

Hungary: Taking Action

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The Hungarian Parliament has enacted a package of constitutional amendments that virtually neutralizes the Constitutional Court as an opponent of Viktor Orbán's two-third-majority government. There was no lack of protest notes from both Strasbourg and Brussels, but apparently to no avail. Neither the EU nor the Council of Europe seems to be able, institutionally, to find an adequate response to a systematic undermining of constitutionalism within member states such as Hungary or Romania.

A conspicuous deterioration in constitutionalism erosion isn't just the problem of the respective member state; it affects the entire EU and all its member states. But what can they do? One year ago, we launched an online symposium on the proposal of Armin von Bogdandy's [Heidelberg research group](#) to find a solution based on European citizenship.. Now, Jan-Werner Müller, a political theorist and historian of ideas based at Princeton University, is offering another proposal – to install a "Copenhagen Commission" which monitors the broad compliance of member states with the political [Copenhagen criteria](#).

Müller's proposal will be the point of departure for a new online symposium starting today. We invite legal and political scholars to comment on these questions:

1. If a EU member state sets sail on a political journey that leads to a constitutional state incompatible with the Copenhagen criteria of democracy, rule of law and human rights, what course of action should the EU adopt?
2. Which of the following possibilities seems best?
 - a) The European party families could isolate the member state politically (e.g. exclusion from EP group)
 - b) The other member states could suspend the country's vote (as envisaged in Article 7 of the Treaty on European Union)
 - c) The EU commission could exert pressure by pursuing specific treaty infringements
 - d) The European Court of Justice could extend its jurisdiction on internal fundamental rights infringements within member states (union citizenship, European Charter of Fundamental Rights).
3. Which of these possibilities do you like least?
4. Do you see other possibilities?
5. To what extent should the EU be competent to take preemptive action against planned constitutional amendments within member states?

6. How should the sanction regime be designed to prevent national leaders from exploiting the sanctions to mobilize their constituencies against the EU? What would be 'smart sanctions' in an EU context that are effective with governments, but do not hurt ordinary citizens?

7. How should the sanction regime be designed to prevent its evolution into a paternalistic constitutional micro-management of member states?

8. How should the sanction regime be designed to prevent the impression that it will hit only small member states and leave large ones untouched?

9. In which cases should the EU leave the field to the Council of Europe and the ECHR?

10. Would you welcome the installation of a „Copenhagen Commission“ that monitors the compliance of member states with the Copenhagen criteria, analogous to what the Venice Commission does with respect to the ECHR?

We will publish the answers during the next weeks on Verfassungsblog. We are looking forward to a lively and fruitful debate!

