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# An externally constrained hybrid regime: Hungary in the European Union

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## ABSTRACT


The paper focuses on the unique, role model characteristics of the Hungarian hybrid regime, the Hungarian political system's new incarnation forged in the past years' democratic backsliding process. Following the short review of the main hybrid regime literature and the key analyses putting the democratic quality of the Hungarian political system under the microscope, the paper argues that Hungary's European Union (EU) membership, the competencies of EU institutions, and the scope of EU law have played a crucial role in the development of the system's unique characteristics. Based on this argument, the paper qualifies Hungary as an "externally constrained hybrid regime". However, the EU does not only fulfil system constraining functions regarding the Hungarian regime, but performs system support and system legitimation functions as well. Ultimately, the changing scope of these functions, determined by the European integration's internal dynamics, influences first and foremost the Hungarian power elite's strategic considerations about the country's future EU membership.

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**KEYWORDS** Democratic backsliding; democratic governance; European Union; external constraint; Hungary; hybrid regimes

## Introduction

This study focuses on the ever-widening grey zone between liberal democracy and dictatorship, and applies the findings of the scholarship on hybrid regimes to the characteristics of the Orbán regime in Hungary.<sup>1</sup> The issue of democracy and dictatorship is not an "either-or" problem; rather, it is one that can be best described along a continuum. At the two opposing ends of the scale stand liberal democracies and totalitarian regimes. When categorizing political systems, we cannot overlook their external embeddedness, and the extent to which outside forces influence the political system itself. Just as it is more difficult for an authoritarian regime to democratize if it is surrounded by other authoritarian regimes, it is also more difficult for a democracy to regress to dictatorship if that democracy is a member of an alliance of democratic

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states. In short, the emergence, existence, and decline of a regime need to be analysed in light of both domestic and international factors.

Until recently no consensus has emerged among political scientists about the exact nature of the post-2010 Hungarian political system. The caution to come to a too early conclusion was understandable given that the past eight years have stood witness to rapid constitutional and political changes. Regime analysts have been dealing with a “moving target”.

We argue that only in the first period of its existence; that is, in the first two years after the new constitution, adopted by Orbán’s Fidesz party representatives in 2011 and entered into force in 2012, could the regime be described with one of the degraded concepts of democracy.<sup>2</sup> At the time, many maintained that the regime can be considered democratic so long as it guarantees free elections. However, defective democracies are dynamically changing and ever hybridizing political systems, in which there are no fixed rules or any guarantees for the maintenance of the remnants of democratic political institutions.<sup>3</sup> Since the unilateral modifications of the constitution in 2013 confronting the Constitutional Court’s former judgments and interpretation competence, or the 2014 unfair elections at the latest,<sup>4</sup> the Hungarian political system belongs in the category of non-democratic regimes. In hybrid regimes political competition may be real, but the broader institutional structure favours governmental forces and drastically decreases the chances of the opposition, and thus a democratic change of government.<sup>5</sup> Since 2014 the occasional empirical distinctions between the concepts of “illiberal” and “antidemocratic” regimes have not only decreased but completely evaporated.<sup>6</sup>

Due to its hitherto overlooked characteristics, the Orbán regime belongs to a specific class of hybrid regimes. Although currently being made up only by a single item, Hungary, bearing in mind the ongoing democratic backsliding in East-Central-Europe in general, and Poland in particular, the separation of hybrid regimes evolving within the European Union (EU) as a distinct subtype of hybrid regimes is justifiable both from a theoretical and practical perspective.

Consequently, the unique properties of the Hungarian hybrid regime follow from the fact that it is part of the EU, which is made up of democratic member states. Since member states transfer parts of their sovereignty to the EU, the EU is both the loci of “domestic” and “foreign” policy-making; that is, as regime theory suggests, it is both the context in which the Hungarian government operates and an integral part of the Hungarian regime itself. Consequently, the EU functions as a “regime sustaining”, a “regime constraining”, and, last but not least, as a “regime legitimizing” factor for Hungary, which compels us to describe the current political system of Hungary as an “externally constrained hybrid regime”.

## Hybrid regime considerations

Contrary to expectations, the democratic revolutions of 1989–91 did not automatically replace dictatorships with liberal democracies. Even though the number of liberal democracies has increased, more noteworthy is the significant widening of the grey zone between democracies and dictatorships<sup>7</sup> and the rise of new forms of non-democracies.<sup>8</sup> In other words, the number of mixed regimes or, as they are better known, hybrid regimes, has considerably increased.<sup>9</sup> While hybrid regimes are far from being identical, the greatest challenge in their categorization has come from the fact that they belong to a transitory category as they are neither democratic nor authoritarian regimes.<sup>10</sup> According to Andreas Schedler, it is a serious problem that the expressions

used to describe these transitory categories dampen our sense of danger when it comes to the strengthening of authoritarian tendencies.<sup>11</sup> Nonetheless, it is empirically obvious that, besides those countries that make up the pure categories of democracy and dictatorship, there are countries that belong to the intermediate group of mixed regimes.

The main theoretical question about classifying hybrid regimes is whether these systems form a third category of regimes between democracies and dictatorships, or whether they should be considered as “diminished subtypes” of those two.<sup>12</sup> Given that, as the Hungarian example demonstrates, stable consolidated liberal democracies can fall victim to hybridization, we can no longer consider hybridization as a one-way process or as the defect of democratic transition. This justifies classifying hybrid regimes into an independent category. Definitional features compel us to consider hybrid regimes as an independent regime type that stand between democratic and authoritarian regimes. These features include the presence of one-sided and unfair political competition as well as the formal existence of a liberal constitution but with serious deficiencies in its actual functioning.

