

FRI-2G.509-2-ESSIR-04

LIBERAL DEMOCRACY DEFICITS AT NATIONAL LEVEL AS VIEWED FROM EU PERSPECTIVE

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***Abstract:** The paper is based on the findings of author's PhD dissertation. It discusses liberal democracy deficits in EU member states and argues, that liberal democracy deficits in member states with former communist regimes generate values-based crises at EU level of governance. The analysis tackles the question whether the EU institutions have capacity to act as a democratic "guardian" and to cope with such problems beyond enforcement of relevant Lisbon treaty legal texts.*

***Keywords:** liberal democracy, EU member states, value-based crisis, EU institutions*

***JEL Codes:** F53, F55*

INTRODUCTION

On November 1st, 1993 the Treaty of Maastricht entered into force and created the European Union. The Preamble of the Treaty referred to the leading principles, which could be found in the core of the European integration: **liberty, democracy, respect for human rights and fundamental freedoms, rule of law**. For the first time, the Member States explicitly declared in the Founding Treaties of the European cooperation their common values to be recognized as immanent features of governance. Furthermore, the Maastricht Treaty constructed the claim of the European Union's democratic identity. At that time, the Union as a collective body became aware of its historical responsibility of an "unifier" of democratic countries and countries that strive to be democratic and therefore gave liberal democracy the status of a key precondition for membership.

During the negotiation and pre-accession phases both Member States and candidate countries reaffirmed the importance of democratic values and strengthened the democratization power of the Union. The consolidation of a democracy-based community facilitated the transition from totalitarian to liberal democratic regimes in all Central and Eastern European countries. EU-25-27-28 didn't change the democratic discourse, but it made clear that liberal democracies can be characterized by deficits emerging at national level. In the context of several crises the Union was faced with from 2008 onwards, it turned out that the interpretation of democratic values and practices has the potential to not only to unite but also to serve as a dividing line between old and new Member States, East and West, national politicians and EU leaders.

The **research objective of the current paper is to discuss liberal democracy deficits¹¹⁶ and crises they catalyze**. The paper will refer to the way EU, the "guardian" of liberal democracy values, tries to tackle such political challenges. To achieve the objective, desk research and analysis of case studies are being used.

The central topic of the paper is currently on the EU agenda because it has demonstrated a reference to several political processes intertwined with the debates on the future of Europe. Firstly, the Member States went through a series of **consecutive crises** of critical importance for the integrity of the Union. They often overlapped or even accompanied one another, which caused diverse implications on the region. Secondly, the period of multiple crises in the EU contributed to an **unprecedented rise of Eurosceptic movements** and political platforms. Most of them attack the liberal elements of liberal democracy and try to denounce some of the Europe-wide recognized

¹¹⁶ The paper is based on the theses, defended by the author in her dissertation Democracy Deficits in United Europe, 2017

achievements of liberalism. Thirdly, a head of government of an EU Member State publicly declared his will to construct a form of an “**illiberal democracy**”, which alarmed European leaders and other officials. The *de facto* red line of EU integration was challenged. Next, there are indicators for the emergence of **political confrontation** within the Union based on differences in the political solutions to the European problems. The financial and economic instability in some countries made evident that there is a trust gap between North and South, whereas the migration pressure restored opposition between West and East. Lastly, there is a **danger of multiplying liberal democracy deficits** in a region that still keeps the memory of an iron border and has a totalitarian heritage. Romania, Hungary, Poland, the Czech Republic, Slovakia and Bulgaria raise concerns about the consolidation of liberal democracy and the consequences of a possible “snowball” effect¹¹⁷.

LIBERAL DEMOCRACY IN THE EUROPEAN UNION

Being a peace project, the European integration has significantly contributed to the universalization of democracy and human rights on the European continent. Even though it started as a top-down community for economic exchange, it has always reflected the post-war preferences for more effective democratic political systems – both at national and supranational level.

According to the Founding Treaties amended by the Lisbon Treaty, the European Union has expressly declared itself to be a territory of liberal democracy. The Union is built upon the principles of liberal democracy which are common to all the Member States. Article (2) TEU reaffirms the will of European leaders to build a European Union based on the “values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons, belonging to minorities”. It is added that “these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. In order to further strengthen the liberal element of the shared vision of democracy in Europe, the Lisbon Treaty provided the EU Charter of Fundamental Rights with a legal force. Once incorporated in *acquis communautaire*, the document became obligatory for the Member States and the respective national legislation systems.

