Co-funded by the
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TRACK Background Paper

Facing the COVID-19 Pandemic: The role of the European Council in upholding a rule-based system

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This TRACK Paper provides some background knowledge for our TRACK Kick-off Conference on 10 November 2020. The Conference Report can be accessed here. The conference aims to shed light on the current role of the European Council as a highly under-researched and widely unknown key institution of the European Union. The panels elaborate on the European Council's role for the recent Corona crisis management and in international affairs. The conference thereby aims to contribute to open research on the European Council.

With the withdrawal of the United States from the international system under the leadership of Donald Trump, the rules-based international order has been challenged and shaken remarkably by both opponents and former supporters. The European Union (EU) now has become the defender of multilateralism and international laws, yet even within the Union, cleavages between Member States about the rules of law. The author, therefore, will investigate the cleavage inside Europe and how it affects the EU governance and policy-making process by assessing decision-making procedures within the European Council.

Multiannual Financial Framework (MFF): an unprecedented budget allocation

The EU has been working effectively in redirecting the cohesion funds to help the Member States who are in need of financial support the most. On 17 December 2020, the European Council concluded the MFF for 2021-2027 that sums up €1.7074 billion. The total package is divided to 27 Member States of the EU and integrated the European Development Fund. The core fund for the next two years is the newly established Next Generation EU (EUR 750 billion) with the Recovery and Resilience Facility at its heart, which mainly focuses on recovering from the consequences of the global health crisis. Furthermore, EU leaders agreed to allocate up to EUR 800 million from the EU Solidarity fund directly to Member States which were affected most severely by the pandemic [1].

There are several key figures discussed within the European Parliament and the Council of the EU, including European values, climate actions, employment, healthcare, however, rule-of-law is the most controversial provision of the budget negotiations. The unanimity rule of the Council delayed the adoption and ratification of the whole process, primarily because of the Rule of Law Regulation [2]. Poland and Hungary blocked the recovery package as there is one provision bound by the non-violation of the rule of law. It reveals two problems that the European Council and the Union are facing, namely the erosion of the rules-based system and values within the EU, and the internal cleavage between countries.

Cleavage in European Council negotiations

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Cleavages in the EU have been always clear at both the national and supranational level. Because of the global health crisis in which countries need to put their national interests first, the transnational cleavages between Member States are resurging stronger than ever.

From the 1990s, after the Maastricht Treaty, EU citizens have been able to migrate and work in other countries, a common currency was established, and the term “EU citizens" appeared. Thereby, the integration process of this Union has been also considered through the lens of cleavage theory by many scholars, and they call it the “transnational cleavage" in which every European country experience a similar situation and the same cleavage. The rise of the far-right party is one of the consequences of the transnational cleavage between the winners of the Western transformation and the losers, and it also leads to modern conflicts such as nationalism or anti-immigration [3]. The migrant crisis is considered the first breakthrough of the transnational cleavage, and now the COVID-19 epidemic is the second milestone.

The division is visible in other EU institutions and at the national levels when Budapest and Warsaw started to disagree on several problems and enact new laws against human rights. The decision-making within the EU requires countries to overcome strong differences, and it is most visible in the negotiation process of the European Council as it only includes the Heads of State or Government of 27 Member States and the President of the European Commission [4]. Although there are no clear winners and losers during the negotiations on MFF, it is a loss to the rule-of-law scheme and democratic fundamentals. Hungary and Poland considered this mechanism as a threat to their national interest, hence, both of them tried to block the decision on linking the distribution of funds to the rule of law. However, the principle of respect to the rules-based system is also salient to other Member States of the Union, such as the Netherlands or Germany. For example, Dutch Prime Minister Mark Rutte once announced that “For the Netherlands the agreed compromise on the rule of law is the bare minimum. We cannot accept anything less” [5]. Hence, it comes to a compromise in which this measure will not be applied until Budapest and Warsaw challenge the legality of it in the Court of Justice and gain a verdict.

This meeting has two distinct characteristics due to the pandemic. First, there was time pressure to adopt the budget timely. All countries had less time to shape the policy outcome like they previously did. For example, vetoing the mechanism would be the issue that Hungary and Poland attached high salience, hence in the normal situation, they would use their bargaining power to remove this provision from MFF. However, given how urgent the financial package is to the regional recovery, all members needed to make a concession. Another reason for the compromise is the different levels of GDP shock of EU Member States [6]. Theoretically speaking, countries who have been affected the most by the

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COVID-19 crisis such as Croatia, Spain, Italy, or France, would support the approval of the EU's budget, while Poland, the least-affected country would have more advantage to shape the bargaining outcome. However, even in this case, the national leaders of these countries also acknowledge that they would also suffer if the package was delayed. In practice, since the bargaining process was not entirely reported in a detailed way, it is challenging for researchers to study the utility and bargaining success within the Council.

European Council in the downfall of rule of law

As the institutions defining the EU's political direction, priorities and safeguarding the EU's values, the outcome of package negotiation is a failure to democracy and liberal values of the Union. It is indeed "a typical compromise" as Slovenian Prime Minister Janez Janša commented [7], but it does not change the fact that there was a false expectation on the support for a rules-based order among EU countries, even when they were in their worst situation and in need of money the most.

Most of the conclusions of the European Council this time reaffirm the existing legal regulation, and thereby it was criticized as a rhetoric proposal. Hungary and Poland will still not be accused of repeated breach of Article 7 of the Treaty on EU, and the Union's money has not completely linked to the values and laws as expected. Furthermore, this mechanism has an important condition, the defense of common financial interests, so many scholars believe that it would never be used as an effective instrument to protect the rule of law and restore democracy. Nevertheless, the European Council this time has made a progressive and crucial step to enhance the rule of law mechanism by keeping the content of measure unchanged. It is the utmost of what could be done in the current situation and the legislation of the EU.

Reference

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