



European Neighbourhood Watch

RULE OF LAW: DOUBLE STANDARDS UNDERMINE EU'S ROLE IN THE NEIGHBOURHOOD

Editorial | Toby Vogel

Article 2 of the Lisbon Treaty defines the European Union as a community of values and then goes on to list them: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are supposed to inform all EU policies, including enlargement and foreign and security policy, which crucially depend on the strength of the EU's 'soft power'. But what happens to the EU and its power to persuade and lead by example when it fails to safeguard its values at home?

Several events in recent months illustrate what happens when the EU loses sight of its commitment to democracy and the rule of law.

Hungary and Poland: Skirting the boundaries

In Hungary and Poland, right-leaning governments have taken steps to consolidate their control over the institutions of the state and to reshape entire societies in pursuit of a socially conservative agenda – steps that might be skirting the boundaries of the values of “pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men” listed in Article 2. These governments have weakened the rule of law, prompting the European Commission to launch several infringement procedures.

Infringement procedures, however, concern specific alleged violations of EU law, not their totality. As a consequence, in the case of Poland, the Commission has also activated for the first time a new rule of law mechanism – essentially a structured, three-stage dialogue that is launched when there are “clear indications of a systematic threat to the rule of law in a Member State”. The Commission sees this threat most clearly in the government's control over the Constitutional Tribunal. To date, the dialogue between the two sides has yielded no tangible result, and it appears unlikely that the Commission will take action. (The Commission could initiate the most extreme measure available to it: the Article 7 procedure, which could result in Poland losing its right to vote in the Council of the EU, but only if all other member states agreed. The prospects of this happening appear dim, as the current Hungarian government would almost certainly block it. And even other member states harbour misgivings about setting such a precedent.)

The Commission has also launched infringement procedures against the two countries plus the Czech Republic over their refusal to meet their obligations vis-à-vis the mandatory quotas under the EU's refugee relocation programme. The move, however, appears to be largely symbolic: the relocation scheme is set to end in three months' time; many other member states have also not met their quota; and since member states are allowed to cherry-pick which refugees they admit (for example, only single mothers), there is a lack of eligible refugees.

Migration: The end of the EU as a community of values?

In a broader sense, however, the EU itself, in its response to the migration crisis of 2015-16, also betrayed the values on which it is supposedly built. At the same time, the relocation scheme over which the Commission is now taking action also highlighted the divisions inside the EU, which in effect stopped functioning as a community of values and the rule of law when Slovak Prime Minister Robert Fico publicly announced that the quotas, decided by a weighted majority of member states, would not be honoured by his government. Such open defiance of EU law was unprecedented in the EU's history. (Hungary and Slovakia also challenged the relocation quotas before the Court of Justice of the European Union. An Advocate General is scheduled to issue a non-binding opinion on July 26th.)

Another major instance of the EU compromising its values for the sake of political expediency in dealing with migration is its deal with Turkey and its subsequent soft-peddalling on President Erdogan's increasing authoritarianism. By offering the opening of two new policy chapters in the country's accession talks with the EU in exchange for Turkey's help in blocking the refugees from reaching European shores, the deal signalled that the enlargement process itself is open to political bargaining. This is troubling, precisely because the accession process is supposed to embed democracy and the rule of law, notably with the early opening of the relevant policy chapters (23 and 24), introduced in response to perceived shortcomings of enlargement.

The effect on enlargement

All this is being watched closely in the countries that are seeking to join the Union. President Aleksandar Vucic of Serbia and Hashim Thaci, his Kosovar counterpart, understood years ago that they could play on the EU's preoccupation with stability by being constructive in the EU-brokered dialogue between Belgrade and Pristina. As a reward, the EU essentially turned a blind eye to the creeping authoritarianism displayed by both leaders. As a result, the EU is seen by many Serbs and Kosovars as a status-quo player, which is supporting incumbent elites. Genuinely pro-EU forces feel abandoned.

