of Law Report 2023". *Liberties*. Retrieved from: <https://www.liberties.eu/en/stories/rolreport2023-main/44656> [Accessed 9 September 2023]
- Camut, N. (2023) "Poland adopts amended Kremlin influence law". *POLITICO*. Retrieved from: <https://www.politico.eu/article/poland-president-andrzej-duda-law-adoption-russia-influence/> [Accessed 9 September 2023]
- EC. (2019) *Rule of Law: European Commission launches infringement procedure to protect judges in Poland from political control*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/es/IP\\_19\\_1957](https://ec.europa.eu/commission/presscorner/detail/es/IP_19_1957) [Accessed 9 September 2023]
- EC. (2020) *State of the Union Address by President von der Leyen at the European Parliament Plenary*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655) [Accessed 9 September 2023]
- EC. (2022a) *Commission finds that Hungary has not progressed enough in its reforms and must meet essential milestones for its Recovery and Resilience funds*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7273](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7273) [Accessed 9 September 2023]
- EC. (2022b) *Commission refers HUNGARY to the Court of Justice of the EU over violation of LGBTIQ rights*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2689](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2689) [Accessed 9 September 2023]
- EC. (2023) *Building materials: Commission decides to refer Hungary to the Court of Justice of the European Union for violations of the freedom of establishment*.

- Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3527](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3527) [Accessed 9 September 2023]
- EP. (2018) *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))*. Retrieved from: [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html) [Accessed 9 September 2023]
- EP. (2020) *Rule of law in Poland and Hungary has worsened*. Retrieved from: <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened> [Accessed 9 September 2023]
- EP. (2022a) *MEPs: Hungary can no longer be considered a full democracy*. Retrieved from: <https://www.europarl.europa.eu/news/en/press-room/20220909IPR40137/meps-hungary-can-no-longer-be-considered-a-full-democracy> [Accessed 9 September 2023]
- EP. (2022b) *European Parliament resolution of 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary (2022/2647(RSP))*. Retrieved from: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0204\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0204_EN.html) [Accessed 9 September 2023]
- Erlanger, S. (2021) “Why Is Poland Fighting the Supremacy of European Union Courts?”. *New York Times*. Retrieved from: <https://www.nytimes.com/2021/10/08/world/europe/poland-opposes-european-union-laws.html> [Accessed 9 September 2023]
- EURACTIV. (2021) *EU Parliament threatens to sue European Commission over rule of law*. Retrieved from: <https://www.euractiv.com/section/politics/news/eu-parliament-threatens-to-sue-european-commission-over-rule-of-law/> [Accessed 9 September 2023]
- Fox, B. (2023) “15 governments join EU lawsuit against Orbán’s anti-LGBT law”. *EURACTIV*. Retrieved from: <https://www.euractiv.com/section/eu-institutions/news/15-governments-join-eu-lawsuit-against-orbans-anti-lgbt-law/> [Accessed 9 September 2023]
- France24. (2021) *EU takes step towards punishing Poland and Hungary*. Retrieved from: <https://www.france24.com/en/live-news/20211119-eu-takes-step-towards-punishing-poland-and-hungary> [Accessed 9 September 2023]
- Freedom House. (2020) *Poland*. Retrieved from: <https://freedomhouse.org/country/poland/freedom-world/2020> [Accessed 9 September 2023]
- Freedom House. (2023) *War Deepens a Regional Divide*. Retrieved from: <https://freedomhouse.org/report/nations-transit/2023/war-deepens-regional-divide> [Accessed 9 September 2023]
- Fusiek, D. (2022) *Tackling Europe’s democratic deficit. The EU as a democratic force in Eastern Europe and Western Balkans. Institute of European Democrats*. Retrieved from: [https://www.iedonline.eu/download/democracy-autocracy/2022\\_IED\\_Fusiek.pdf](https://www.iedonline.eu/download/democracy-autocracy/2022_IED_Fusiek.pdf)
- Henley, J. (2023) “How Europe’s far right is marching steadily into the mainstream”. *The Guardian*. Retrieved from: <https://www.theguardian.com/world/2023/jun/30/far-right-on-the-march-europe-growing-taste-for-control-and-order> [Accessed 9 September 2023]
- IDEA. (2022) *Global State of Democracy Report 2022: Forging Social Contracts in a Time of Discontent*. Retrieved from: <https://idea.int/democracytracker/g sod-report-2022> [Accessed 9 September 2023]