The current legal basis of the EU reflects the ambition of the integration to develop consensual standards of liberal democracy at national level. The prospect of the big Eastern enlargement at the beginning of the 90s presupposed the formulation of “entry” requirements aimed at ensuring compliance between old and new Member States in democratic, economic and legislative terms. At the Danish summit of the European Council in 1993, the European leaders adopted a set of minimum criteria to be met, if a third country demonstrates a desire to join the community (the so-called Copenhagen criteria). Until then, the EU-12, limited to a geopolitical toponym for Western Europe, was a relatively homogeneous group of countries whose integration is based on the mutual recognition of common standards and democratic values. However, in 1993, in the light of future enlargement waves, the Heads of State and Government of the Member States decided the following:

„Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with the competitive pressure and market forces within the Union“.

Moreover, “membership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union”.

Paradoxically, the Union strengthened its democratic profile by setting entry criteria, but at the same time it was considered less democratic by the European citizens. The controversy between EU agenda and public opinion was reflected by the notion of “EU’s democratic deficit” that was coined. The EU is a *sui generis* organization whose quality of democracy has to be assessed in the light of its complexity and multi-level governance system. If we analyze the EU with reference to the nation state, however, we would encounter some weaknesses in the EU governance model. In spite of the numerous interpretations of the notion of “**EU’s democratic deficit**” in the scientific literature, the

¹¹⁷ See Kornazheva, M and B. Stancheva, 2013

most popular relates to the discrepancy between the powers transferred to the supranational level and the respective control mechanisms exercised by the only democratically legitimized EU institution – the European Parliament. In this sense, the EU's "democratic deficit" is a matter of political representation and "checks and balances", but it does not question the embedment of liberal democracy into EU's construction.

In addition to this, there is also the hypothesis that the vitality of EU democracy could be undermined by deficits occurring at national level. The so-called "**Europe's other democratic deficit**" (Keleman, 2015) focuses on the emergence of tendencies to restoration of authoritarian practices in the Member States. In this context, Keleman points out:

"[...] electoral authoritarian regimes in EU Member States are likely to erode democracy in subtle ways, not locking up their opponents, but making life difficult for them; not openly declaring a break with democracy but dressing up their demagoguery as democracy; and not openly rejecting the EU's rules and core values but violating their spirit."

According to the researcher, national biases towards authoritarianism in the context of EU membership can be explained by applying comparative political theories and analogies with heterogeneous governance patterns within federal states.

LIBERAL DEMOCRACY DEFICITS AT NATIONAL LEVEL

Liberal democracy is a complex construct. The French and the American Revolutions have strongly impacted on the conceptualization of liberal democracy. Still, it is an invention of the Western world and has been established as a phenomenon of the 19th and 20th centuries. As explained above, liberal democracy is therefore incorporated in the philosophical foundations of the European Union.

In order to define liberal democracy, we will use **a matrix composed by eight indicators: political pluralism; political representation; free, fair and regular elections; separation of powers and "checks and balances" between institutions; the rule of the law; respect for human rights; respect for the "otherness" of minorities; culture of competition and cooperation between political actors.**

This definition of liberal democracy distinguishes between two main components: democratic and liberal. The democratic component refers to the first three indicators. Political pluralism presupposes the existence and competition of a variety of political values and ideas which is a prerequisite for a multi-party system to be anchored. Pluralism assumes that a society is characterized by a plenty of political opinions, problems and ideas for their solution, thus creating conditions for competition between an unlimited number of political subjects. In order to be able to turn their views and preferred political values into practical political decisions, citizens empower their trustees to exercise sovereign power on their behalf, thereby ensuring political representation. Liberal democracy is considered to be representative, even though it may contain elements of direct democracy, such as public consultations and referendums. Delegating powers is done through the democratic institution of free, fair and regular elections. Elections are free, in case that the right to free choice is guaranteed, there is no political, economic, social or other pressure on the voters, and they can choose among different political value systems. The elections are fair, if law provides voters with equal rights and the whole electoral process is conducted in a transparent manner. Elections are regular, if they are held on a regular basis and allow people to exercise their right to vote at legally specified time intervals.

