



The Limits of the European Union's Enforcement Powers: a Case Study of the Response to Democratic Backsliding in Hungary

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Authors Note

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I hope you enjoy reading.

Abstract

This paper explores the reasons behind the European Union's inability to respond to the trend of democratic backsliding occurring within its member states by looking at Hungary as a case study, and the ongoing process of the consolidation of illiberal democracy headed by the Fidesz party under the leadership of Viktor Orbán. This paper examines the trend of democratic backsliding within the European Union, and the various obstacles the Union faces in its attempts to curb such outcomes. Using Hungary as a case study, the European Union mechanisms for the incentivization and enforcement of democratic norms will be evaluated against the ongoing process of "illiberalization" taking place under the leadership of Viktor Orbán and the Fidesz party.

Background

Beginning in 1958, an economic association of six European states, called the European Economic Community, organized with the aim to secure peace post-World War II through economic cooperation. Since then, the Economic Community has developed into the European Union, an international organization consisting of 26 member states across the European continent. The close economic ties of these countries have become even stronger because of the EU, as the creation of a single currency and market has reduced trade barriers and bound state monetary policy (European Union 2018). However, there are political elements of the union, with the EU consisting of a number of institutional bodies. The judicial branch of the EU is known as the European Court of Justice, which serves as the supreme court of the EU. The institutions involved in decision-making are the European Parliament and the Council of the EU, which jointly adopt legislation, and the European Commission, which proposes legislation and functions as the executive branch of the European Union (European Commission 2005). The European Parliament is meant to be the democratic component of the EU, as it is the only institution in which its representatives are directly elected by the citizens of the member states. These representatives also form seven supranational political parties organized by ideology.

Separately, the European Council is made up of the heads of state or government of each member state (European Commission 2005). However, these institutions of the EU have limited political authority over member states due to the principle of subsidiarity, in which policy areas must be handled at the lowest possible level in which they are effective (Schilling 1994).

Hungary and the European Union's relationship began in the post-Cold War years, when former Soviet states began to look outside of Central and Eastern Europe for partnership. In the early 2000s, a multitude of these former Soviet states applied for membership to the European Union. The 2004 enlargement resulted in the extension of the EU membership to 10 countries from Central and Eastern Europe, including Hungary (Publications Office of the European Union 2007). As a member of the Soviet Union, Hungary was run under a communist regime until 1989. After the destruction of the Soviet Union and to be considered for membership into the European Union, Hungary's political institutions were reformed toward a democratic system (BBC News 2018).

Introduction

In 2010, the Fidesz party, under the leadership of Viktor Orbán, rose to power, winning 53% of the vote and 68% of parliamentary seats (Kelemen

2017, 221). With a two-thirds parliamentary supermajority bolstering the party, Fidesz has been able to consolidate its dominance over the past decade through constitutional amendments. Among other examples, the amendments have stripped the powers of Hungary's once independent court system, silenced independent media, and constructed a new electoral system to reduce opposition and pluralism (Ariès 2019). These reforms have installed an illiberal democratic order within Hungary. Such moves away from democracy have earned Hungary a rating of 69, or 'partly free', according to Freedom House's 2021 rankings of democratic freedom; a classification Hungary alone holds within the EU (2021). Prior to these developments, Hungary had, only a few decades earlier, made substantial progress in its democratic transition in order to adhere to the EU's conditionality guidelines for accession (Ungváry 2014). Since 2004, Hungary has held membership in the European Union, an organization legitimized in part by its commitment to a core set of values based on democracy and the rule of law, as laid out in Article 2 of the Treaty on European Union, or TEU ("Consolidated Version" 2012). Yet these values have been explicitly rejected by Orbán, who has "declared the era of liberal democracy to be over" (Janjevic 2018). Given its normative democratic claim, why has the European Union been unsuccessful in containing the overturning of democratic legislation and institutions by illiberal-minded leaders of member states like Hungary, post-accession? I argue that there are three factors contributing to why the European Union has been unable to respond to the rising threat of democratic dissolution within Hungary. The first factor is that the EU lacks effective legal mechanisms for continuing to hold states accountable to conditionality measures after their membership to the Union has been affirmed. The second are political factors, involving the presence of supra-national political alliances and the unwillingness of states to concede more powers to the EU in an attempt to protect

their sovereignty. Lastly, high levels of economic integration between member states serve as bulwarks to the imposition of sanctions on EU members. In combination with each other, these factors severely diminish the options the EU has for dealing with democratic backsliding amongst its members.

