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Europe's fragile freedoms facing a coronavirus stress test

The coronavirus crisis is accelerating a paradigm shift in European integration. Freedom as the organising principle of the EU was in retreat even before the pandemic when liberalisation, openness and liberal democracy came under strain in many countries. Restrictions imposed to tackle Covid-19 are reinforcing this trend. Concerns that some of these restrictions may remain in place beyond the pandemic are legitimate, particularly in the case of countries that are abusing the crisis to achieve autocratic overreach. The EU will need to find new ways to defend its legal order based on freedom.

European integration has, since the outset, been a freedom project as much as a peace project. Not only is freedom enshrined in Article 2 of the Lisbon Treaty as one of the fundamental values of the EU, but the principle of freedom, or – to put it another way – liberalisation and openness, has also been the cornerstone of the integration process. The deepening of market liberalisation and widening of Europe without physical borders (the Schengen area) were the key vehicles of the EU's success in economic terms as well as in the eyes of its citizens. The same is true of the foundations of the political systems of EU member states. Liberal democracy – a system based on the primacy of individual liberties, the rule of law and civil rights – is an indispensable part of the EU project. Traditionally, this paradigm of freedom has never been seen in contradiction to security. On the contrary, freedom and liberalisation were all perceived as guarantors of economic and hard security.

Covid-19 as an accelerator of existing trends

It is not that the coronavirus crisis has fundamentally shaken these convictions. Rather, the unequivocal dominance of the paradigm of freedom was criticised and, indeed, called into question already in the past decade or longer before that. The EU as a liberalisation machine unleashing market forces did an excellent job, but it seemed to neglect the social consequences of unfettered and increasing openness, as scholars such as Fritz Scharpf and Wolfgang Streeck pointed out. In this context, the EU has been perceived as one of the driving forces of globalisation, hollowing out social protection and national competences.

European freedoms raised eyebrows also in countries such as France, the UK and the Netherlands because of the negative – in the eyes of parts of their populations – impact of cheap labour after the Eastern enlargement of 2004 in conjunction with the delocalisation of industries. The mantra of open borders was further weakened in the course of the refugee crisis and the appeal of border controls has not fully waned since then. Last but certainly not least, the erosion of a Europe based on freedom has been fuelled by a populist takeover, most notably in Hungary and Poland. The breakdown of the rule of law in these countries dealt a blow to the EU's liberal architecture as its self-defence measures proved to be inadequate.

All of this happened before the coronavirus crisis, which therefore cannot be seen as the main trigger of a certain – perhaps temporary – retreat of freedom as the

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EU's main organising principle. Emmanuel Macron's idea of a "Europe that protects" reflected at least some important outlines of this new social context, one that is more sceptical about the virtues of openness and globalisation. The pandemic that sent shockwaves across Europe only strengthened and accelerated pre-existing trends, leading to a shift away from freedom towards security as the primary goal of political action. Restrictions on mobility, free market forces and limitations of civic rights did not encounter much opposition in societies. Even considering the emergence of new political protest movements, the majority of the population supported such protectionist measures.

Interestingly, while the freedom of movement has always been seen by Europeans as one of the key achievements and tangible benefits of EU integration, the swift closure of national borders was widely accepted as a justifiable measure to fight Covid-19 by large majorities in many member states. Most remarkably, continued controls of national borders seem to be popular even beyond the coronavirus crisis. In Poland, where unlimited freedom of travel has always been seen as the greatest benefit after decades of Communism, this view is shared by almost the half of citizens. In a poll commissioned by the European Council on Foreign Relations in April 2020, 46% declared that, after the pandemic, the borders should be "better controlled" while only 27% opposed this view.