Five indicators (separation of powers and "checks and balances" between institutions; the rule of the law; respect for human rights; respect for the "otherness" of minorities; culture of competition and cooperation between political actors) belong to the liberal component of liberal democracy. The principle of separation of powers excludes concentration of power and therefore divides the three functions of government: legislative, executive and judicial. The respective power resources are shared between different institutions and bodies with limited and competences. The authorities are independent but nonetheless interdependent. The mutual control over the way the powers are exercised is guaranteed by a system of "checks and balances" encompassing mechanisms to prevent

the abuse of overconcentration and to support the effective enforcement of law. Furthermore, limitation of power is ensured by the rule of law. To put it simply, the state is governed by publicly negotiated collective norms of law and not by arbitrary decisions of individuals or institutions. The rule of law stays for an independent judiciary and constitutional regulations guaranteeing that all citizens are equal before the law and no one is placed above or beyond. Moreover, in a constitutional liberal democracy people have human rights, which are enshrined in the law and whose respect is guaranteed by the rule of law. Human rights, binding on all EU Member States, are codified in the EU Charter of Fundamental Rights and concern the right to dignity, fundamental freedoms, equality, solidarity, citizenship and justice. Liberal democracy respects not only individual rights, but also the right of the minority to assert its "otherness". This is directly related to political pluralism because diversity of political values goes hand in hand with diversity of social groups, which not always identify with the majority. That is why, liberal democracy, in its ideal form, does not allow the arbitrariness of the majority, legitimized by the fact that it dominates public values, but respects the minority as an expression of other values.

The culture of competition and cooperation between political actors refers to two interrelated processes, namely: the struggle to come into power and the use of power. As we have said above, in a democracy, political pluralism is an environment of a variety of political values to which individual political actors adhere. However, the existence of a culture of competition and cooperation between political actors means that political actors stick to the norm not to allow the monopolization of power by only one political subject and to allow compromise as a result of interactions with other political subjects. The culture of competition and cooperation helps political parties to agree that it is normal to compete for access to power with other actors representing other political values. In other words, they do not seek to eliminate the difference, but accept the right of the political opponent to oppose. When there is a culture of competition and cooperation, the relevant political subjects agree that it is normal to negotiate and compromise with the parties in opposition. They accept the compromise as a way of sharing power resources, as an opportunity to win the opponent.

The formulation of a definition of liberal democracy leads to the concept of liberal democracy deficit. **If one of the five indicators, referred to as liberal, is missing, hence there is a liberal democracy deficit.**

Since liberal democracy is primarily linked to the nation states as traditional political systems, we can conclude that the vitality of EU democracy is dependent on the democratic dynamics at national level. When a liberal democracy deficit is identified as part of a national governance system, it inevitably affects the political agenda of the Union. All EU Member States are considered to be liberal democracies, but, still, those which joined in 2004, 2007 and 2013 often raise concerns because of their short track of democratic experience and unsustainable democratic consolidation. Some recent examples could illustrate this assumption.

The **idea of an "illiberal democracy"** to be constructed in the heart of Europe was launched by the Hungarian Prime Minister Viktor Orban in 2014. When he summarized his political beliefs on July 26th, 2014, in Băile Tuşnad, Mr. Orban had just won the general elections in Hungary for the second time in a row. This means that he spoke from the most democratically legitimized tribune in the country and this gave him the courage to provoke the political leaders across the EU. "The Hungarian nation is not a simple sum of individuals, but a community that needs to be organized, strengthened and developed, and in this sense, the new state that we are building is an illiberal state, a non-liberal state", he announced (Orban, 2014). The Prime Minister underlined that "it does not deny foundation values of liberalism, as freedom, etc., but it does not make this ideology a central element of state organization". The concept of illiberal democracy was introduced in 1997 by the American author Fareed Zakaria. "The end of the history" (Fukuyama, 1992) had been already declared, when Zakaria stated that "the greatest danger that illiberal democracy poses – other than to its own people – is that it will discredit liberal democracy itself, casting a shadow on democratic governance" (Zakaria, 1997). Furthermore, illiberal democracies "gain legitimacy, and thus strength, from the fact that they are reasonably democratic".

Similar messages can be found in the controversial speech delivered by the democratically elected Viktor Orban. In 2014 the statesman said he wouldn't seek to demolish liberal democracy,

but in practice, at that time he had already tried to challenge some of its integral components. At the end of 2010, the political constellation in Hungary was changed. The Hungarians voted for a new composition of the Parliament and the government; a new president was also elected. As a result, FIDESZ became the most influential political actor in the country, exercising control over both the legislative and the executive powers. Initially, this did not give rise to speculations about abuses of power, as the allocation of power resources was legitimized through the institution of free and fair elections. Electoral support and a parliamentary supermajority of two-thirds were generally seen as a signal of a broad public consensus on the way the country should be governed. The so-called “supermajority” won by FIDESZ provided the government with firm and unconditional support for the implementation of reforms in key sectoral policies. A Media Council with a nine-year term of office with the competence to control the media content was created. In addition, the two-thirds majority empowered the Prime Minister to amend the Constitution of Hungary. Indeed, the government-initiated changes to the Basic law, which related to the electoral legislation and reduced the number of the Members of Parliament. The mandate of key officials in the judiciary was extended to nine or twelve years, thus facilitating political influence over the independent system. Under the leadership of Orbán, a Budget Council was set up close to the Prime Minister and empowered to reject or modify the Budget Act. The independence of the National Central Bank was also put into question, when the government decided to appoint deputy governors of the institution. To sum it up, the areas of competence of the executive power were drastically expanded. Moreover, the new Constitution adopted in 2011 ruled that any further amendments can be made only in case there is a two-thirds majority. It was exactly the “supermajority” that enabled the adoption of Constitution’s amendments without any deliberate consultation with the actors in opposition.

