The Authoritarian Market Playbook

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For more than a decade, lawyers and political scientists have extensively studied the "authoritarian playbook" – the instruments, methods and processes used by autocrats such as Hungary's Viktor Orbán to capture established democracies. However, so far, the impact of autocratic economic governance on the rule of law has been surprisingly underexplored in the legal field. The respective electoral wins of Donald Trump in 2016 and 2024 illustrate that economic policies are often at the heart of authoritarian actors' electoral success and ideological goals. Even more so, this is certainly true for Hungary, as Orbán's political regime is deeply rooted in crony state capitalism and institutionalized corruption.

In this contribution, we analyse the case of Hungary as a role model for authoritarian market interference in the EU. Our aim is to start and stimulate a fresh political-legal discussion about populist economic policies, and how they affect the legal and economic order based on the rule of law in the EU and its Member States. To the extent the length of this blog allows, we demonstrate with concrete cases the functioning of the economic governance of the Hungarian government and how it creates market distortions in Hungary as well as in the EU's internal market. We argue that a more economic law and policy-focused approach must be pursued if the EU and its institutions are serious about tackling and solving its rule of law crisis.

The remodelling of the state-market relationship in Hungary

Over the past fifteen years, not only a drastic transformation of the constitutional system has been underway in Hungary, but also a radical transformation of its economy with tangible impact on market actors, local consumers, and their fundamental economic rights. Relying on law and regulation enabled the Hungarian government to shape markets along the authoritarian playbook, including, in certain cases, the far-reaching restructuring or even shutting down of existing markets. As a result, competition was in certain markets deliberately limited as a policy direction using a mixture of regulatory instruments. State ownership was increased through regulation reducing the scope for private market activities, and direct price regulation, including price freezes (especially in the energy sector), was prioritized. While state interference in markets can certainly be legitimate when justified by important public interest, e.g., to protect consumers from price shocks, such intervention must be carefully confined by constitutional safeguards of the rule of law, and hence, comply with its procedural and substantive guarantees.

Yet, the Hungarian measures increasing state involvement and decreasing room for pressures of free competition often relied on executive law-making without constitutional and rule of law based oversight mechanisms. As a result, the unpredictability and uncertainty (volatility) of the regulatory environment increased considerably, with decreasing quality of the legislative process and the legal measures, increasing the risk of corruption. This has been regularly voiced in the European Commission's European Semester reports and Council recommendations over the years since 2011.

Selective exemptions for economic activities of crony companies in often strategically important sectors of the economy, such as media, telecommunications, waste management, transport or energy, increased concentration of markets, and entry barriers, while it reduced the number of market players often to the detriment of local consumers. The arbitrary use of regulatory measures enabled the Hungarian government to restructure various sectors of the economy, overriding market mechanisms and affecting the

economic freedoms of market actors and the welfare of EU citizens in local markets.

Two main instruments in remodelling economic governance stand out which are directly connected to the precarious situation of the rule of law. First, the artificially created constitutional lacunae of emergency laws, which grant the government considerable discretion to rule by decree, and to bypass the possibility of parliamentary scrutiny. This form of "autocratic legalism" entails the instrumentalization of the law with opportunistic variability.

Second, the Constitutional Court's jurisdiction to review budgetary and tax laws was restricted shortly after the Court had struck down tax legislation in October 2010. By amending the constitution, the parliamentary supermajority limited the Constitutional Court's jurisdiction to certain fundamental rights (e.g., human dignity, freedom of thought) – although these rights are usually not affected by budgetary and tax law. This is a "unique" Hungarian legal construction according to Halmai, who commented that "[t]his withdrawal of the right to review financial laws created a solution found nowhere else in the world."

The systematic increase of executive competence paired with the simultaneous confinement of judicial review enabled the Hungarian government to implement its economic policies in the name of economic stability and strengthening national sovereignty in strategically important sectors of the national economy. These policies often proved to be discriminatory against specific market actors while also weakening the enforcement of both national but also EU economic law.

