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Geostrategy

What's at Stake in the EU Elections: Democracy and the Rule of Law

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By Daniel Hegedűs | May 21, 2024

EU Election Series: The European Parliament elections in 2024 will shape the EU's political direction over the next five years and, therefore, constitute a defining moment. In this series, GMF experts discuss the impact the elections will have on EU policy in key areas, consider what can—and should—be done before the elections, and outline potential post-election scenarios.

Given the likely strengthening of the radical right in the European Parliament elections and the fact that three governments with domestic illiberal agendas (Hungary, Slovakia, and Italy) will send members to the European Commission, it is unrealistic to expect an ambitious rule-of-law agenda in the EU in the second half of 2024.

In parallel with the democratic decline of member states such as Hungary, Poland, or, most recently, Slovakia, the protection of democracy and the rule of law has occupied a high position on the EU's political agenda over the past decade.

The EU legislative period 2019–2024 saw positive developments in this area. On the legislative side, the so-called Conditionality Regulation and the European Media Freedom Act (EMFA) were adopted, while compliance with the Charter of Fundamental Rights was anchored in the Common Provisions Regulation (CPR) and thus in the implementation of most policies financed by the EU budget.

More importantly, the European Commission reversed its previous approach and invested heavily in enforcement through de facto sanctions, suspending European Recovery and Resilience Facility (ERRF) and EU cohesion funds for Hungary and Poland due to the lack of judicial independence and attacks on the rule of law in those countries.

These positive developments were the result of important changes in inter-institutional relations and in the political impetus the European Parliament (EP) and the Council gave to the European Commission. In the current legislature, the EP has put the rule of law at the center of its agenda and has regularly backed up its calls to the Commission for more enforcement and financial sanctions against Hungary and Poland with threats of legal action.

Following a sovereignty-based approach, member states and the Council have traditionally played a role that hindered rather than promoted effective protection of the rule of law. However, as the organized abuse of EU funds in Hungary and elsewhere reached the domestic agenda of net payer countries, the so-called „Friends of the Rule of Law“ group emerged within the Council, under the unofficial political leadership of the Netherlands and composed mainly of Nordic member states. The Council no longer spoke with one voice in favor of member-state sovereignty and against effective enforcement of the rule of law; the EP and the „Friends of the Rule of Law“ encouraged the Commission to play hardball with rogue member states such as Hungary or Poland (before 2023). The inter-institutional political environment thus played a decisive role in enabling the Commission's successes between 2021 and 2024.

This influence of the political environment is what makes the protection of the rule of law in the EU highly dependent on the results of the EP elections and the composition of the new Commission. The expected rightward shift of the EP may significantly reduce the pressure on the Commission to enforce compliance with rule-of-law standards. The fact that the number of governments with illiberal domestic agendas is at an all-time high of three (Hungary, Slovakia, and Italy) also has a direct impact on the internal dynamics of the Commission and the Council. In this scenario, the political position and commitment of the new Commission president and the commissioners in charge of the democracy and rule of law portfolios are determinative. Regardless of their personal political position and commitment, however, it would be unrealistic to expect them to succeed with an ambitious rule-of-law agenda in an unsupportive inter-institutional environment.

Scenarios and Risks: What Happens After the Elections?

The biggest challenge in the aftermath of the EU elections will be the upcoming Hungarian Council presidency, which will run from July 1 to December 31, 2024. While the presidency period will be consumed by institutional matters such as the constituent sessions of the EP and the election of the new Commission and its President, it is almost certain that the Hungarian government will try to use the Council presidency to upload illiberal content to the EU agenda and undermine the legitimacy of EU protection of the rule of law. After this six-month period, however, the Polish Council presidency offers an opportunity to create positive synergies between the Council, the EP, and the Commission and to put the rule of law again at the top of the EU agenda.

The critical point in the EP elections is whether a center-right/far-right coalition of the European People's Party (EPP), the European Conservatives and Reformists (ECR), and the Identity and Democracy (ID) groups can form an alternative majority alongside the traditional „grand coalition“ of the EPP, the left-wing Socialists and Democrats (S&D), and the liberal Renew Europe. If so, the EPP will be free to choose alliances on the basis of political issues, alternating between the center and the right, and most likely abandoning the rule of law in order to forge right-wing majorities on issues such as immigration or the scaling back of climate policy commitments. In addition, a potentially poor result for the Greens/EFA group could further weaken the EP's position on protecting the rule of law, as the Greens have been championing the topic in the outgoing legislature. Taken together with the fact that Commission has never before had three commissioners delegated by illiberal governments, it is clear that the EP elections and the composition of the new Commission represent a crossroads for the protection of democracy and the rule of law in the EU.

Priorities: Maintaining Momentum and Focusing on Enforcement

The extent to which the Commission will be politically able and willing to counter authoritarian and illiberal dynamics in member states will also depend on the pressure exerted by the new EP. Considering that the most likely scenario is an increase in the strength of the combined radical right (ID plus ECR) without an the achievement of an alternative center-right/radical right majority with the EPP, the Commission should pursue the following set of priorities, in order of decreasing likelihood.

- The Commission should invest significant resources in the full implementation of the European Media Freedom Act (EMFA), which can be a useful tool to protect media pluralism and to counter potential future media capture in countries such as Slovakia and Italy, where autocratization is in its early stages.
- The Commission should support the restoration of the rule of law and liberal constitutionalism in Poland. By helping the reforms succeed, the Commission can create a blueprint for successful re-

democratization of captured semi-authoritarian regimes. Such a blueprint could be very useful in the future for both member states (Hungary) and candidate countries (Serbia, Georgia). Also, the Commission must not forget that the timeframe for reforms in Poland may be limited to three years. By 2027, constitutional checks and balances must be restored and resilient enough to resist a new wave of illiberal power grabs should the Law and Justice Party (PiS) return to power at the next parliamentary elections.

- Beyond top-down enforcement, the Commission can invest more in bottom-up support for civil society in EU member states. Civil society organizations (CSOs) are both the bulwarks of EU values and the first targets of authoritarian measures introduced by illiberal governments. In this spirit, the budget of the EU's Citizens, Equality, Rights and Values (CERV) program should be increased.
- Maintaining pressure on Hungary, the Commission should continue to block the release of ERRF and cohesion funds until the Hungarian government engages in substantial reforms to restore the rule of law and the integrity of public spending with objective, measurable impact. Retaining this leverage over Prime Minister Orbán's government can influence its cost-benefit calculations and deter other would-be EU autocrats.
- Learning from the past experiences of autocratization in Hungary and Poland, the Commission must use available instruments to stop the implementation of authoritarian power consolidation at an early stage. The Commission should therefore apply to the Court of Justice of the European Union (CJEU) for interim measures to suspend the implementation of each and every significant national autocratizing legislation. These measures must be applied extensively in the case of Slovakia to prevent the autocratization of the country.

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About the Author

Daniel Hegedüs is a GMF senior fellow focused on Central Europe. He writes and speaks extensively on populism and democratic backsliding in Central and Eastern Europe, and the European and foreign affairs of the Visegrad countries. He is frequently quoted in outlets such as AFP, the Financial Times, the New York Times, Euractiv, EU Observer and Der Spiegel. He has studied political science, history, and European law at the Eötvös Loránd University Budapest and Humboldt University in Berlin.

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