

Two proposals to promote and protect European values through the Multiannual Financial Framework:

Conditionality of EU funds and a financial instrument to support NGOs

Executive summary

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Authoritarian populist governments, such as those in Hungary and Poland, have weakened standards and captured institutions designed to uphold European values as set out in Article 2 of the Treaty on European Union (TEU): democracy, the rule of law and fundamental rights. It has been difficult to deter these governments through political pressure from the EU because existing tools are either too weak (the rule of law framework) and too narrow (infringement procedures) to be effective, or too politically controversial to use (Article 7 of

paper sets out two economic measures the EU could take to protect European values.

First, a model that would allow the EU to cut off European Structural and Investment Funds (ESIFs) when a Member State violates the rule of law. ESIFs for the current funding period of 2014-2020 amount to a total of 450 billion EUR. The ESIFs support a number of EU objectives, but broadly speaking they are a means through which the EU helps to improve the standard of living of Europeans. Accord-

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the TEU). Authoritarian populists continue to perform well in elections across the Member States. If the EU is to safeguard its fundamental values, it will have to develop new tools.

The negotiation of the new Multi-Annual Financial Framework (MFF) gives EU governments and institutions the opportunity to create new means of protecting European values based on the EU’s economic power. The new MFF will determine how EU money will be spent over a period of five to seven years from 2020. The MFF for 2014-2020 amounted to around 1 trillion EUR, with an annual EU budget of around 155 billion EUR. This

ing to Article 3(1) of the TEU, the ultimate goal of the EU is to ‘promote peace, its values and the well-being of its peoples’. Accordingly, allowing Member States to benefit from ESIFs while undermining the EU’s values contradicts the purposes of the EU and is contrary to the EU treaties. This paper proposes a minimalist model that could allow the EU to suspend the payment of funds by making relatively small changes to EU legislation.

The rules governing the ESIFs (the Common Provisions Regulation or CPR) require Member States to create a management and control system at national level, which ensures

that ESIFs are spent according to EU law. As part of their obligation to create a management and control system, Member States should be required to have independent and impartial courts in place to ensure that the ESIFs are being spent according to EU law. Although this requirement is not currently set out in the CPR, it is already part of EU law, according to the case law of the EU's Court of Justice. Accordingly, this paper suggests that such a requirement should be incorporated into the next version of the CPR that will be created for the new MFF. Failure to meet this requirement should be considered to be a serious deficiency with the management and control system, which can lead to the suspension of funds. Furthermore, the Commission should regularly and independently check that Member States comply with this requirement instead of relying on self-reporting by national authorities, which is the current procedure. Where there is a risk that suspension of ESIFs would have serious negative consequences on the general public, the Commission should have the discretion to allow funds to continue to flow, but take over administration of these funds from national authorities.

The second measure suggested by this paper is a promotional tool: a new EU fund to provide financial support to NGOs in the Member States to promote and protect European values, termed a European Values Instrument (EVI). NGOs, like an independent judiciary and free media, are vital to promoting and protecting European values. Because of this, NGOs working on European values are increasingly facing restrictions, including smear campaigns and funding cuts.

By supporting NGOs, the EU would help to strengthen participatory democracy, government accountability to the law, and the legal standards that NGOs uphold. More importantly, funding NGOs would help to create grassroots support among the public for European values. This would make it more difficult for authoritarian populists to attract support while undermining protections for democracy, the rule of law and fundamental rights.

Currently, the EU provides no funding for NGOs in the Member States for the purposes of promoting and protecting European values. In contrast, the EU spends several billion EUR to support these activities in countries outside the EU. The main sources of funding for NGOs to promote and protect European values inside the EU are the Norwegian government and philanthropic foundations. The paper suggests that the EVI should be worth 2 billion EUR over seven years to match the EU's support for NGOs outside the EU.

The EVI should have two broad aims. First, to build a sustainable, healthy NGO sector capable of fulfilling its role in upholding democracy, the rule of law and fundamental rights. Second, to protect and promote fundamental rights (as set out in the Charter of Fundamental Rights), democracy (including transparency, good governance and participatory democracy) and the rule of law. The EVI should make grants to NGOs so that they can carry out advocacy, monitor compliance with European and international standards, litigate, engage in public education, support independent journalism, and to build the capacity and sustainability of NGOs. The EVI should place

emphasis on building NGOs' capacity to communicate effectively with the public to create grassroots support for European values.

The EVI would be overseen by the Commission but implemented by fund operators acting as intermediaries between the Commission and the NGOs that receive grants. Fund operators would be independent non-governmental, non-profit bodies, without governmental,

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political or religious affiliation and with experience of working with the NGO sector. The EVI could either be structured around 27 nationally based fund operators, or a smaller number of thematic-based fund operators covering the entire EU. Funding should be allocated between geographic areas of the EU so as to reflect the different needs of Member States.

Because fund operators are independent of the EU, they should not be obliged to apply restrictive EU financial rules when making grants to NGOs. These rules, such as eligibility and co-funding requirements as well as burdensome financial reporting obligations, prevent or deter grassroots NGOs from apply-

ing for funds. As such, fund operators should apply flexible and light procedures.

Authoritarian populists continue to grow in strength and pursue policies to unravel pluralist democracy, the rule of law and fundamental rights. The EVI is a singular opportunity for the EU to make a strategic intervention that would rally public opinion around European values. Political pressure from the EU is less likely to be effective, and EU tools to apply such pressure are less likely to be used, unless there is grassroots support for European values. Just as the EU should dedicate funds to support NGOs to promote and protect democracy, the rule of law and fundamental rights, it should remove ESIFs from authoritarian governments that take EU money while destroying the basic principles upon which the Union is founded. The upcoming MFF may be the last opportunity for the EU to take such bold steps to preserve its values, given the continued rising popularity of far-right parties, which will limit the EU's room for manoeuvre in the future.

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting and protecting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of national civil liberties NGOs from across the EU. Unless otherwise indicated, the opinions expressed by Liberties do not necessarily constitute the views of our member organisations.

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