This "new" economic governance systematically undermined key legal rules and independent institutions of the functioning Hungarian market economy. As checks and balances disappeared, so did the rule of law control over markets, and markets' accountability mechanism, including safeguards of market actors' and local consumers' economic freedoms. Such instances of economic backsliding were not limited to national cases but often had an effect on cross-border trade and arbitrarily disadvantaged foreign-owned companies. Hence, it created tangible effects on the core of the EU's legal and economic order, free competition and free movement rules. This renders a debate about the impact of rule of law backsliding in the economic sphere the more important.

The authoritarian market playbook at work

The constitutional re-engineering and the shift in Hungary's political economy over the past decade to authoritarian neoliberalism and economic patriotism not only undermined core institutions of its market economy, but also enabled the Hungarian government to deeply politicize and instrumentalize economic law and policy in Hungary. Emergency decrees have been increasingly used to address growing economic and fiscal problems in Hungary, for example, for setting and enforcing price caps on food and fuel prices, or imposing extra profit taxes on companies.

Most of these measures were justified by the need to protect Hungarian consumers from various crises in Europe and the world, such as the migration crisis, the pandemic, and later, the shocks of the global economy caused by Russia's attack on Ukraine.

For example, from 2017 on, the Hungarian government revised its national consumer policy programmes to reinstate its family protection policy and its anti-gender ideology. The Hungarian government implemented family protection as the fundament of Hungarian consumer policy, and started using gender as a discursive tool to strengthen its illiberal regime, and to mobilize its anti-feminist agenda that promotes conservative views on gender and family instead of ensuring women's and LGBTIQ rights as fundamental human rights. Such instrumental (ab)use of consumer law seemingly protects consumers as national citizens, and members of Hungarian families. However, it rather undermines meaningful protection of consumers' economic as well as their political rights, and impinges on their autonomy to participate freely in the marketplace and society.

Over the past six months, under the flagship slogan of economic neutrality, populist economic policies have become the primary agenda item in the Hungarian government policies and its presidency of

the Council of the EU. Starting with the announcement of a new economic policy announced by Orbán in September 2024 in the Hungarian parliament, the government continued to disseminate his new vision of "economic neutrality" to the broader EU context through Hungary's presidency. While the term economic neutrality is new, the policy behind it has characterized Hungarian economic policies over the past years. Among others, they resulted in the loss of significant amounts of EU funding, and the partial replacement of such funding with expensive loans and state-subsidised imports of working capital, often for projects with very dubious returns. While current budget plans for 2025 are rich in describing the problems of the economic situation limited to bad international conditions, war, misguided Brussels sanctions and the energy crisis, they remain silent on why this international situation has hit Hungary particularly hard, and how much the mistakes of Hungarian economic policy have played a role in this.

Hungary's performance is, according to various economists, poor by international standards, and its economy is characterized by "sluggish growth, the return of inflation, a rapidly deteriorating exchange rate and a growing housing crisis". Accordingly, 2025, the year before the 2026 elections, is already dedicated to Orbán's new economic policy, which was kicked off last November with a new national consultation. In a sentiment of populist economic policies, the consultation is a clear example of how the government is pursuing authoritarianism in its economic policies addressing issues of SME protection vis-a-vis regulating multinational companies, economic self-reliance, tax policies, and social support systems for workers and young people.

The government's "new" economic programme includes various plans for loans, capital and non-refundable grants that ensure the survival of inefficient companies and projects. According to a leading economist, this is further exacerbated by the corruption that often accompanies such programmes, while the budget situation worsens and inflation increases. Such a programme undermines competitiveness and trust in economic policies, and is not in any way new, but is rather a continuation of the trends of the last decade and a half.

A strong illustration of such cases was subject to a recent preliminary ruling by the Court of Justice (ECJ) in the case between Austrian supermarket chain, SPAR, and a local Hungarian consumer protection authority.

In February 2022, the Hungarian government decided to regulate by a Government Decree adopted in the context of an emergency situation linked to the COVID-19 pandemic the marketing of six basic products (certain types of sugar, wheat flour, sunflower oil, pigmeat, poultry meat and milk). After amendments in late 2022 due to the war in Ukraine, new products were added to the list, and the Government Decree remained in force until 31 July 2023. On the basis of the Decree, traders that had already marketed those products at a specified earlier date were required, on pain of a fine, to offer for sale a predetermined quantity – based on, initially, the average daily quantity offered for sale during a reference period and, subsequently, the quantity of the products at issue in stock during that reference period – at a regulated price.