The developments in Hungary and Poland have raised the question whether the democratic and institutional transformation during the transition from communism to EU membership might have been shallower than assumed. The EU's experience with Bulgaria and Romania, which joined in 2007, was supposed to have informed a new, tougher accession process whose first test was Croatia, which became a member in 2013. This process includes post-accession monitoring and more member state involvement in the opening and closing of policy chapters, as well as a stronger focus on the quality of reform rather than a box-ticking approach to the adoption of laws. If Hungary and Poland – among the first former communist states to join the Union – remain susceptible to autocratic tendencies, what does that tell us about the transformative power of EU enlargement?

The EU should fix its democracy and rule of law problems irrespective of their effects on enlargement countries. These negative effects merely make it even more pressing that the Commission and the Council start taking the EU's values seriously in their policymaking.



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Ukraine: Council agrees its stance on trade measures, Brussels, 06 June 2017. [Link](#)

Joint Press Release: EU-Ukraine Human Rights Dialogue, Kyiv, 13 June 2017. [Link](#)

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Turkey: changing the constitution could end up in freezing EU accession talks, 20 June 2017. [Link](#)

CEPS Working Document: The Donbas blockade - Another blow to the Minsk peace process

On 2 June 2017, CEPS published a Working Document written by Hrant Kostanyan and Artem Remizov on the Minsk peace process and the Donbas blocked.

The Minsk peace process that was set up to address the Ukraine crisis has had a bumpy ride from the start. The current conflict has its origins in the Kremlin's reaction to the Euromaidan revolution in Ukraine: Russia annexed Crimea in March 2014 and has orchestrated a war in the east of Donbas. In January 2017, some veterans of Ukraine's volunteer battalions blockaded pro-Russian separatist-held territories in the eastern Donbas, the so-called 'Donetsk People's Republic' (DPR) and 'Luhansk People's Republic' (LPR). After unsuccessful attempts to disperse the veterans and activists blocking several checkpoints, Ukrainian President Petro Poroshenko gave in to increasing public support for the blockade and transformed a rogue operation into official Ukrainian government policy. Russian President Vladimir Putin responded with a decree to recognise certain personal identity documents issued by the breakaway 'republics', and separatists 'nationalised' Ukrainian companies in the eastern Donbas.

These events have led the National Bank of Ukraine to revise downwards its previous economic growth forecast for 2017; indeed, the blockade poses a major challenge to companies located in both the eastern and western Donbas due to the interconnection of their production cycles. The blockade exposed the failure of the so-called 'Rotterdam Plus' formula – a new methodology for calculating wholesale market prices on electricity, intended to help Ukraine diversify its energy sector. But ultimately, argue the authors, the blockade by Kyiv, the recognition by Russia of the separatist republic's identity documents, and the 'nationalisation' of Ukrainian companies in the eastern Donbas amount to yet another blow for the Minsk peace process. They conclude with recommendations for a more constructive way forward.

To read the full text of this Working Document, click the button below.

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The EU's Association Agreements and DCFTAs with Ukraine, Moldova and Georgia: A Comparative Study

On 26 June 2017, CEPS published a comparative study on the three Association Agreements (AAs) and Deep and Comprehensive Free Trade Areas (DCFTAs) that the EU has concluded with Ukraine, Moldova and Georgia. Written by Guillaume Van der Loo, the study explores the main differences in the 'political' and trade-related chapters and the provisions on legislative approximation. Whereas the scope and contents of these sets of agreements are very similar, some specific differences can be identified in view of the different political and economic priorities of the EU's partner countries.

To read the full text of the study, click the button below.

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Demystifying the Association Agreements: Review of the Trilogy of Handbooks on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine

In a recent paper, Katarzyna Wolczuk reviewed three handbooks on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine published by CEPS last year. The paper examines the role of the Association Agreements in the Europeanisation of the three countries and draws attention to the dual role of the Agreements, namely, as frameworks for both economic integration and modernisation. The paper analyses the content of the Handbooks and draws attention to the complex and varied nature of the legal commitments made by the association countries. In the final section, it focuses on the process of implementation of the Agreements and the considerable challenges this presents for the EU and the three countries in question.

To read the full text of the review, click the button below.

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