



## Concept Paper

### Introduction – What is at stake?

The Hungarian Europe Society intends to organise two workshops on the theme “Illiberal democracies – what can the European Union do in case a member state regularly and systematically breaches European values and regulations?” The two events will take place in Budapest on 24 April 2015 and in Brussels on 2 June 2015.

The concept of our initiative focuses on the decline in the field of the protection of fundamental rights, the weakening power of the rule of law as well as the deterioration in the functioning of constitutional check and balances in the political settings in some EU member states. As a fresh study, requested by the LIBE Committee of the European Parliament, has pointed out: “Civil society organisations should be empowered to monitor application of fundamental rights in Member States – in accordance with the Lisbon Treaty and the International Covenants, and report back to the Commission’s Vice-President for fundamental rights and the European Parliament.”<sup>1</sup> Our Hungarian Europe Society (HES) wants to go even further when analysing the dilemma what the European institutions and European political actors can do in such individual cases when basic common European values are breached. HES will also elaborate recommendations for the stake-holders both at national and European levels.

Nationalist, populist, eurosceptic and even illiberal voices have gained significant influence inside the European political sphere in many parts of the European Union. Moreover, some member governments have implemented new laws which have raised international criticism – just like a recent legislation on media freedom in Spain. The negative political development in neighbouring big states – especially Russia and Turkey – towards a more and more authoritarian

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<sup>1</sup> DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS, European Parliament: The impact of the crisis on fundamental rights across Member States of the EU Comparative analysis, manuscript completed in February 2015, Brussels, p. 181, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL\\_STU\(2015\)510021\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf)



system also gives reason to growing concerns. The European Union has shown fragility when confronted with unprecedented challenges like the war in the Ukraine. In such an internal and international environment, and also because of the ongoing strengthening of the internal structures and mechanisms of the political union (inside the European Union), where member states share common values and norms, the (potential) systemic breach of European rules, and also their spirit, has become a crucial issue in the public discourse and in the coverage of the international media. The European institutions have started to investigate what are the political and legal instruments to keep member states on the right track in case there is a temptation to loosen their willingness to insist on the common rules. As the new study has summarised, “it is important to note that, following the Parliament’s initiative, the Commission has developed a Framework to Strengthen the Rule of Law to tackle the challenges identified to bring about a fully-functioning European area of justice. The Framework is intended towards a structured exchange with the Member State where there are clear indications of a systemic threat to the rule of law. This is to be done in accordance with the following principles: focusing on finding a solution through dialogue with the Member State concerned; ensuring an objective and thorough assessment of the situation; respecting the principle of equal treatment of Member States; and indicating swift and concrete actions which could be taken to address the systemic threat and to avoid the use of Article 7 TEU mechanism”<sup>2</sup>.

In the meantime, Kim Lane Scheppele, Jan-Werner Müller and other scholars urged the European Commission to take a more activist role and prepared in their studies potential new legal and political approaches for the European institutions: some of them became part of the recommendations specified in the Tavares Report of the European Parliament. During his hearing at the European Parliament, now First Vice President Frans Timmermans insisted that he was ready to use any instruments to defend European norms which remain indisputable inside the community in the future. And in November 2014, the Council of the European Union dealt with the same theme first time in its history. Still, the European institutions are far away from any detailed

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<sup>2</sup> Ibid. p. 178

(re)action plan that would receive the necessary support of the most important political players, member governments and European political parties.

Since 2010, the conflicts between the Hungarian government and the European institutions have continuously attracted the biggest attention concerning our subject. The Venice Commission of the Council of Europe, international government organisations like the OCSE and the United Nations, as well as European civil associations have joined the criticism against the non-democratic character of the fundamental changes introduced by Fidesz using its parliamentary super-majority. Although the Hungarian government has accepted and introduced some of the modifications proposed by the European Commission and some intergovernmental institutions, the political system of the country has been profoundly transformed during the first four year long rule of Fidesz. Just recently, at the end of July 2014, the news media widely reported that Hungarian Prime Minister Viktor Orbán declared the creation of an illiberal democracy in a speech held in Tusnádfürdő, Romania. During the history of the European political and economic integration, none of the EU heads of state or government had ever expressed such contradicting views to the fundamental European values.

Instead of quoting many reports elaborated by the European institutions and international government organisations, let us mention one of the latest summaries about the political, constitutional and legal changes in the most important fields of the political system entitled “Disrespect for European Values in Hungary, 2010-2014” published by four Hungarian NGO-s and signed by our Hungarian Europe Society, which gives a review and evaluation of the most striking cases<sup>3</sup>. The risk of the emergence of a political regime within the European Union, which stands in permanent conflicts with the European institutions as the consequence of its anti-liberal ideological stance and majoritarian political practice, has become a reality. The recent deterioration of

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<sup>3</sup> Disrespect for European Values in Hungary, 2010-2014, AN ASSESSMENT OF THE CURRENT DEFICIENCIES OF THE RULE OF LAW, DEMOCRACY, PLURALISM AND RESPECT FOR HUMAN RIGHTS IN HUNGARY, The analysis has been prepared by four Hungarian NGOs (the Eötvös Károly Policy Institute, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union and the Mérték Media Monitor), Budapest, <http://helsinki.hu/en/disrespect-for-european-values-in-hungary-2010-2014>

the relationship between Hungary and the United States of America has shown how the US government expressed its serious concerns regarding the political “swing” of the Hungarian government between the “East”, especially Russia, and the transatlantic alliance.