Juan Linz argued<sup>13</sup> that it is counterproductive to use adjective democracies—that is democratic subtypes where adjectives are used to mark their differences from liberal democracies—to replace the category of hybrid regimes, because it diminishes the differences between democratic and hybrid regimes, and thus obscures the fact that hybrid regimes do not live up to the criteria of liberal democracies. We believe that this argument should not only be valid for democracies and mixed regimes, but also for dictatorships and hybrid regimes. Modifying the label of authoritarian regimes with adjectives such as “electoral” or “competitive” is useful only to a limited degree when it comes to identifying hybrid regimes. Hence, those should be differentiated from democracies as well as autocracies. Due to the wide variation among hybrid regimes, we readily acknowledge that some of them are closer to democracies while others have more in common with authoritarian regimes. Therefore, we find the differentiation *within* hybrid regimes justified. Treating hybrid regimes as a separate category helps avoid the debate about whether or not democracies with adjectives should be considered as democracies and authoritarian regimes with adjectives as dictatorships.

### **The unique model of the Hungarian hybrid regime and the EU**

Although the Hungarian developments after 2010 were frequently compared to authoritarian tendencies in Russia or Turkey, the rise of the Hungarian hybrid regime, often referred to as the “System of National Cooperation” by Orbán, to distinguish his own period from the previous two decades of liberal democracy, is not the result of copying one or more existing models. As a hybrid regime, the Hungarian political system has several unique features that compel us to regard the developments in Hungary as the formation of a rather new model.<sup>14</sup> The specific characteristics of this political system call for the partial reevaluation of extant concepts of hybrid regimes.

There are two reasons why the Hungarian case outlines a new subcategory of hybrid regimes. On the one hand, since 1989, Hungary has been the first—and so far only—state in Europe that had a consolidated Western-type liberal democracy,<sup>15</sup> but which has abandoned this democratic regime by transforming its political system into a hybrid regime. The hybrid regimes that have been hitherto analysed in the literature emerged due to either the partial democratization of authoritarian regimes or the

stagnation of the transition process. Therefore, hybridization used to be seen as a unidirectional process. Its starting point and direction remained unquestioned even when the various concepts of hybrid regimes appeared as partial refutations of the theories of transitions, pointing out how the process of democratization partially or fully stagnated and led to hybridization in some cases.<sup>16</sup> Hungary is an example of how the political system of a stable liberal democracy may erode, which demonstrates that hybridization is a two-way process. The two-way nature of the process needs to be reflected in the conceptual framework of hybrid regimes.

On the other hand, Hungary is the first, and currently only, completely developed hybrid regime within the EU.<sup>17</sup> This fact deserves attention not simply because the EU sees itself as a multi-level polity made up of liberal democracies bound together by mutual respect for the EU's value system as laid out in Article 2 of the Treaty on European Union (TEU), which is formally incompatible with the presence of a member state with a hybrid political regime, but also because the EU puts great emphasis on "political conditionality" in the accession process, stipulating that only stable liberal democracies may gain membership in 2004 and afterwards.<sup>18</sup> Regarding regime typology, Hungary's membership of the EU is crucial as the EU fulfils a systemic role in the functioning of this hybrid Hungarian regime.

Unlike these two unique features of hybridization in Hungary, "illiberal populism" is not unheard of in other member states of the EU.<sup>19</sup> Through populist discourse and the tools of mobilization, "illiberal populism" attacks the determinant features—that is, liberal constitutionalism, the assumed limitations on the will of the democratic majority—of the liberal consensus that has determined political reality after the regime change.<sup>20</sup> This, together with the possession of political power, resources, and support, eliminates the liberal and republican dimensions of democracy.<sup>21</sup> Pappas makes the same argument<sup>22</sup> when he calls the Greek and Hungarian political systems "populist democracies". On the other hand, others note the combined influence of "paternalist populism" and "illiberal elitism"<sup>23</sup> or evaluate the regime as personalist, racist, and ethnicist rather than populist.<sup>24</sup> We consider illiberal, anti-pluralist, homogenizing populism as an introductory feature of democratic derailment and hybridization; that is, a necessary but not sufficient condition. The sufficient condition is the kind of political power of illiberal actors that allows for the elimination of the institutional guarantees of liberal constitutionalism through a politically unilateral process of constitutional engineering, which has only materialized in Hungary so far, but is undoubtedly under construction in several other East-Central-European countries as well.

### **Brief comparison to Poland**

Beside Hungary, Poland has also enjoyed significant academic and international political attention since the country departed on the illiberal development path in the autumn of 2015.<sup>25</sup> Obviously, several factors support the claim that the political developments challenging liberal democratic institutions in these two countries are rather equal. Such are commonalities in the political playbook, such as the neutralization of the Constitutional Courts in both countries, the attempts to establish a certain degree of executive control over the judiciary, the subordination of the public media to the governments for propaganda purposes,<sup>26</sup> the unhidden cooperation between the two regimes publicly proclaimed in Jaroslav Kaczynski's political plan "Budapest on the Vistula",<sup>27</sup> or the

fact that the Polish and Hungarian governments strategically safeguard each other from potential European sanctions.<sup>28</sup>

Nevertheless, in spite of all above mentioned commonalities on the surface, until now<sup>29</sup> the political systems of Poland and Hungary have been showing rather different characteristics. First, the democratic backsliding processes of the two countries are obviously at different stages. As Pech and Scheppele rightly pointed out, the dismantling of democracy and rule of law in Poland is still in progress, while in Hungary the hybrid regime is already entrenched and stabilized.<sup>30</sup> In short, Poland is still a backsliding democracy, while Hungary represents a fully developed hybrid regime.