Research Methodology

This paper employs secondary literature on the European Union and the case of democratic backsliding in Hungary to identify three facets to the problem of the European Union's inaction towards democratic backsliding among its member states. My research is based on the reading of secondary sources and the consideration of their application to the Hungarian case, which has been useful in determining the legal, political, and economic dimensions to the issue. Specifically, evidence for the legal and political dimensions of EU inaction relies on op-eds, journal articles and academic case studies which document backsliding within Hungary. This body of work has been analyzed for its themes to understand the legal and the political circumstances driving the European Union's inaction. As for the legal factors, op-eds from Serhan and Ariès identify current legal mechanisms that the EU has for punishing member states that transgress the rule of law as ineffective in managing the Hungarian case. Additionally, I use Sedelmeier's assessment of how well those EU member states which were added during the 2004 enlargement have adhered to EU legislation after gaining membership. Specifically, Sedelmeier establishes a substantive link between inadequate pre-accession institutional change and post-accession non-compliance. This insight helps to demonstrate how Hungary's membership status within the EU has enabled the country's non-compliance within EU laws and norms. Literature from Kelemen has helped to identify partisanship as a key factor motivating the European Union's inaction towards the Orbán government through its demonstration of how the European People's Party (EPP) has relied on Orbán's popularity to increase

its representation within the European Parliament. News articles from Thorpe provide further insight into the relationship between the EPP and Orbán, further grounding this argument. I employ Serhan, in combination with secondary literature from Holesch and Kyriazi, which both argue that alliances among member states concerning state sovereignty, particularly between Hungary and Poland, have effectively disarmed the EU's ability to punish non-compliant states. Lastly, my exploration of the economic factors behind the Union's failure to respond to backsliding employs quantitative data demonstrating the levels of economic integration between the EU and Hungary. These data, sourced from the EU budget and from metrics produced by the OEC on Hungarian-EU trade, are used to establish deep levels of economic integration between Hungary and other EU member states. Scholars such as Halmai have argued that the EU's ability to impose sanctions is ineffective, if not counterproductive, in handling democratic backsliding within the European Union: rather than promote democratic change, the use of sanctions may in fact fuel anti-European Union sentiment amongst the sanctioned country's population.

Generally, democratic backsliding describes the "state-led debilitation or elimination of any of the political institutions that sustain an existing democracy" (Bermeo 2016, 5). Such political institutions are numerous, meaning that democratic backsliding encompasses multiple processes and actors (Bermeo 2016, 5). As a result, a discourse has arisen attempting to define democratic backsliding. In this discourse, three arguments attempt to capture the "essence of democratic backsliding" (Gora and de Wilde 2020, 1). Firstly, debates from EU institutions tend to focus on backsliding as the deterioration of the rule of law and judiciary independence. Other scholarship draws attention to declining deliberation between oppositional political parties. The third group emphasizes citizen disengagement in terms of levels and demands for democratic political participation (Gora and de

Wilde 2020). For the purposes of this essay, I will define democratic backsliding through this first perspective. This is the definition used most often by the EU institutions for assessing the extent of democratic backsliding, which is most relevant to my argument surrounding the question of the EU's inaction towards member's violations of democratic principles.

My analysis of the three factors that I attribute to limiting the EU's ability to control democratic backsliding among its members is grounded on a variety of theories on international organizations and democratic backsliding. Two of the theories I will be drawing on offer a rationalist view of international organizations. The first theory I will be discussing is the theory of the rational design of international institutions. This theory posits that states design institutions so that they can use them to advance their individual goals (Koremenos et al. 2001, 762). From this assertion, it may be better understood that states are motivated to join international organizations according to their self-interests. Additionally, the organizational design within international institutions — largely in accordance with individual interests — will be shown to limit the legal recourse that organizations can take against its members. Rationalist theory pursued by Schimmelfennig and Trauner interprets pre-accession compliance to EU conditionality through a rationalist bargaining model, which assumes actors to calculate the "costs and benefits of adopting and implementing new rules" such that EU incentives for adherence to conditionality must outweigh the costs (Schimmelfennig and Trauner 2009, 2). This may be extended to predict outcomes for conditionality post-accession. Although Schimmelfennig and Trauner themselves refute this idea, arguing that there is not evidence that the removal of accession conditionality as an incentive for compliance has had a "dramatic influence on the new member states' compliance," their rationalist bargaining model, as with work from other scholars, does reveal that connecting