The new Constitution defined the Hungarian nation as Christian and modified the provisions concerning minority groups in the country. Meanwhile, Viktor Orbán's government nationalized private pension insurance and guaranteed a state monopoly over metal buying and selling of tobacco products. During his first term of office, he managed to cut the taxes on utilities, which, in turn, increased his popularity among the voters. The power in Budapest moved forward to the civil sector, thus creating special rules for organizations funded by foreign sources. Gradually, the government began to use anti-immigrant and anti-minority rhetoric – a trend that culminated during the second mandate of FIDESZ.

In the 2014 elections, the party strengthened its leadership position and received the votes of nearly half of the Hungarian citizens. With a reduced parliamentary turnout and one-round elections, Viktor Orbán's party won 133 out of 199 Parliament’s members (Inter-Parliamentary Union). The “supermajority” was maintained, although the arithmetic weight of the parliamentary group did not grow. The second consecutive term of office was marked by the migration crisis the EU and its Member States had to cope with. The nationalist-oriented, anti-immigrant discourse was reinforced by the legitimate Hungarian government. In his speech at the annual Civil Picnic in Kötöcs in September 2015 Mr. Orbán expressed his view on the most significant problem in the EU at that time. “The whole refugee crisis, this whole migration and the whole problem of economic immigration, if viewed from the right perspective, is nothing more than an identity crisis on the part of liberalism”, he said (Orbán, 2015). This is how he declared ownership over the “right perspective” and announced the end of the period of the “liberal blahblah”.

On April 8th, 2018, the leader of FIDESZ was assigned by the Hungarian electorate to hold a third term of office in a row. Election turnout was 69,73%; 49,27% of the votes was in favor of the ruling FIDESZ (OSCE, 2018). The third consecutive parliamentary majority of two-thirds further strengthened the power positions of the party leader and provided democratic legitimacy as an answer to severe criticism of Orbán’s actions. The Hungarian Prime Minister has recently stated that he was working on “building an old-school Christian democracy, rooted in European traditions” (Than, 2018). The nationalist rhetoric led to the adoption of a controversial legislation criminalizing people and NGOs who offer help to migrants. Furthermore, the government backed a law that requires from universities with foreign accreditation to provide higher education services in their country of origin. It also stops such universities to award Hungarian diplomas, unless there is an intergovernmental agreement.

The analysis of the state of liberal democracy in Hungary in the period 2010-2018, under the FIDESZ rule, concludes that there are registered deficits in the EU Member State. More specifically, considering the 8-indicator matrix, we can identify liberal democracy deficits concerning the following indicators: respect for human rights; respect for the “otherness” of minorities; separation of powers and “checks and balances” between institutions; culture of competition and cooperation between political actors. The rhetoric of the Prime Minister Viktor Orban leads to the overall assumption that Hungary suffers from a deficit of the liberal component of liberal democracy.

The Hungarian case is an illustrative example of what Daniel Keleman called “EU’s other democratic deficit” – **a liberal democracy’s weakness at national level can weaken the liberal environment in the neighboring countries and regions**, thus implementing alternative political models. Similar to Hungary, **Poland** has initiated a change in the political direction since 2015 when the government of the Law and Justice party was formed. During the first decade of its EU fully-fledged membership, Poland achieved a significant economic growth and a balanced regional development. The success story even helped the former Polish Prime Minister to obtain the EU highest political position of a President of the European Council. As The Economist put it, “there was once no brighter star in Europe” (The Economist, 2018). However, the democratic vote in 2015 gave legitimacy to the political platform of the Law and Justice national-conservative party lead by Jarosław Kaczyński. The government tried to increase the political control over the media sector and the judiciary. “By July 2016, 164 journalists and news anchors had either resigned or been dismissed”, media reported (Pogany, 2018). Proponent of Orban’s “illiberal democracy”, Kaczyński seemed to state in 2011 that “the day will come when we will succeed, and we will have Budapest in Warsaw” (Byrne, 2016). In September 2016, when both party leaders appeared together for the first time, they announced the possibility of a cultural counter-revolution in the EU. “You have given an example and we are learning from your example”, turned Mr. Kaczyński to the Hungarian Head of Government and publicly declared his support for Mr. Orban’s illiberal democracy within the EU (Foy, 2016).