Second, as a result of the unequal development stages, the level of constitutional capture also differs in the two countries significantly. Although the existence of a certain kind of constitutional capture in Poland is undeniable,<sup>31</sup> the examples of the Polish Constitutional Tribunal and the Supreme Court clearly show that constitutional capture in Poland is dominantly one-dimensional. In the most emblematic case, the government led by the “Law and Justice” (PiS) party amended the national legislative framework, and unconstitutionally intervened in the functioning of the Constitutional Tribunal as well as in the election of its members to be able to fill the tribunal with loyal acolytes and occupy it.<sup>32</sup> Similar developments have taken place in the Polish public media,<sup>33</sup> and, following the legislation package of July 2017, it is rather obvious that the government’s intentions with regard to the ordinary judiciary are no different either.<sup>34</sup>

Importantly, in Poland, this “human resource” dimension of constitutional capture based on court-packing and “office-grabbing” enables political control over the key institutions of constitutional checks and balances. Compared to Hungary, where potential future democratic governments are going to face the tremendous challenge posed by “unconstitutional” institutions anchored in the text of the Fundamental Law and in legal norms requiring two-thirds constitutional majority, the *legislative* dimension of constitutional capture in Poland is rather weak. This results in the fact that the national legislative framework can be readjusted in a much simpler way to the previously existing democratic standards than in Hungary, where such a readjustment would require a constitutional supermajority by any future democratic government. Furthermore, from an ontological perspective, it might appear that the use of the concept of “constitutional capture” in the case of Poland, so long rather questionable as the electoral self-adjustment mechanism of Polish democracy, definitely fails during the ongoing parliamentary elections in 2019, or—as in the case of Hungary—the uneven political playing field significantly reduces the chances of such a democratic self-adjustment.

Even if, due to the lack of constitutional supermajority, the Polish government’s actions have seemed to be more aggressive and resulted in objective breaches of the country’s constitution, while the Hungarian regime used to act in a way procedurally consistent with the letter of the constitution, the outcome of the Polish approach and the systemic changes caused by it turned out to be rather moderate when compared to the Hungarian one. Furthermore, the differences in the way of acting, as obvious as they might have seemed in the early days, are becoming more and more balanced as the need for norm breaking is definitely lower since the Polish government effectively took over control of the Constitutional Tribunal in December 2016.<sup>35</sup> As Batory convincingly argues, “creative compliance” evolved to be a commonly shared phenomenon among EU member states breaking European norms.<sup>36</sup> As creative compliance, the often quoted “peacock dance” of Orbán, loses its uniqueness and the differences

between the two regimes' way of acting slowly evade, the opportunity rises to switch the focus of analysis from the surface determined by political actions to the deeper structures of the political systems.

Based on these arguments, the common substance of "illiberal populism"<sup>37</sup> behind the democratic backsliding both in Poland and Hungary must be undoubtedly recognized. However, from the perspective of the political systems' characteristics, the two countries represent different development stages and cannot be treated together or as equals. Therefore, in spite of all substantial commonalities, Hungary qualifies, even in a comparison to Poland, as a unique case of democratic backsliding, still being the only one former consolidated liberal democracy in the EU that has reached the level of a non-democratic system as a hybrid regime, thus justifying the special attention paid to the Hungarian model.

### **The systemic functions of the EU in the working of the Hungarian hybrid regime**

Theories that describe the institutional structure and functioning of the EU suggest that it should not be considered as an environment in which its member states' political systems operate but rather as *a part* of those systems. These include the notions of multi-level governance,<sup>38</sup> multi-level polity,<sup>39</sup> and multi-level constitutional system.<sup>40</sup> Thus, the EU does not only exert its influence through providing a framework, but also fulfils systemic functions in the political systems of its member states.

Most scholars who have analysed the post-2010 relationship of Hungary and the EU agree that the EU was not capable of standing up effectively to the constitutional engineering process which has led Hungary in an authoritarian direction.<sup>41</sup> The Orbán regime created unequal conditions for political competition, as well as a political and constitutional system that favours the governing forces—that is, the elements that satisfy the definitional requirements of hybrid regimes.

The EU fulfils three different functions in Hungary's hybrid regime, serving as: (1) a systemic constraint; (2) a supporter; and (3) a legitimizer of the regime. Nevertheless, these functions are not specific to the Hungarian case. The EU would fulfil the same functions in any hybrid regime or defective democracy that is a net beneficiary of the EU's cohesion policy.

Regarding its function as a systemic constraint, the EU played a Janus-faced role. On the one hand, as expressed in its own discourse of legitimization, the European Commission lacked the political and legal tools to confront effectively the Hungarian government over the dismantling of liberal democracy and liberal constitutionalism except for initiating infringement proceedings against the country.<sup>42</sup> On the other hand, the joint efforts of the Council of Europe and the EU, especially through the judgments of the European Court of Human Rights (ECtHR), could secure respect for personal freedoms at a relatively high level.