Public support is also high for loosening the anti-dumping measures applied by the European Commission to allow EU member states to support their industries and labour markets hit by the lockdown. They are, obviously, a huge impediment to the freedom of the single market and free competition. According to calculations made by the think tank Bruegel, the immediate fiscal response to the crisis by the German government (until 25 May) amounted to 13.3% of the country's GDP in 2019. By contrast, France spent only 2.4% of its GDP. Poland was not included in this

calculation, but even if its crisis stimulus package is large in relation to the size of its GDP, it is still not impressive in absolute numbers compared with wealthier countries. Putting the rules on free competition to one side can thus have far-reaching implications. The imbalances among those EU member states that can afford high subsidies and those whose financial resources are much more limited are threatening to shake up the EU's economic system. These imbalances will need to be addressed by the rules of the new EU Recovery Fund. The disbursement criteria, which have yet to be agreed upon, will be of key importance in helping to preserve a level playing field for everyone in the future.

Covid-19 as a pretext for curtailing the rule of law

The coronavirus crisis alone may not become a game changer in the evolution of how our democracies function. However, its implications help us to understand the high stakes in the battle for the rule of law that has unfolded in some countries in recent years. All over Europe, far-reaching restrictions of civil rights necessitated by the lockdown raised questions about their legitimacy and potential long-term negative effects. These concerns are not unfounded, and the risk that some measures impinging on Europeans' liberties, such as digital surveillance, could stay in place even after the pandemic is not negligible. However, as long as the foundations of the liberal democratic order – independent courts, constitutional provisions and the separation of powers – remain intact, it is not naive to believe that the observance of fundamental principles will, sooner or later, be fully restored, with the freedoms of assembly and movement already being gradually re-established across Europe.

These systemic guarantees are no longer in place in Poland and Hungary. Moreover, the coronavirus crisis

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has been abused – more or less successfully – by the governments of both countries to achieve a further consolidation of power with the violation of constitutional norms. The rule by decree introduced by Viktor Orbán at the end of March is the best example of such autocratic overreach. It lacks any “sunset clause” and its termination requires a qualified majority in the Parliament (and is thus de facto impossible without Orbán’s consent).

The Polish government attempted to ensure the success of the candidate of the Law and Justice (PiS) party, the incumbent President Andrzej Duda, in the presidential election in the midst of the pandemic, seeking to carry out the vote in violation of the principles of free and fair elections. Under pressure from a smaller coalition partner, the PiS government was ultimately forced to abandon this idea. This showed that the power of PiS has its limits, but also caused a major constitutional crisis: the presidential election – probably for the first time in an EU democracy – was called off just three days before the scheduled date. A new election will be held in the summer. The breakdown of European liberal-democratic standards remains a massive problem in Poland, however. In the turmoil of the pandemic, the government took control of the Supreme Court, the key institution in the judicial system, whose independence is subject to infringement procedures before the European Court of Justice.

Solidarity and freedom need to go hand in hand

As much as the coronavirus crisis has shaken the European project founded on freedom and has accelerated the pre-existing shift towards greater protection and security, its long-term impact is likely to be more nuanced. The quest to restore the freedom of movement and other civil liberties has intensified in recent weeks not only because of the upcoming holiday season.

European societies will not accept endless restrictions as they would contradict their cultural DNA.

However, the expected economic crisis will inevitably give more protectionist measures a further boost. While renationalisation needs to be avoided, it is crucial to build up European sovereignty in areas in which the EU needs to respond to external challenges. The debate surrounding the security of supply chains, relations with China, digital security and investment protection will determine the future of the European integration project.

The rule of law dimension to the erosion of freedom as the EU’s organising principle is the most fundamental consideration as it is the precondition for all other freedoms in the EU and its member states. The EU is, first and foremost, a set of rules and exists only if these are followed. Economic and health concerns are, understandably, at the heart of the current EU debate and response to the coronavirus crisis. However, while addressing its implications, the EU countries will inevitably also have to deal with the question of the rule of law as a precondition for the protection of citizens’ fundamental rights and liberties.

The EU will have to develop better tools to ensure the implementation of this key principle, also by punishing member states that violate laws that are fundamental to its functioning. In this context, access to funds from the EU budget should be made conditional on observing the rule of law. For this purpose, the approach proposed by the Commission that places – at least formally – an emphasis not on the independence of the judiciary, but on the prevention of money fraud must be revamped. Especially after the experience of the coronavirus crisis, solidarity and freedom (democracy) need to go hand in hand.

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