- Liboreiro, J. (2023) "Poland and Hungary hijack EU summit with anti-migration demands". *Euronews*. Retrieved from: <https://www.euronews.com/my-europe/2023/06/30/poland-and-hungary-hijack-eu-summit-with-anti-migration-demands> [Accessed 9 September 2023]
- Makowski, M. (2022) "The Polish Deal: how a landmark tax reform has turned into a PR disaster for the government". *Notes From Poland*. Retrieved from: <https://notesfrompoland.com/2022/01/23/the-polish-deal-how-a-landmark-tax-reform-has-turned-into-a-pr-disaster-for-the-government/> [Accessed 9 September 2023]
- Martinez-Mortera, C., & Tordoir, S. HUNGARY, POLAND AND THE EU: IT'S THE MONEY, STUPID?. *Centre for European Reform*. Retrieved from: <https://www.cer.org.uk/insights/hungary-poland-and-eu-its-money-stupid> [Accessed 9 September 2023]
- McCourt, K. (2022) "European Commission Lacks Tenacity on the Rule of Law". *Human Rights Watch*. Retrieved from: <https://www.hrw.org/news/2022/07/20/european-commission-lacks-tenacity-rule-law> [Accessed 9 September 2023]
- Moens, B., Barigazzi, J., & Heszenhorn, D.M. (2022) "After Orbán pipes up, Hungary skips Russian oil ban". *POLITICO*. Retrieved from: <https://www.politico.eu/article/orban-hungary-eu-oil-ban-exempt-euco/> [Accessed 9 September 2023]
- Moens, B., Barigazzi, J., & Kijewski, L. (2022) "15 governments join EU lawsuit against Orbán's anti-LGBT law". *POLITICO*. Retrieved from: <https://www.politico.eu/article/eu-considers-shelving-ban-on-russia-oil-as-hungary-viktor-orban/> [Accessed 9 September 2023]
- Moens, B., Barigazzi, J., & Kijewski, L. (2023) "New sanctions against Russia stuck in limbo over Greek-Hungarian protest". *POLITICO*. Retrieved from: <https://www.politico.eu/article/new-sanctions-against-russia-stuck-limbo-greece-hungary-protest-ukraine-war/> [Accessed 9 September 2023]
- OECD. (2023) *Economic Forecast Summary (June 2023)*. Retrieved from: <https://www.oecd.org/economy/hungary-economic-snapshot/> [Accessed 9 September 2023]
- Pecha, L. (2022) "Doing more harm than good? A critical assessment of the European Commission's first Rule of Law Report". *Heinrich-Böll Stiftung*. Retrieved from: <https://eu.boell.org/en/2020/12/04/doing-more-harm-good-critical-assessment-european-commissions-first-rule-law-report> [Accessed 9 September 2023]
- Reuters. (2023) *Poland passes judiciary, wind farm laws in bid to unlock EU funds*. Retrieved from: <https://www.reuters.com/business/sustainable-business/polish-parliament-passes-law-changing-rules-wind-power-investments-2023-02-08/> [Accessed 9 September 2023]
- Rybacki, M. (2022) "The EU must scrap unanimity to unlock its superpower potential". *EURACTIV*. Retrieved from: <https://www.euractiv.com/section/future-eu/interview/the-eu-must-scrap-unanimity-to-unlock-its-superpower-potential/> [Accessed 9 September 2023]
- Simon, Z. (2023) "How EU Is Withholding Funding to Try to Rein In Hungary, Poland". *Washington Post*. Retrieved from: [https://www.washingtonpost.com/business/how-eu-is-withholding-funding-to-try-to-rein-in-hungary-poland/2022/12/30/ba3641fc-8818-11ed-b5ac-411280b122ef\\_story.html](https://www.washingtonpost.com/business/how-eu-is-withholding-funding-to-try-to-rein-in-hungary-poland/2022/12/30/ba3641fc-8818-11ed-b5ac-411280b122ef_story.html) [Accessed 9 September 2023]
- Strupczewski, J. (2022) "Poland holds up EU deal on minimum corporate tax, aid for Ukraine". *Reuters*. Retrieved from:

- <https://www.reuters.com/world/europe/poland-holds-up-eu-deal-minimum-corporate-tax-aid-ukraine-2022-12-15/> [Accessed 9 September 2023]
- Tamma, P. (2022) “Poland and Hungary: How a love affair turned toxic”. *POLITICO*. Retrieved from: <https://www.politico.eu/article/moment-of-truth-for-polish-hungarian-toxic-relationship-approaches/> [Accessed 9 September 2023]
- Tidey, A. (2022) “Brussels calls for €7.5 billion EU funding cut from Hungary over rule of law concerns”. *Euronews*. Retrieved from: <https://www.euronews.com/my-europe/2022/09/18/brussels-calls-for-75b-of-eu-funds-to-be-cut-from-hungary-over-rule-of-law-concerns> [Accessed 9 September 2023]
- Urban, M. (2022) *EU funding cuts could trigger an economic crisis*. Oxford Economics. Retrieved from: <https://www.oxfordeconomics.com/resource/eu-funding-cuts-could-trigger-an-economic-crisis-in-hungary/> [Accessed 9 September 2023]
- Verseck, K. (2023). “Will Hungary's Orban weather the storms of 2023?”. *DW*. Retrieved from: <https://www.dw.com/en/hungary-will-orban-weather-the-storms-of-2023/a-64307826> [Accessed 9 September 2023]
- Wahl, T. (2022) “Commission Triggers Conditionality Mechanism against Hungary”. *Eucrim*. Retrieved from: <https://eucrim.eu/news/commission-triggers-conditionality-mechanism-against-hungary/#:~:text=On%2027%20April%202022%2C%20the,2020%2C%20174%2D176> [Accessed 9 September 2023]
- Walker, S. (2022) “Hungarian journalists targeted with Pegasus spyware to sue state”. *The Guardian*. Retrieved from: <https://www.theguardian.com/world/2022/jan/28/hungarian-journalists-targeted-with-pegasus-spyware-to-sue-state> [Accessed 9 September 2023]
- Wojcik, A. (2022) *How the EU Can Defend Media Freedom and Pluralism in Hungary and Poland*. German Marshall Fund. Retrieved from: <https://www.gmfus.org/news/how-eu-can-defend-media-freedom-and-pluralism-hungary-and-poland> [Accessed 9 September 2023]
- Zgut-Przybylska, E. (2023) “Visegrad shaken to its core, Hungary in isolation. *Heinrich Boll Stiftung Prague*. Retrieved from: <https://cz.boell.org/en/2023/01/09/visegrad-shaken-its-core-hungary-isolation> [Accessed 9 September 2023]