The reason behind these unique developments is that, whereas within the EU there is no institutional or procedural precedent<sup>43</sup> to proceed against a member state in violation of the EU values laid down in Article 2 of the TEU, the protection of human rights and basic civil liberties have long-standing traditions, stretching over several decades, both at the ECtHR and the Court of Justice of the European Union (CJEU). Furthermore, there is a high correlation between the argumentation of these two courts due to the fact that the case law of the ECtHR also serves as precedents in the jurisprudence



of the CJEU. Furthermore, political considerations are much less influential in judicial proceedings that concern human rights and civil liberties than in the protection of democracy and liberal constitutionalism.

Accordingly, only when its actions have had a solid legal basis, either because they were rooted in the legal clauses of EU treaties or in the case law of the ECtHR—for example when the Hungarian government considered reinstating the death penalty<sup>44</sup>—could the EU successfully confront the policies of the Hungarian government. Even the neutralized Hungarian Constitutional Court, which was packed with justices loyal to the governing Fidesz party, accepts and applies the jurisprudence of the ECtHR, and therefore has declared several key clauses of the much debated Law on Religion<sup>45</sup> in breach of the Fundamental Law.<sup>46</sup> As a member state of the EU, Hungary cannot afford to disregard the decisions of the ECtHR frequently and systematically because that would unequivocally and undeniably mean that Hungary violates its obligation under EU treaties, to protect fundamental human rights and civil liberties. In such cases the violation of norms could be determined and then legally defined, and thus would make Hungary subject to firmer actions by European institutions than in case of the less clear-cut violations of the principles of democracy and rule of law.

Even though the EU could not stop the deconstruction of liberal democracy, it did help to slow down and prevent the undermining of liberal constitutionalism and the concomitant curbing of human rights and liberties in Hungary. Consequently, it is fair to say that membership in the EU matters: the EU has structurally constrained the hybrid regime. Ultimately, the human rights and liberties of Hungarian citizens are not guaranteed by such constitutional institutions as the Constitutional Court or the Ombudsperson, because these were neutralized during the illiberal constitutional engineering, but by the EU and the ECtHR of the Council of Europe.

It is indicative of the decline of the rule of law in Hungary that the number of applications by Hungarian citizens to the ECtHR increased by a dramatic 1,177 per cent, from 436 to 5,569 between 2010 and 2016, while Hungary's share of total applications to the court rose from 0.71 per cent to 10.41 per cent in the same period. Hungary's share of ECtHR pending cases totalled up to 11.2 per cent in 2016, while the country's less than 10 million citizens represents approximately 1.25 per cent of the population being under ECtHR jurisdiction. Hence Hungary currently has the highest number of ECtHR pending cases on a per capita basis and the third highest number of pending cases in total.<sup>47</sup> These figures clearly support the claim that the ECtHR plays an increasing, systemic role in the external protection of Hungarian citizens' fundamental rights, while the number of Hungarian citizens seeking international legal remedy against the judgments of the national judiciary has skyrocketed over the past few years.

On the one hand, the Hungarian Constitutional Court has been reflecting more on the jurisdiction of the ECtHR and CJEU on the field of fundamental rights since 2010 than it has done before. On the other hand, the application of the ECtHR and CJEU case law is also disputed more intensively within the Constitutional Court.<sup>48</sup> The reason behind this seemingly contradictory development is that, while the guiding light character of ECtHR/CJEU case law was never put into question within the Hungarian Constitutional Court, there have been ongoing changes in this regard since 2011; hence conscious reflections in the judgments of the Constitutional Court are unavoidable.<sup>49</sup> Although the Constitutional Court ruled in its judgment<sup>50</sup> that the level of protection provided by international legal mechanisms can be considered as minimum standards of fundamental rights and freedoms, in several further politically sensitive judgments,



the court did not follow this interpretation and did not maintain these minimum standards.<sup>51</sup> In the absence of effective domestic forces, the EU and the ECtHR have become the most important systemic level obstacles to the curbing of basic human rights and the move towards a more authoritarian regime in Hungary. In general, Hungarian political leadership is externally constrained by European law and institutions.

It is not easy to demonstrate through examples how the constraining function of the EU works in practice because it is either a structural phenomenon, as in the case of ECtHR jurisdiction, or the EU's prohibitive and coercive actions are not always done publicly. Open confrontation between the European Commission and the Hungarian government emerged only in a limited number of, often controversial, cases. One of these concerns the Hungarian government's interest in reinstating the death penalty in 2015. The unusually decisive reaction of the EU forced the government to abandon the idea within two days.<sup>52</sup> On the other hand, it must be noted that Orbán's initiative was primarily aimed at influencing the political agenda and discourse rather than originating from an honest intention to reinstate capital punishment. Given the constraining mechanisms of the EU, Orbán could anticipate the EU's firm resistance and that he would provoke effective EU intervention over an issue that Brussels was immovable about. Indeed, he most likely hoped that, as a result, the EU will be more permissive on other issues.

In other cases, the EU was determined but slow in getting its way. This gave the Orbán government enough time to present both the EU and the concerned parties in Hungary with a *fait accompli* over such issues as the independence of the Data Protection Office or the premature pensioning of justices. These issues concern directly the question of constitutional checks and balances rather than fundamental rights, yet their impact over fundamental rights is undeniable. In both cases the CJEU, located in Luxembourg, determined Hungary's infringement of European law, but the court's decision in each case was limited to compensating the plaintiffs' damages without a restitution order.<sup>53</sup>