this cost and benefit analysis of state actors in the EU to their post-accession conditionality adherence may be useful to my analysis (Schimmelfennig and Trauner 2009, 6). Taking into account the work of Sedelmeier, changes in the incentive structure from pre- to post- accession should lead to changes in compliance to EU rules, unless new incentives are created (Sedelmeier 2008, 807). Hence, I apply both rationalist theories to explain how the desire of states to protect their political and economic interests is related to their limiting of the European Union's powers, which results in the lack of the European Union's response to democratic backsliding in Hungary.

Additionally, Kelemen offers the theoretical framework in his outline of the conditions under which authoritarianism survives within democratic organizations (Kelemen 2017, 214). Kelemen names party politics as one such condition, positing that the presence of the authoritarian state in federal political parties makes the other members of the coalition more likely to defend the state from attempts at democratic accountability from above (Kelemen 2017, 215). Kelemen also suggests the conditions for intervention at the federal level. Federal parties can support opposition parties to decrease the influence of the authoritarian party over local politics or if the authoritarian state's membership begins to be a detriment to the reputation of the party, states in political alliance with the authoritarian leader federal leader will support efforts to punish the state for its violations (Kelemen 2017, 217). I will use this theory in my section on how the presence of partisanship at the European Union level further incapacitates the EU to act against the Orbán government.

Barriers to Enforcing Laws: Limited Legal Toolkit

When member states fall back on their commitments to the EU's democratic principles, the EU struggles to impose sanctions on these states due to its limited options for taking legal action.

Although there are several procedures in place for dealing with states that violate EU democratic principles, these mechanisms are rarely effective in curbing illiberal policy decisions of rogue politicians. In terms of the European Union's legal options for penalizing breaches of EU law, Article 7 of the Treaty of Lisbon allows the EU to "suspend certain rights of a country," such as voting rights in the Council of Europe, if there has been a clear breach of the EU's fundamental values, such as democracy and the rule of law, in that state (Serhan 2020). Yet, when the European Parliament triggered Article 7 in 2018 in response to Hungarian infractions against democracy, Orbán's government went unpunished. The arenas in which it was invoked, namely media policy and regulation, are seen as outside of the EU's competence and should remain a national matter (Ariès 2019). In consequence, the EU's subsidiarity principle, in conjunction with a small range of legal options for the EU to deal with infractions to its law, pigeonholes the EU into inaction.

The other legal tool at the EU's disposal is the Rule of Law Framework which, established in 2014 by the European Commission, acts as an "early warning" for member states experiencing democratic rollbacks and opens a dialogue between the EU and the implicated member state to preempt the need to resort to Article 7 (Halmai 2019, 176). The Rule of Law framework unfolds in three contingent steps: the Commission monitors the situation of the concerned member state to determine "whether there is a systemic threat to the rule of law," then offers the member state advice on what to do if such a threat exists, and finally, observes the "response of the member country to the Commission's recommendations" (Halmai 2019, 176). Regardless of these new procedures for handling the trend of democratic deterioration among its members, the EU has not initiated the Rule of Law Framework for Hungary; it rendered these additions to the EU's legal toolkit for handling democratic backsliding useless thus far for imposing penalties on transgressors of EU law (Serhan

2020). Since the EU struggles to overcome the barriers to initiating these procedures, the threat of these legal mechanisms is not credible enough for member states like Hungary, which has faced few consequences for its rollback of the rule of law and its attacks on regime opposition.

