

# DIPLO Development Summaries 2

## Trouble in the Family: Hungary, Poland and the European Union Explained

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14 February 2022

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Poland and Hungary have witnessed an [“unparalleled democratic deterioration over the past decade”](#), according to Freedom House, with Hungary undergoing the biggest decline ever measured in its *Nations in Transit* report. The rise of anti-democratic norms, including attacks on the rule of law, freedom of the press, and on vulnerable minority populations (including most prominently the LGBTQ+ community) have meant that two states that, thirty years ago, shook off the chains of authoritarianism, are now increasingly seen as falling once more under that shadow. This is a situation that has brought the two under the scrutiny of the European Union (in which both have been members since 2004), with French President Emmanuel Macron, assuming the rotating Presidency of the Council of the EU in January 2022, characterising backsliding on democracy and the rule of law as an [existential crisis for the organisation](#).

So why do the situations in Poland and Hungary cause such concern within the EU? The answer lies in the challenge that they pose to European integration, and to the idea of Europe itself and the role that the EU seeks to play on the global stage. The European Union presents itself as a ‘community of values’, values that are established in its treaties and in its membership criteria, and which are iterated (at least formally) in its external actions. These values define the way that the Union sees itself, and also the way it wants to be seen by others. They are intrinsic to its identity, and to the projection of that identity, and they are the foundation stones on which integration has been built.

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### Values and European Integration

Initially unstated in integration, the central spine of democracy, human rights and the rule of law were gradually incorporated through a number of legal and political channels, among the most visible of which was enlargement: the expansion in membership of the European institutions forced consideration of the identity of applicants, and of whether their values fit alongside those of existing Member States.

When the European Economic Community was established by the 1957 Treaty of Rome, membership criteria were limited: the Treaty required only that potential members be a European state, a narrow approach that proved unproblematic when the first tranche of candidates (Denmark, Ireland and the United Kingdom) expressed an interest in joining in the early 1960s, but which proved awkward when, in 1962, Francisco Franco’s Spain began to

express an interest in association (a step on the path to membership). While the existing members (and particularly France and Germany) were comfortable with Spanish interest, opposition from the European Parliament and a range of civil society actors (most notably the Trade Union movement) was strong. In a report that same year, the European Parliament made the case that references to ‘liberty’ and ‘ever closer union’ in the Treaty of Rome should be interpreted as strict political criteria for membership, necessitating democracy, respect for the rule of law, human rights and fundamental freedoms. This view cemented opposition to Spanish advances, leading to their eventual rejection.

From that point, this core values framework was progressively cemented in place at the heart of European integration and European identity. Thus, when Greece applied to join in 1975, just a year after the fall of the military junta, followed by Spain and Portugal in 1977 soon after their own democratic transitions, this was framed in terms of safeguarding and securing democracy, a logic that was to be mirrored with the Eastern enlargement two decades later. For these newly democratic states, Europe was, as one Spanish diplomat noted at the time, [“a synonym for democracy”](#).

By the mid-1990s, democracy, human rights and the rule of law were firmly established at the heart of European integration. In the 1986 [Les Verts](#) case, the European Court of Justice had for the first time suggested that the European institutions were based on the rule of law. In 1993, in advance of the Eastern enlargement, formal membership criteria were established, in which these values were firmly embedded. And in the same year, the Maastricht Treaty defined democracy, human rights and the rule of law both as foundations of the European Union, and as objectives of its external relations – there was now a treaty-based, legal obligation for the Union to support and promote these norms and values in its international relationships.

By the 2004 enlargement to Eastern and Central Europe, a clear understanding of the values at the heart of the Union was held, a vision that had guided and shaped the democratic transitions in those countries over the course of the preceding decade. It is this understanding, and the identity built upon it, that has been challenged by democratic backsliding in Poland and Hungary, a challenge that is both functional and ideational.