In the case of the government's attack on the Central European University (CEU),<sup>54</sup> the political and discursive reactions of European institutions and actors were more determined than in any other previous case, excluding that of capital punishment. The European Commission proposed the introduction of a new type of "broad political dialogue" with Hungary due to serious concerns about the recent antidemocratic turn.<sup>55</sup> Furthermore, the European Commission initiated its infringement procedure with regard to the "lex CEU",<sup>56</sup> while the European Peoples Party (EPP), the European party alliance of Fidesz, put Orbán under previously never experienced pressure to comply with the Commission's position.<sup>57</sup> Last, but not least, EPP's evading support for the Hungarian regime was also clearly mirrored by the European Parliament Resolution threatening Hungary with the introduction of the famous Article 7 procedure allowing the sanctioning of norm-breaking member states, which also enjoyed considerable support among MEPs of the EPP.<sup>58</sup> Whether the political conflict around the "lex CEU" and the Hungarian Foreign Agent Act passed in June 2017, which stigmatizes NGOs receiving financial resources from abroad, turns out to be clear-cut evidence supporting the regime's "externally constrained" character, or will result in an overt authoritarian breakthrough, cannot be actually foreseen. However, bearing in mind the determined character of EU reactions, they fit the frame of the presented theory of external constraint under the current state of affairs.

The working of the Hungarian political system, and the general pattern of Hungarian–EU relations, provide more convincing evidence for the EU’s constraining function than the cases cited above.<sup>59</sup> In individual cases it is difficult to determine beyond doubt the original intentions of the Hungarian government and the exact influence that Brussels’ opposition had on the final outcome. On the other hand, general tendency that while as early as 2013 the Orbán government made significant advances in the dismantling of the constitutional system of checks and balances and the creation the lopsided arena of political competition, the curbing of fundamental rights has been done gradually<sup>60</sup> with more caution and repeated references to European standards.

However, the EU not only constrains the expansion of the hybrid regime in Hungary but also contributes to its survival and, paradoxically, plays a regime supporting function. The ruling elite’s appropriation of public resources is a frequent element of the definition of hybrid regimes,<sup>61</sup> and just as much an organic part of everyday Hungarian political reality.<sup>62</sup> Between 2014 and 2020 Hungary is projected to receive, on average, 3.89 per cent of its gross national income from the EU cohesion fund.<sup>63</sup> Nearly all the public resources committed to national development policy come from these EU resources. Considering that the reports of both the European Commission and Transparency International found that in about 50 per cent of public procurement procedures there is only one tender offer and 70 per cent of these procedures are riddled with corruption, which often results in a 25 per cent spike in pricing and in an additional corruption premium,<sup>64</sup> it is easy to understand the regime sustaining function of the EU’s developmental funds in the operation of the machine of corruption in Hungary. If we also take into account the centralized nature and politically organized “reverse state capture” in Hungary one can see how corruption is supporting the regime. In this process, political and economic “entrepreneurs”, often called “political family”, occupy the state from inside, and they operate their own network of corruption.<sup>65</sup>

The resources of the European cohesion policy add to the abundance of public resources that can be appropriated by the national ruling elite for its own purposes<sup>66</sup> and thus contribute to the uneven political playing field.<sup>67</sup> Additionally, through increasing market demand and the potential multiplier effects of investment projects, the EU cohesion fund has contributed to the stability and modest growth of the economy, and thus the political stability of the regime. Consequently, the Hungarian government is interested in preserving the country’s membership of the EU, at least during the financial cycle coming to an end in 2020. It cannot (yet) seriously entertain the idea of leaving the EU, despite the increasing anti-EU flavour of its illiberal and Eurosceptic rhetoric. For the time being, the decision-makers of the Orbán regime are willing to accept the regime constraining function of the EU in order to be able to enjoy its regime supporting role.

In addition to the two above functions, the EU plays a less significant role as legitimizer of the regime. As it was suggested in the conceptual debates about the nature of the Hungarian regime, theoretically Hungary as a member of the EU can only be a democracy.<sup>68</sup> While we pointed out above that this reasoning ignores the literature that focuses on the potential sanctioning of the developments taking place in Hungary,<sup>69</sup> it does reveal the flaw in the EU’s approach. Article 7 of the TEU would have obligated the EU to initiate proceedings against Hungary if it found Hungary in serious violation of the values laid down in Article 2 of the treaty. Why this did not happen is the subject of several other studies.<sup>70</sup> Regardless of the flaws in Article 7, the fact remains that lack of sanctions and open criticism of the political developments

in Hungary indirectly legitimize the Orbán regime, and strengthen the self-legitimizing discourse of its leaders who argue for the illiberal but democratic nature of their regime.

Based on the above explained fundamental patterns of interaction between the EU and the Orbán regime, one can assume that the Hungarian hybrid regime could openly move toward authoritarianism in two cases. First, if the EU drastically alters the generous nature of the cohesion funds, or if the EU denies or limits access to cohesion transfers of member states that violate EU values. In either of these instances, the lack of financial motivation could prompt Hungary—and any other future hybrid regime within the EU—to lose interest in remaining in the EU, and such regimes could realistically be expected to leave so as to shake off the EU's constraining function. Second, if, as result of its political and economic crises, the EU ceases to work as a political community of liberal democracies based on mutual values and interests, and thus is no longer able to fulfil its above-mentioned constraining function, then we can expect Hungary to move further towards authoritarianism. Considering current developments in both European and Hungarian politics one cannot fully rule out the possibility of either of these two scenarios in the future.