An alternative to the aforementioned procedures, lawsuits made by the European Commission against transgressing member states have proved to be equally ineffective in encouraging member states to reconsolidate their democracies. After the European Union took legal action against Hungary through the European Court of Justice for violations of EU legislation, Hungary's government amended internal policies subjected to these infringement proceedings. Nevertheless, since the lawsuit was targeting particular actions taken by Hungary, it did not reverse broader illiberal trends in Hungary, such as systematic attacks on the rule of law (Kelemen 2017, 224). Hence, EU action against states weakening their commitment to democratic values is effective in forcing changes in specific policy that directly violates the rights of democratic citizens but cannot get at the deeper structural changes that pose a real threat to democracy. Krekó and Enyedi have characterized the Hungarian political system as hybrid (Krekó and Enyedi 2018). This label of 'hybrid' refers to the "uneven development of nondemocratic practices across various sectors of society," in which some institutions have been able to maintain a larger degree of independence than others (Krekó and Enyedi 2018, 40). This mixed political system makes targeting the source of the deterioration of the rule of law difficult. Individual lawsuits, even when taken all together, cannot capture the scope and pace of the autocratic measures occurring (Serhan 2020). Moreover, Hungary has largely complied with EU directives and laws in both its pre- and post accession period (Sedelmeier 2012, 24). Orbán's government has been able to circumvent democratic conditionality post-accession by playing by the rules of the EU, even as it deconstructs

its democratic institutional bodies. For instance, when stripping away the judicial independence of Hungary's courts, Orbán used the supermajority his party, Fidesz, had in the national parliament to amend the constitution without breaking laws set out by the union (Ariès 2019). Hence, Fidesz can weaken democratic institutions without breaking the laws that would lead to calls for EU action.

Impact of Membership on Effectiveness of Laws

As states become EU members, the ability of the EU to influence their democratic practices is negatively impacted. The promise of membership in exchange for compliance with EU interests is a powerful tool of the European Union to push potential candidates toward democratization (Halmai 2019, 172). As the European Union prepared to expand its membership to Central and Eastern Europe, the European Council created a list of conditions, called the Copenhagen Criteria, that applicant countries had to meet before they would be considered (Marktler 2006, 344). Namely, the stability of democracy and the presence of market economies are listed as key conditions for EU membership. Thus, as states aspire to join the European Union to have unrestricted access to its markets and trade, they are incentivized to adhere to this pre-accession criteria (Marktler 2006, 343). However, applying Schimmelfennig and Trauner's rationalist bargaining model for conditionality adherence, it appears that once these states are granted membership, the EU loses its bargaining power as it can no longer threaten to withhold membership as a result of non-compliance (Sedelmeier 2012, 20). As a result, governments can reverse "inconvenient institutional changes" made during the pre-accession conditionality process upon gaining membership (Sedelmeier 2012, 21). Even without reversal, EU member states' failures to fully democratize during the pre-accession period may lock in authoritarian tendencies and make it difficult for that country

to make up for its gaps in democratic governance. These spaces of weak democratic oversight within the state provide opportunities for co-option and capture by authoritarian leaders, such as Victor Orbán in Hungary. Again, the choice of member states such as Hungary to adhere to EU legislation aligns with the rationalist bargaining model, as leaders of these states, like Orbán, consider the incentives of compliance and noncompliance and act accordingly. When the EU pressures states with these weak democratic institutions post-accession, the change implemented in response is minimal as states find that the benefits of the status quo, such as unchecked power, outweigh the costs of EU infringement procedures (Sedelmeier 2012, 25).

Many of the EU's institutional bodies, including the European Parliament, the Council of Europe, and the European Commission, support critical reports and legal action against Hungary over their violations of minority rights for immigrants and its 2013 Constitutional Reforms that disabled Hungary's Constitutional Court. Yet the EU has persistently failed to curb Hungary's authoritarian tendencies due to the EU's limits in intervening in the domestic affairs of its members (Kelemen 2015). In accordance with the theory of the rational design of international institutions, members of the European Union have designed the organization to fit their interests, making it difficult for the European Union to act in ways that do not serve them (Koremenos et al. 2001). Furthermore, due to the subsidiary principle, the national parliaments of member states can penalize the EU for overstepping its bounds and impinging on their sovereignty (Bandeoglu 2021). This concern for the protection of state sovereignty means that the enforcement of democratic rules risks triggering the backlash of union members who view the move as outside the legitimate powers of the EU. If the EU pushes for Hungary's compliance with the rule of law, it can also feed into an authoritarian rhetoric about the need for a strong leader to protect the state from outsiders threatening to impede on Hungary's

sovereignty (Halmai 2019, 174). This rhetoric serves to both strengthen the leader partaking in the deconsolidation of democracy and to create Euroscepticism among the public. At the risk of fueling anti-EU sentiment, the European Union withholds from sanctioning these states so that it can continue to negotiate with the states as their supranational body rather than as an outside foreign organization.