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## The Functional Challenge

The European Union is an institution built in law. It is founded on a series of legally binding treaties ratified democratically by its Member States. These treaties make the EU cohesive, shaping and defining its institutional structures, as well as its role and authority in a range of areas. Respect for the rule of law is therefore essential to the functioning of the Union itself, a reality challenged by events in Poland and Hungary. While this plays out over a number of areas, two examples are illustrative: the single market, and judicial and police cooperation.

The single market is at the core of the integration project. Underpinned by the four freedoms of movement of goods, services, people and capital, and defined by equal treatment across the Member States, its operation requires the uniform application of the legal and regulatory framework that defines it. It is, in other words, dependent in the first instance on the judicial systems of the Member States to apply its rules in a clear and consistent fashion. In this sense, the free and effective functioning of the single market is a confidence game: any

deviation from the principle of the rule of law has the potential to undermine the confidence of business, and the functioning of the market itself. Events in Poland and Hungary, and particularly the October 2021 finding of the Polish Constitutional Tribunal challenging the primacy of EU law, are seen to pose a clear risk in this respect.

Beyond the single market framework, confidence in the rule of law plays a key role in European judicial and police cooperation, including the use of the European Arrest Warrant (EAW). The success of a programme such as the EAW is based on the conviction among other Member States both that the arrest warrant itself has been issued without political interference, and that those subject to arrest will also be granted a fair trial. That breach of the rule of law is undermining mutual trust and mutual recognition of Member State judicial systems is becoming increasingly evident, with a number of cases brought before the European Court of Justice in recent years examining grounds for denying the application of European Arrest Warrants issued by Polish authorities.

In short, the situations in Poland and Hungary are seen to pose a significant threat to the operation of key facets of the European Union. European integration is premised upon the equal treatment of Member States and their nationals in an array of functional areas. In order to achieve this, it relies on the operation of the rule of law and of free and fair judicial systems in the Member States for the implementation and adjudication of the rules underpinning European cooperation. In the absence of mutual trust in, and recognition of, Member State judicial systems, functional cooperation and the architecture of integration cannot stand.

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## **The Ideational Challenge and EU Foreign Policy**

Alongside this functional threat, democratic backsliding in Poland and Hungary also poses an ideational challenge, clashing as it does with the idea of Europe that has been progressively constructed over the last seven decades. It questions the stories that the European Union tells to itself and to the world, and in so doing, it potentially hollows out the foundation on which the EU has, for example, built its role on the global stage.

That values have been at the core of its approach has long been central to the way the Union has positioned itself as an international actor. The obligation to promote democracy, human rights and the rule of law established in the Maastricht Treaty has shaped the Union's policy approach, and underpinned its representation as an ethical or normative power. Embodied, for example, in the call from Javier Solana (the EU's former external relations chief) to [“act as a credible force for good”](#), or new European Commission President Ursula von der Leyen's assertion of the need for EU leadership as [“a force for peace and positive change”](#) and of [“Europe's vocation”](#) as [“shapers of a better global order”](#), the Union has made moral claim to the promotion of these central values, of which its own history and structure is seen as an expression.

This claimed role as an ethical actor promoting human rights, democracy and the rule of law has been premised on the idea that the European Union lives by example – that its soft power influence is based on its position as some kind of virtuous exemplar. Poland and Hungary challenge this vision of Europe. The Union therefore finds itself confronted with the question as to how it promotes democracy, human rights and the rule of law elsewhere in the world,

when these very values are demonstrably being challenged at home. How does it promote a liberal world view, when leaders such as Hungarian Prime Minister Victor Orbán openly espouse the building of an illiberal state?

An answer may potentially be found in openly acknowledging the challenge that the Union itself faces, in recognising that the battle for democracy, human rights and the rule of law is never complete, and in characterising the current efforts to address the situations in Poland and Hungary not as a failure of these ideals, but rather as proof both of the importance they are accorded by Europe as a whole, and of the willingness of the EU and its Member States to fight for their realisation at home, as well as abroad. By recognising, in other words, that the European Union remains a work in progress.