Finally, how does our “externally constrained hybrid regime” approach relate to the international dimension of democratization? Levitsky and Way identify the strength of Western influence (leverage) and the density of social contacts to Western societies (linkage) as the two key international factors of internal democratization or hybridization.<sup>71</sup> The validity of their argument can hardly be criticized in a global context. However, its explanatory power is rather limited with regard to the recent Hungarian and Polish democratic backsliding processes. The reason behind this weakness can be traced back to the fact that the authors partially misidentify the role and functions of the EU within the linkage and leverage dimensions. According to Levitsky and Way, it could be deemed impossible that an EU member state linked with the strongest possible economic and social ties to the centre of Western democracy, and being rather dependent on this centre in economic and financial terms,<sup>72</sup> slides back from a consolidated liberal democracy to a hybrid regime. Especially because the authors attribute a further positive characteristic to the EU beside the evident capability of influencing and the high density of connections between the EU and its member states. According to them, only in the case of the EU could a consistent democratization practice be identified, which is not exclusively narrowed down on the electoral dimension of democracy, but embraces the protection of fundamental freedoms and the condition of a level political playing field as well.<sup>73</sup>

In contrast to that statement, the EU rather lacks any detailed benchmarks with regard to what constitutes a level political playing field, or the quality of checks and balances in its member states. Although a functioning system of checks and balances was considered an important part of the conditions of “external political governance” prescribed for the candidate countries, the EU does not have extensive competence in the field of “internal political governance”,<sup>74</sup> which could successfully transfer this condition to the member states either by European law or in any other form. Opposing the thesis stating that high linkage increases the chance of external intervention to safeguard liberal democracy,<sup>75</sup> in the Hungarian case one could experience the opposite.

These contradictions can be understood better if one considers the linkage/leverage theory as a general mezzo-level theory, while the model of the “externally constrained hybrid regime” can be used as a focused, micro-level approach at the level of the EU. It does not question the general validity of the mezzo-level explanation, but in the unique

environment of the European multi-level polity the insights won by the micro-level model overwrite the previous one.

## Conclusions

The unique nature of the Hungarian regime that makes it a new hybrid regime model begs the question whether this regime's characteristics allow for contributions to the comparative theories of political regimes. We claim it is necessary to treat hybrid regimes that are part of a multi-level polity as a distinct subtype. Although currently this subtype only applies to EU–Hungarian relations, the EU's role is crucial in understanding the nature of a hybrid regime, or even democratic backsliding, in a member state. Future research should explore further the EU's role in the transformation of the political system of Hungary and other currently democratic states, such as Poland, which have stepped onto the illiberal path.

Considering the main questions of the contemporary debate about hybrid regimes, we argue that hybrid regimes should be seen as a distinct category of regimes rather than subtypes of either democracies or dictatorships. While in democracies a “level playing field” is guaranteed for political competition, in hybrid regimes this crucial component is missing; thus competition is systemically unfair and occurs on an “uneven political playing field”.<sup>76</sup> It is evident today that hybridization can no longer be considered a one-way process or a distortion of the democratic transformation of an authoritarian state. Stable, consolidated democracies may also fall victim to the process of hybridization. Based on such objective definitional traits as the existence but unfair and unjust nature of political competition or the system-level absence of liberal constitutionalism, we conclude that hybrid regimes constitute a third group of regimes between democracy and dictatorship.

Juan Linz's argument that it is counterproductive to use adjective democracies to replace the category of hybrid regimes because it diminishes the differences between democratic and hybrid regimes, and thus obscures the fact that hybrid regimes do not live up to the criteria of liberal democracies (i.e. “the” democracies) also needs to be extended.<sup>77</sup> Hybrid regimes need to be differentiated not only from democracies but also from authoritarian dictatorships. Hence, augmenting authoritarianism with adjectives such as “competitive” or “electoral” may be necessary, but is not sufficient for a general description of hybrid regimes. Given the variety among hybrid regimes, it is necessary to reflect on several new dimensions and, possibly, create additional subtypes within hybrid systems. This way we can avoid treating democracies with negative adjectives (“illiberal”, “delegative” etc.) as democracies and authoritarian regimes with positive adjectives as dictatorships. Our approach could thus limit the erosion of the concept of democracy particularly in the field of theorizing and within academia but also, to a limited extent, in the public discourse as well.

In summary we have argued in this study that Hungary's “System of National Cooperation” belongs to the group of hybrid regimes, and there is a gap in the literature of regime typologies that needs to be filled by analysing and understanding the functions of the EU in the development of the political systems of its member states. Taking these arguments into account we have introduced a new concept of “externally constrained hybrid regime” to describe the Orbán regime and to understand the nature of constant interplay between the community of democratic states and their non-democratic member.