Political Barriers: Partisanship

A main bulwark in the way of the EU taking action against the authoritarian shifts of its members' government is the political alliances between the member states. Over the past decade in which Fidesz has held power in Hungary, one contributing factor to the European Union's toleration of democratic backsliding in Hungary is its inclusion within partisan EU politics. While Fidesz was a member of the European People's Party, the EPP, which constitutes the majority in the European Parliament, other members within the coalition feared that sanctioning Hungary for its authoritarian actions would cause the party to lose its dominance within the EP. With a population of 10 million people, Hungary made up a substantial bloc within the European Parliament (Kenealy 2018, 80). The loss of popularity by the European People's Party within Hungary diminishes the representation of the EPP within parliament. As part of a partisan tactic, the EPP continued to support Hungary (Krekó and Enyedi 2018, 45). The EPP has even gone so far as to appoint Fidesz's leaders to key positions within EU institutions (Kelemen 2017). Furthermore, leaders of the EPP were hesitant to critique Hungarian policies despite their own commitments to democratic principles. Even German chancellor Angela Merkel, a devotee of democracy, failed to call for "EU action regarding democratic backsliding in Hungary" (Kelemen 2017, 226). Based on the rational design theory, the design of the European Union is a product of the meshing of the many and sometimes conflicting

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interests of its members (Koremenos et al. 2001). The inability of EU leaders to coordinate a unified condemnation of democratic erosion in Hungary is reflective of the EU's broader disaccord that makes it difficult to explicitly denounce backsliding among its members. As the European Parliament's powers were strengthened to respond to pressures by European citizens and political actors to further democratize the EU's institutions, the incentives for the EPP members' continued support of Orbán grew so that the EPP could maintain its majority in a parliament with increasing legislative powers (Kelemen 2015). Thus, partisan concerns over the power distribution within EU institutions limit European political actors and parties, preventing them from taking strong stances against governments instigating democratic erosion out of fear that criticism of these regimes will result in the loss of their political partnership at the supranational level. For instance, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs issue of the 2013 Tavares Report, which functioned as a critique of Hungary's democratic backsliding, was met with backlash from the EPP vice-chair Manfred Weber. In a display of contempt for the EU's attempts at accountability for Fidesz's autocratic maneuvers, Weber called the report a "politically motivated attack on the Orbán government by leftist parties" (Kelemen 2015). The EPP, as the party in power in the EU, effectively shielded Orbán from EU pressures in exchange for the popularity that he brought to their party. Therefore, the European Union faced less pressure from European leaders to punish Hungary for its swing towards authoritarianism because it was a relevant player in European partisan politics.

Nonetheless, tensions that grew between the European People's Party and Orbán, beginning in 2019 when Fidesz was suspended by the EPP for "human rights" violations and "attacks against the EPP leadership," have resulted in Fidesz's withdrawal from the EPP in March 2021 (Thorpe 2021). This conflict between the EPP and Hungary

demonstrates that partisanship plays a key role in the EU's decision to cooperate with or sanction dissident EU national governments. As Kelemen predicts with his conditions for federal intervention, partisan politics provides a lens at which to look at the shift in the EPP's attitudes towards Orbán; Fidesz became a "political liability" for the party when Orbán began criticizing leaders within the EPP as a part of his Eurosceptic rhetoric (Kelemen 2017, 231). For example, the very same EPP head, Manfred Weber, that had defended Hungary against criticisms of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs in 2013, became the target of Fidesz's attacks in which he was compared to the Gestapo by a leader of the Fidesz party (Thorpe 2021). Only after the costs of maintaining its relationship with Fidesz began to outweigh the benefits of the greater party representation that Hungary brought with its 12 EPP aligned Members of European Parliament was it that the European People's Party took an oppositional stance against Hungary and its democratic backsliding. Therefore, it can be understood that the European Union's capacity to censure its democratically precarious members is restricted to moments when these states are inopportune in EU party politics.