The potential spill-over effect of the peculiar Hungarian example inside the European community has made the democratic public and the mainstream elites inside the European Union especially nervous. In their eyes, a similar U-turn concerning the respect of democratic norms and institutions, the rule of law, human rights, freedom of expression, and further basic European values would be a nightmare scenario in any of the post-communist Central and Eastern European countries. The relatively new democracies in the region seem to be rather vulnerable to nationalistic rhetoric and authoritarian political language even twenty-five years after the regime-changes.

### The workshops

The workshops of our Hungarian Europe Society intend to investigate the above-mentioned institutional, legal and political problems from an all-European perspective. We will have four sessions following one another with altogether 6-8 introductory remarks by our invited experts who will map the following areas which will be discussed in more details by the participants:

1. a) Illiberal democracies in the world, b) Anti-liberal political tendencies and populism in EU member states, c) Risks of the strengthening of authoritarian-majoritarian views in the Central and Eastern European countries, d) Geopolitical games: is the "Eastern Opening" of the Hungarian government especially towards Russia a risk for the European Union and the United States of America?

2. The state of democracy in Hungary. Political and legal conflicts between the Hungarian government and the European institutions: experiences from the last four and half years.



3. What can the European Union do in case a member state regularly and systematically breaches European values and regulations? What are the concepts which suggest new institutional frameworks and mechanisms to cope with the problems on European level? What is the political reality of a break-through in this matter? What are the political and economic risks and dangers of any fresh political and legal instruments having in mind the historic process of a united Europe and the respective member state? Is there any “middle of the road”, systemic method to be found between the legal provisions of Article 7 of the Lisbon Treaty and the individual infringement procedures? What about the consequences of potential economic measures and/or political sanctions? And are those observers right who argue that such actions would be too harmful to the people of a given member state?

4. What can be done to have a significant influence on high-level political decision-makers and to give new ideas for the general public debates in Europe concerning this issue? How can we bring the national and European public spheres closer to each other in order to influence its outcome? What should be the role of the civil society and the media to frame the political discussion in the case of Hungary, and from a broader perspective, all around Europe, about the conflict between the European institutions and the respective member government? What about the European solidarity with party politicians and civil society actors who disagree with the politics of their national government?

The international character of the list of the invited participants will guarantee the success of the broad and comparative approach. In Budapest, Jean-Marie Cavada, Member of the European Parliament and Vice-president of the JURI Committee will speak about the proposal of the ALDE Group to the European institutions entitled “The EU Democratic Governance Pact - Upholding the Rule of Law and Fundamental Rights”. Kati Piri, Dutch socialist MEP has also accepted our invitation. Morten Kjærum, director of the Fundamental Rights Agency in Vienna until March 2015 (tbc) is supposed to report about the down-grading tendency in some member states in his field of investigation. Pelin Ayan Musil from the Anglo-American University, Prague will talk - after an important theoretical clarification - about the experiences of



“existing” illiberal democracies, especially Turkey, whilst Timo Lochocki, German Marshall Fund, Berlin wants to compare and classify populist political forces all over in Europe. Timm Beichelt, who comes from Viadrina University, Frankfurt an der Oder, will explain the interplay between democracy deficits at national and European levels. We will have representatives of the NGO world from Hungary and at European level: Lorenzo Marsili, executive director of European Alternatives and Alexandrina Najmowicz, director of the umbrella organisation European Civic Forum will present their views how civil society organisations can bring the issue of liberal democracy, citizen participation and freedom of speech back to the forefront of public and elite discourses.

At our second occasion in Brussels there will be an overlap with the participants at the first meeting in order to keep continuity of the debates and to be able to elaborate a policy paper as an outcome. The list of newcomers includes Rui Tavares, historian, former Member of the European Parliament, who has received an international reputation as the rapporteur of the report on the situation of fundamental rights in Hungary approved by the European Parliament in 2013. Jacques Rupnik from Science Po in Paris, well-known expert of the Central European region also accepted our invitation. So did Takis Pappas, European University Institute, Florence, who will explain the spread of left and right wing populism in Europe from the point of view of a political scientist. We also want to welcome high-level representatives of the European Commission and the Council of the EU. Together with a few Hungarian politicians and with spokespersons of the Hungarian civil society we have strong hopes to have a fruitful brain-storming at both events. The final paper, which will be elaborated by HES based on the debates of the workshops and on selected written contributions, might be an important contribution to the all-European debates and decision-making concerning the future of a European liberal democracy.

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