## Notes

1. The regime that exists in Hungary since 2010 is named after Prime Minister Viktor Orbán.
2. Zakaria, “Illiberal Democracy”; Merkel et al., *Defekte Demokratien. Bd. 1*; Urbinati, *Democracy Disfigured*.
3. Merkel, “Embedded and Defective Democracies”; Bogaards, “Where to Draw the Line?”
4. As observers of the 2014 Hungarian elections described: “The main governing party enjoyed an undue advantage because of restrictive campaign regulations, biased media coverage and campaign activities that blurred the separation between political party and the State.” Hungary, Parliamentary Elections, 6 April 2014. OSCE/ODIHR Limited Elections Observation Mission, Final Report. <http://www.osce.org/odihr/elections/hungary/121098?download=true> 1.
5. Levitsky and Way, *Competitive Authoritarianism*.
6. Müller, “The Problem with ‘Illiberal Democracy’.”
7. Carothers, “The End of the Transition Paradigm.”
8. Brooker, *Non-Democratic Regimes*.
9. Diamond, “Thinking about Hybrid Regimes”; Levitsky and Way, “Elections without Democracy”; Levitsky and Way, *Competitive Authoritarianism*; Wigell, “Mapping ‘Hybrid Regimes’.”
10. Bogaards, “How to Classify Hybrid Regimes?”
11. Schedler, *Electoral Authoritarianism*, 4.
12. Cassani, *Hybrid What?*
13. Linz, *Totalitarian and Authoritarian Regimes*.
14. Bozóki and Hegedűs, “Az Orbán-rezsim értelmezései.”
15. As early as 1999, Kaldor & Vejvoda found that Hungary met the criteria of western-type liberal democracy both formally and substantially. Cf. Kaldor and Vejvoda, “Democratization in Central and East European Countries: An Overview.” Similarly, Freedom House considered Hungary as consolidated democracy up until 2016. <https://freedomhouse.org/report/freedom-world/2017/hungary>.
16. Levitsky and Way, “Elections without Democracy,” 52.
17. At the time of completing our article (December 2017), we consider Poland as democracy under stress.
18. Sedelmeier, “The EU and Democratization in CSE.”
19. The political changes taking place in Poland after October 2015, the constitutional crisis in Romania in 2012, and the politics of first Fico-cabinet in Slovakia between 2006 and 2010 are good examples.
20. Smilov and Krastev, “The Rise of Populism in Eastern Europe.”
21. Miroiu, “What is Left from Democracy?”
22. Pappas, “Populist Democracies.”
23. Enyedi, “Paternalist Populism and Illiberal Elitism.”
24. Tamás, “The Mystery of ‘Populism’.”
25. See among others: Bogdandy et al., “Protecting European Constitutional Values”; Kelemen, “The Assault on Poland’s Judiciary”; Konciewicz, “Farewell to the Separation of Powers”; Konciewicz, “Living under Unconstitutional Capture”; Pech, “Systemic Threat to the Rule of Law in Poland”; Pech and Scheppele, “The EU and Poland”; Pech and Scheppele, “Poland and the European Commission, Part I-III.”
26. See above.
27. “The Duda in Poland,” *Politico.eu*. May 24, 2015. <http://www.politico.eu/article/upset-in-poland-2/>.
28. “Orbán pledges to support Poland against the EU,” *Politico.eu*. July 22, 2017. <http://www.politico.eu/article/hungary-viktor-orban-pledges-to-support-poland-against-eu-inquisition/>.
29. See endnote 17.
30. Pech and Scheppele, “The EU and Poland.”
31. Konciewicz, “Living under Unconstitutional Capture”; Pech and Scheppele, “Poland and the European Commission, Part II.”
32. Kelemen, “The Assault on Poland’s Judiciary.”
33. “Orbán’s media playbook, now coming to Poland,” *Politico.eu*. January 8, 2016. <http://www.politico.eu/article/orban-media-playbook-coming-to-poland-media-law-human-rights->

- european-values/; “Polish media veers back to pre-1989,” *Politico.eu*. July 11, 2016. <http://www.politico.eu/article/polish-tv-viewers-turn-off-tune-out-drop-out-poland-kaczynski/>.
34. Kelemen, “The Assault on Poland’s Judiciary.”
  35. Pech and Scheppele, “Poland and the European Commission, Part II”; Steinbeis, “Is the Commission’s Rule of Law Fight against Poland Already Lost?”
  36. Batory, “Creative Compliance and the Rule of Law.”
  37. Smilov and Krastev, “The Rise of Populism in Eastern Europe.”
  38. Bache and Flinders, *Multi-level Governance*; Piattoni, “Multi-level Governance.”
  39. Kassim and Le Galés, “Exploring Governance in a Multi-level Polity.”
  40. Pernice, “Multilevel Constitutionalism.”
  41. Halmai, “Alkotmányosság és demokrácia”; Kelemen, “Europe’s Hungary Problem”; Kelemen, “Europe’s Other Democratic Deficit”; Kochenov, “Europe’s Crisis of Values”; Müller, “Protecting Democracy and the Rule of Law”; Scheppele, “The Case of Systemic Infringement Actions.”
  42. Scheppele, “Making Infringement Procedures More Effective.”
  43. Although the experiences of the Austrian case in 2000 still have a deep influence on the contemporary interpretation of Art. 2 TEU non-compliance and its sanctioning, as a matter of fact it neither fulfils the criteria of a serious breach of the EU fundamental values, nor qualifies it for being an “EU precedent”, as that time the concerted action of the fourteen Member States did not include EU institutions.
  44. “EU Chief Warns Hungary Over Return of Death Penalty Comments.”
  45. Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities.
  46. European Court of Human Rights, *Case of Hungarian Christian Mennonite Church and Others v. Hungary*, <http://hudoc.echr.coe.int/eng?i=001-142196>, and 3144/2015 (VII. 24.) AB Határozat (Constitutional Court decision) <http://public.mkab.hu/dev/dontesek.nsf/0/A4DBC7826F85A134C1257B34002128EB?OpenDocument>.
  47. *Judging by Results*.
  48. Gárdos-Orosz, “Alkotmánybíróság 2010–2015”; Polgári, “Alkotmánybíróság.”
  49. Gárdos-Orosz, “Alkotmánybíróság 2010–2015.”
  50. 61/2011 (VII. 13.) AB határozat, <http://www.kozlonyok.hu/nkonline/MKPdf/hiteles/mk11080.pdf>.
  51. Polgári, “Alkotmánybíróság,” 8–9.
  52. According to the famous statement of Jean-Claude Juncker, President of the European Commission, “Mr. Orbán must immediately make clear that this is not his intention. If it would be his intention, it would be a fight.” “EU chief warns Hungary over return of death penalty comments.” *The Guardian*, May 30, 2015.
  53. “By prematurely bringing to an end the term served by its Data Protection Supervisor, Hungary has infringed EU law”, *Court of Justice of the European Union, Press Release No. 53/14*. 2014. April 8. To the analysis of the cases see: Scheppele, “Making Infringement Procedures More Effective.”
  54. The Central European University, a Hungarian-American private, graduate school of Budapest, was established by George Soros, a financier and philanthropist, in 1991. In the Spring of 2017 the Orbán government passed a bill to shut down the university in the name of “equality” with state universities. This move has been globally understood as an attack on academic freedom and the freedom of expression, and thus provoked wide-scale anti-regime protests in Hungary. For details, see Müller, “Hungary: The War on Education.”
  55. Initiated on April 26, 2017. [http://europa.eu/rapid/press-release\\_SPEECH-17-966\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-966_en.htm).
  56. Initiated on April 29, 2017. [http://europa.eu/rapid/press-release\\_MEX-17-1116\\_en.htm](http://europa.eu/rapid/press-release_MEX-17-1116_en.htm).
  57. <http://www.epp.eu/press-releases/prime-minister-orban-to-comply-with-eu-laws-and-epp-values-following-meeting-with-epp-presidency/>.
  58. European Parliament resolution of 17 May 2017 on the situation in Hungary (2017/2656(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2017-0216%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>.
  59. Hungary’s EU membership might played a role in that the police, except some sporadic cases have not used violence against protesters, unlike in hybrid regimes outside the EU (i.e. Macedonia and Turkey). About anti-regime protests see Krasztev and Van Til, *The Hungarian Patient*.