Political Barriers: Protection of Sovereignty

An additional political dynamic behind the EU's struggle to sanction Hungary is the constraints that individual member states have imposed on the union's ability to act against the Orbán government due to their unwillingness to expand the EU's powers. The autocratic leadership of Hungary and Poland have been able to maintain backsliding despite efforts at the supranational level to control it through the formation of a coalition between the Hungarian Fidesz party and the Polish Law and Justice party, or PiS (Holesch and Kyriazi 2021). A major outcome of this relationship is the mutual assurance of protection that allows these states

to evade the sanctioning mechanisms of the EU (Holesch and Kyriazi 2021, 9). As the imposition of Article 7 of the Treaty of Lisbon requires unanimity of EU member states, the threat of its invocation is ineffective in changing behaviors of illiberal leadership with alliances among the union's members (Sehran 2020). The EU's sanctioning power was further proved to be weak against the Hungarian-Polish coalition when Hungarian and Polish members of the European Parliament threatened to veto the union's €1.8 trillion budget and coronavirus recovery package which aimed to tie "spending to the respect for the rule of law" (Holesch and Kyriazi 2021, 14). Orbán continues his erosion of illiberal democracy without concern about severe repercussions because he understands that Poland functions as a veto player against the implementation of penalties against Hungary for its violations. Likewise, many member states fear that moving towards the unprecedented revocation of an EU member state's rights could be a stepping stone to limiting member states' sovereignty in general. As a result, EU member states have kept the Union weak regarding its capacity to sanction infringements to EU law (Sehran 2020). The hesitancy of EU member states to punish Hungary's reversal of democracy is a result of their fears of what such actions will mean for their own sovereignty.

Economic Barriers: Economic Integration

In addition to political factors, the depth of the EU's economic integration also contributes to the hesitancy of the EU to censure states as they democratically backslide. After the failure of the European Defence Community, the project of political integration has been pushed aside while the development of the common market has moved ahead (Kenealy 2018, 29). Hence, as more states adopt the euro, which Hungary is currently preparing for, it becomes more difficult to untangle the economic ties of EU member states ("Hungary"

2020). When a country infringes EU law, the sanctions that ought to be imposed create negative knock-on consequences for all the EU members to which it is economically connected. The economic integration that have both driven and been the result of the EU's common market policies therefore limits the EU's willingness to sanction individual member states. For example, the restructuring of Hungary's economy that occurred to meet EU requirements for accession was successful in turning Hungary into an economically attractive state with the highest per capita foreign direct investment amongst all the Eastern Bloc countries (Ungváry 2014). As a result, Hungary has created a market for Western Europe's exported goods. In the case of Germany, Hungary's largest importer and exporter, Hungary has increased its import of German goods at a rate of 7.9% annually, rising from 4.67 billion USD in 1995 to 28.9 billion in 2019 ("Hungary" 2019). These trade relationships influence the degree to which the EU responds to breaches in Article 2 of the Treaty on European Union. Due to these high levels of economic integration within the EU, the EU stands to lose out economically from Hungary's withdrawal from the union. The rationalist design theory predicts in this case that because states join the EU to advance their goals, member states will be opposed to taking action against a member state in violation of EU law if it results in economic losses (Koremenos et al. 2001).

Economic Barriers: Economic Sanctions

Despite these points, some argue that the European Union has the potential to effectively punish member states that infringe on the rule of law through the raising of economic sanctions. According to the theoretical framework provided by Marinov and Nili on the effect of economic sanctions on democratization, the empirical evidence in support or in refutation of the effectiveness of economic sanctions in encouraging democratic behavior is inconclusive (Marinov and Nili 2015,

766). However, they present a model for evaluating the effectiveness of sanctions on influencing politics through their impact “on the price of repression, the provision of public goods, and also by affecting loyalty and ideology” (Marinov and Nili 2015, 767). Based on this approach, it is concluded that the success of economic sanctions in encouraging democratic behaviors varies substantially. Hence, both the extent to which sanctions hurt an economy and transform the loyalty and ideology of the public must be explored to evaluate whether economic sanctions are effective tools for curbing democratic backsliding within the EU.

Advocates for the imposition of economic sanctions make the point that the EU already has the measures in place to trigger such sanctions through the Common Provision Regulation, which imposes the conditionality of adherence to the rule of law in exchange for access to the European Structural and Investment Funds (Halmai 2019, 185). Since the EU can bind member states to its common economic policy, the EU has the legal authority to coordinate efforts to economically coerce members who breach the democratic values stated by Article 2 of the TEU into compliance (Bandeoglu 2021). However, once again, compliance to EU legislation, as predicted by the rationalist bargaining model, depends on its incentives (Sedelmeier 2008, 807). Thus, even if the EU does have a legal basis for economic sanctions, a change in the balance of the costs and benefits of adherence, such as suffering economic losses from the sanctions, could lead to noncompliance with this EU law.

