

The EU's Real Rule-of-Law Crisis

Frustration with uneven application of EU law is a feature of the domestic politics of all member states



Polish Prime Minister Mateusz Morawiecki, left, and Jean Claude Juncker, president of the European Commission, met in Brussels on Jan. 9. PHOTO: JOHN THYS/AGENCE FRANCE-PRESSE/GETTY IMAGES

By

Simon Nixon

Feb. 11, 2018 5:52 p.m. ET

[9 COMMENTS](#)

It has become accepted wisdom to talk of the European Union being afflicted by a rule-of-law crisis. This is often portrayed as the latest threat to the EU's cohesion, following hard on the heels of the eurozone debt crisis and the migration crisis.

The focus of this new crisis is central and Eastern Europe, where authoritarian governments are alleged to be driving through reforms that undermine important democratic safeguards including the freedom of the press and the independence of the judiciary. This perceived assault on core liberal democratic values has fueled talk of an emerging East-West split that could lead to further EU fragmentation.

One problem with this narrative is that it seeks to draw a link between unrelated situations. It may be appropriate to talk of a crisis with respect to Poland given that the European Commission has launched a formal process that could lead to Warsaw being sanctioned over its judicial reforms.

But while this threatens to create tensions between member states who must now decide which side to back, no one believes this process will end in Poland being stripped of its EU voting rights.

Nor has any other country been threatened with a similar procedure, although Hungary has clashed with the commission in the past. Romania and Bulgaria have longstanding problems with corruption and organized crime but they are both already subject to special EU oversight.

The bigger problem with this narrative is that by focusing on a supposed East-West split, it overlooks a much deeper rule-of-law problem that afflicts the whole of the EU.

The perceived failure of EU member states to respect EU rules and of Brussels to interpret and enforce those rules consistently and fairly has been an important factor in all recent EU crises. It has led to a loss of trust not just in Brussels but—crucially—in the governments of other EU member states that has undermined support for the EU and fueled support for [populist euroskeptic parties](#).



— ADVERTISEMENT —



A woman held Polish and EU flags in Krakow on Jan. 21. PHOTO: OMAR MARQUES/ SOPA/ZUMA PRESS

Indeed, frustration with the uneven application of EU law is now a feature of the domestic politics of all EU member states. Italian politicians, for example, complain that Hungary and Poland are defying EU law by refusing to take their share of asylum seekers. Dutch officials complain that Italy is also defying EU law by failing to send back asylum seekers whose claims are obviously bogus.

German politicians complain that Brussels has made a mockery of EU fiscal rules with what they consider its excessively flexible treatment of France, Italy and Spain. Southern European governments accuse Brussels of ignoring EU rules by failing to take action against Germany and the Netherlands for running excessive trade surpluses.

The European Commission accuses Poland of undermining the rule of law; Warsaw says its new system for appointing judges closely resembles that used in Spain, which hasn't been criticized.

Alongside this belief in double standards is a wider concern that some countries are either unwilling or unable to live up to their wider responsibilities as EU members.

The origins of the euro crisis, for example, lay in part in the failure of some countries to undertake the overhauls of their economies to make them sufficiently competitive to cope with membership of a single currency. Governments have been too slow to cut public deficits and debts, overhaul inflexible labor and product markets and overhaul inefficient public administrations.

While the commission points the finger at Warsaw's judicial reforms, Italian business leaders complain that Italy's own unreformed judicial system, which can take up to eight years to settle commercial disputes, discourages investment and prevents resources being redeployed to healthy businesses.

How is this crisis of trust to be resolved? This debate that will begin in earnest [once a new German government is in place](#) but already the battle lines are clear.

Northern European countries will argue that the key to making the EU more resilient is to ensure that existing rules are more effectively enforced. For example, the German, Dutch and Finnish governments have called for changes to the way the EU budget is administered to make future EU funds conditional on member states undertaking reforms that would boost economic convergence.

That will put them on a collision course with countries in Eastern Europe who fear that the EU budget will be turned into another tool to allow Brussels to interfere in their domestic politics.

It will also put them on a collision course with the French government, which believes that simply relying on stricter enforcement of rules to rebuild trust isn't sufficient.

French officials argue that the answer is deeper political integration based less on rules and more on institutions. They point to the creation of the European Central Bank as an example of a significant pooling of sovereignty that was greeted with suspicion at first but has won broad public trust by operating independently and decisively. They say that a similar leap is needed now.

But to succeed, France will need to convince skeptical partners that any new institutions can be trusted to apply EU rules consistently and ensure member states respect their obligations—rather than deepen what has become the EU’s true rule-of-law crisis.

Write to Simon Nixon at simon.nixon@wsj.com