*About the Rise of Politically Motivated Violence in Hungary See: Freedom House (2017 & 2018), Nations in Transit, Hungary Report.*

60. See, for example, the issue of rights to information.
61. Levitsky and Way, *Competitive Authoritarianism*.
62. Magyar, *Post-Communist Mafia State*.
63. Mrak, Richter, and Szemlér, *Cohesion Policy as a Function of the EU Budget*.
64. “EU Anti-Corruption Report – Hungary,” *European Commission*, February 3, 2014, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_hungary\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf); “Public Procurement Corruption,” *Transparency International Hungary*, February 12, 2015, [http://transparency.hu/uploads/docs/infografika\\_angol.pdf](http://transparency.hu/uploads/docs/infografika_angol.pdf).
65. Freedom House (2016), *Nations in Transit, Hungary Report*, <https://freedomhouse.org/report/nations-transit/2016/hungary>; Freedom House (2017), *Nations in Transit, Hungary Report*, <https://freedomhouse.org/report/nations-transit/2017/hungary>; Kornai, “Hungary’s U-Turn”; Magyar and Vásárhelyi, *Twenty-Five Sides of a Post-Communist Mafia State*.
66. “Az uniós források korrupciós kockázata Magyarországon” [EU Cohesion Funds related Corruption Risks in Hungary], *Transparency International*, 2015. [http://transparency.hu/uploads/docs/unios\\_forrasok\\_WEB\\_jav.pdf](http://transparency.hu/uploads/docs/unios_forrasok_WEB_jav.pdf).
67. The contribution of resources that the government captures from the European Cohesion Fund to the uneven political playing field is well-illustrated by the buying up of the commercial TV channel, TV2. The state-owned Eximbank used public funds to help Andrew Vajna, a government commissioner and member of the inner circle of Prime Minister Viktor Orbán, acquire Hungary’s second largest commercial television channel.
68. Mándi, “Politikai gondolkodás.”
69. Blokker, “Systemic infringement action”; Closa, Kochenov, and Weiler, “Reinforcing Rule of Law Oversight”; Kochenov, “Europe’s Crisis of Values”; Kochenov, “On Policing Article 2 TEU Compliance”; Müller, “Protecting Democracy and the Rule of Law”; Scheppele, “The Case of Systemic Infringement Actions.”
70. For analyses of the proceedings based on article 7 of the Treaty on the EU see Bugarcic, “Protecting Democracy and the Rule of Law in the European Union”; Closa, Kochenov, and Weiler, “Reinforcing Rule of Law Oversight”; Hegedűs, “Protection of the EU’s Fundamental Values”; Sadurski, “Adding a Bite to Bark”. For the political background behind the lack of sanctions see: Kelemen, “Europe’s Other Democratic Deficit.”
71. Levitsky and Way, “Linkage versus Leverage”. Others offered similar evaluations, like Vachudova, *Europe Undivided* or Berg-Schlosser, “Neighborhood Effects of Democratization in Europe.”
72. More than 80 per cent of the Hungarian export goes to the European internal market, moreover, as it was mentioned above, the economic importance of the European cohesion transfers totaling up to 3.89 per cent of the Hungarian GDP annually can be hardly overestimated. (Source: Eurostat – Extra and Intra EU-Trade by Member State and Product Group).
73. Levitsky and Way, “Linkage versus Leverage,” 381.
74. Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe*.
75. Levitsky and Way, “Linkage versus Leverage,” 384.
76. Levitsky and Way, *Competitive Authoritarianism*, 5.
77. Linz, *Totalitarian and Authoritarian Regimes*; See also Bozóki, “Illiberal Democracy Belongs to the Hybrid Regimes.”

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No potential conflict of interest was reported by the authors.

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