Supporters of economic sanctions also attribute the potential of their effectiveness to the fact that as much as the EU relies on new member states to provide markets for its large export economies, new member states depend greatly on EU funding. The EU contributed €6.298 billion to Hungary in 2018 alone. The threat of the loss of this aid may incentivize countries like Hungary to hold back on their democratic dismantling projects (“Hungary” 2020). Additionally, the main importers of

Hungarian goods are other EU member states, with its top importer, Germany, making up 26.9% of its total imports and bringing in the country 32.6 billion USD in revenue in 2019 (“Hungary” 2019). Economic sanctions imposed by the EU would likely be very impactful on the Hungarian economy, and thus provide a strong incentive for Orbán to alter his current trajectory or face domestic backlash as a result of a failing economy. However, while these sanctions may be effective in reducing democratic reversals taking place in Hungary, which is largely dependent on the European Union’s aid and markets, these penalties are less likely to impact the larger economies of the EU. The wealthy EU member states have established global trade relationships and could better afford the cost of EU economic sanctions. Since these states are the ones contributing to the economic aid funds of the EU, the threat of withholding aid would have little to no effect on these states’ actions (Halmai 2019, 183). Similarly, imposing sanctions on wealthy EU member states and barring them from the common European market would devastate the union as smaller, poorer members depend on these wealthy states for trade. Consequently, the imposition of economic sanctions by the European Union as a mechanism for controlling democratic deconsolidation would have a disproportionate effect on poorer member states and may create a double standard in which wealthier states have virtual immunity from punitive measures imposed upon them, while other, less economically developed members are more severely impacted and, thus, incentivized toward reform. While points can be made that economic sanctions have the capacity for enforcing adherence to democratic principles in Central and Eastern European states like Hungary, these mechanisms are not equally effective at protecting democracy across Europe.

Economic sanctions are further made problematic because they have the potential to hinder the EU’s influence over national democratic conditions by fueling anti-EU sentiment. In depriving Hungary

of a market for its exports, Orbán could frame EU sanctions as an attack by an outsider on Hungary's economy (Halmai 2019, 184). Heinkelmann-Wild and Zangl's theory on blame-shifting in multilevel governance systems states that actors' choices regarding whom they shift the blame onto for bad policymaking are shaped by a combination of preferences, in which "policymakers have a strong preference for shifting blame onto policymakers" at other levels of government (Heinkelmann-Wild and Zangl 2019, 954-955). This corroborates Halmai's argument that sanctions present an opportunity for Orbán to criticize the EU by giving the autocrat a government outside of Hungary to position as the enemy of Hungarians and a specific policy decision of the EU to cite as the reason for this. Likewise, these sanctions would isolate already vulnerable populations within these states by generating brutal economic conditions. This economic ostracization has the potential to push these populations even closer towards a strong, central leader like Orbán (Sehran 2020). As populist, anti-democratic sentiment rises in Western Europe, the economic procedures for relegating these forces to the outskirts of politics may not be reliable.

Conclusion

The European Union is highly constrained in its response to democratic backsliding, specifically in the Hungarian case. One factor for this has been that the current legal mechanisms the EU has for countering the establishment of illiberal democratic regimes among its members is ineffective in penalizing the states that infringe on EU democratic principles. Moreover, the EU is hesitant to establish more effective procedures for sanctioning transgressing EU states due to the reluctance of members to give more power to the union's institutions, motivated by fears over the loss of national sovereignty. Alongside these legal barriers, the EU faces political and economic hurdles that control how the EU can respond to such democratic decline. Politically, the EU is subject to the will of its parties and member

states, which have in the case of Hungary overlooked democratic concerns to serve their various interests. Furthermore, as Central and Eastern European member states like Hungary have increased their economic integration into the union, the EU has struggled to sanction these members for their undemocratic practices and breaches to the rule of law as the supranational organization desires to appeal to the economic interests of its community by maintaining the economic union of its members. Whatever the case, the EU's passiveness towards the authoritarian shifts occurring in Hungary calls into question the legitimacy of the Union's claims to its dedication to democratic ideals and the protection of human rights. As the trend of electorally successful populist, illiberal parties continues to spread across Europe, the dichotomies between EU institutions and authoritarian governments will continue to both strain and shape the future of the European project

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