In May 2023, the Hungarian authorities imposed a fine on the retailer SPAR Magyarország after finding that, in one of its shops, it had not respected the daily quantities in stock of five products referred to in the decree. The authorities imposed and justified the fine referring to the protection of consumers. In fact, in determining the amount of the fine, that authority took into account, among others, the large number of consumers affected by that infringement given the location of the store in question. Moreover, during the proceedings, the Hungarian Government justified the government decree by referring to the objectives of combating inflation and the protection of disadvantaged consumers by means of a guaranteed supply of basic foodstuffs at affordable prices (see para 41 of C-557/23 SPAR). SPAR brought proceedings before the Szeged High Court seeking annulment of the decision of the authorities. As the Szeged High Court had doubts concerning the compatibility of the Government Decree with the Common Market Organisation (CMO) Regulation, and in particular with the principle of free formation of selling prices of agricultural prod-

ucts on the basis of fair competition, that court sought a preliminary ruling from the ECJ.

The Court ruled that the Hungarian Government Decree was contrary to EU law, through undermining fair and free competition, a fundamental component of the CMO Regulation. The obligation to offer for sale agricultural products at regulated prices and in specific quantities prevented traders from freely setting their selling prices and the quantities they wish to sell on the basis of economic considerations.

The Court dismissed Hungary's argument alleging that that restriction is justified by the objectives of combating inflation and protecting disadvantaged consumers by means of a guaranteed supply of basic foodstuffs at affordable prices. The Court stated that even if the contested Government Decree were appropriate for achieving those objectives, the measures that it entails were not proportionate. The undermining of free access by traders to the market in conditions of effective competition and the disturbance of the entire supply chain caused by the regulated prices and quantities imposed on those traders go beyond what is necessary to attain the objectives pursued by the decree (paras 46-47 of the judgment).

Conclusions

As mentioned above, this case does not stand alone but rather illustrates practices that are widespread in the Hungarian economy. There have been similar cases before the ECJ, for example for similar violation of the CMO Regulation through an infringement procedure brought by the Commission, and concerning the same Government Decree through other preliminary requests and various cases brought in Hungary concerning the same Government Decree and regulated prices. Beyond our academic analysis on the borderlines of EU and national law, these cases should also serve as important warnings that the Hungarian government has been systematically overstepping its competences for shaping its national variety of capitalism, while relying on a regulatory framework enabled by its authoritarian playbook. The EU's instruments and rule of law toolbox addressing Hungary's rule of law backsliding have proved rather ineffective so far.

This seems to have been finally acknowledged also by the EU institutions which adopted a new approach in 2024 based on the EU's primary identity: the economy and market integration, and "the centrality of markets to the life of states". In other words, enforcing the rule of law is increasingly tackled by using the EU's economic competences under the Single Market acquis. This is now explicitly and firmly laid down in the political guidelines of the new European Commission and the mission letter of President Ursula von der Leyen to Commissioner for Democracy, Justice, and the Rule of Law, Michael McGrath, adding "a Single Market dimension in the Rule of Law Report to address rule of law issues affecting companies, especially SMEs, operating across borders." Additionally, enforcement of the Conditionality Regulation against Hungary culminated in Hungary having lost substantial EU funds by 1st January 2025.

In the light of electoral victories of the far-right in many EU Member States, challenges to the EU's legal order can be expected to increase at a time, where the bloc is desperate to preserve (and improve) its competitiveness.

For the EU, the challenge of authoritarian economic policies requires the Commission to make proper use of its wide-ranging and far-reaching competences to ensure fair competition, and also the protection of consumers in the Single Market. As debates about the fundamental constitutional role of competition law to disperse concentration of political *and* economic power intensify, as shown by this new *Verfassungsblog* symposium, the broader "rule of law community" needs to incorporate such economic approaches.

For researchers of authoritarianism, a similar case study research strategy and methodology as used above should be employed in order to tackle and investigate the rule of law crisis in-depth. Research questions could include *inter alia* how structural independence of regulatory bodies is safeguarded, which (legal) instruments authoritarian governments use to capture or sideline such bodies as well as markets, and if instruments differ regionally or ideologically.

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