To list only few more examples, we have to mention that there are other EU Member States where liberal democracy has been challenged. Significant concerns have been recently raised in **the Czech Republic, Slovakia as well as in Romania and Bulgaria** which are still under the Cooperation and Verification Mechanism exercised by the European Commission.

ROLE OF THE UNION IN OVERCOMING DEFICITS AT NATIONAL LEVEL

Even though liberal democracy is included in the list of EU’s founding values, it seems that **the Member States haven’t yet equipped the Union with the necessary competences to cope with deficits occurring at national level**. Paradoxically, there is an imbalance between EU’s role of a liberal democracy promoter during the pre-accession process and EU’s role of liberal democracy observer in a situation of a full membership.

If we have a look at the examples given above and analyze the respective reactions of EU officials, we’ll find out that there is a no unified approach to deal with threats to liberal democracy.

It took the EU institutions almost 8 years to respond to Viktor Orban’s attempts to challenge democracy. Leading a political party that is a member of the biggest political family in Europe – the European People’s Party, Mr. Orban was often criticized, but no decisive measures have been undertaken until the autumn of 2018.

Indeed, EU institutions and European leaders, declared their disagreement with the political agenda in Budapest but proved themselves to be unable to ensure that national authorities will not violate democratic standards. In February 2012, the European Parliament adopted a resolution criticizing the political processes in Hungary. 315 votes in favor versus 263 against, argued that the situation in Hungary was alarming. The European Parliament called on the Hungarian government to comply with the European values and the European Commission to act as the “guardian of the Treaties”. However, it was not until September 12th, 2018, when a vote took place in Strasbourg and 448 Members of the European Parliament backed the decision to trigger the mythical **Article 7 from**

the Treaty on European Union. At present, this is **still the most powerful instrument for influence the EU has** at its disposal which could be applied in case “there is a clear risk of a serious breach by a Member State of the values referred to in Article 2” (Art. (7), par. 1 TEU). If such is validated, the Council “may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council” (Art. (7), par. 3 TEU). Formulated so, this legal tool favors the intergovernmental Council, which, eventually, will vote in correspondence with the national interests and coalitions and may possibly neglect the interest of liberal democracy. Earlier in 2018, by the same vast majority, Members of the European Parliament gave the European Commission the green light to start procedure under Article 7 against Poland for passing constitutional reforms that put judicial independence in question.

In response to the threat of emergence of a multiplier effect with respect to the guiding European values, in March 2014 the European Commission published a Communication to the European Parliament and the Council announcing new **EU legislation to strengthen the rule of law**. It noted that the modern model of constitutional democracy is closely related to the rule of law. Furthermore, “the Commission is the guardian of the Treaties and has the responsibility of ensuring the respect of the values on which the EU is founded and of protecting the general interest of the Union”. Therefore, in cases of ineffective functioning of national mechanisms to ensure the rule of law, supranational institutions should take the necessary measures to protect the rule of law as a fundamental value of the Union. The procedure can be triggered if there are systematic threats to the rule of law concerning political, institutional or legal order, constitutional arrangements, separation of powers, independence of the judiciary or the system of judicial control. The mechanism for defending the rule of law consists of three phases in which the Commission has the leading role: assessment, recommendation and follow-up on the recommendation. The mechanism is conceived as a buffer procedure before the triggering of Art. (7) TEU, which remains the most influential tool at the moment to put pressure on some Member States.

CONCLUSION

Liberal democracy is at the core of EU identity, it underpins its “soft power” and moral authority worldwide. However, membership *per se* does not guarantee overcoming of liberal democracy deficits, typical of post-communist states. These states lack longstanding democratic traditions and are prone to reversibility of the uncompleted process of democratic consolidation,

Paradoxically, the national authorities have conferred upon the European Union the power to act as a guardian of liberal democracy – both in and out – but haven’t yet developed the adequate capacity to oppose such political threats.

The model of intervention undertaken by the EU institutions in the cases of liberal democracy deficits in Hungary and Poland expose the limits of Union’s ability to influence and persuade.

Breaches of EU law or violations of Europe-wide established democratic values could not remain unaddressed, because it is clear that it will otherwise constantly gain in importance and attract proponents. An invisible division is sneaking across Europe: the new axis of illiberalism is confronting the engine of EU integration. **There is much at stake for the Union right now, because it is not just a clash of visions about the frontiers of liberal democracy, but also a battle for the future of the European Union.**

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