

Winners All

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After two days and one night, not to mention several weeks of mutual recrimination and blackmail, 27 national governments, the European Commission and the European Parliament declared themselves to be winners – all of them. A miracle? The first thing to learn about Brussels is that nothing there is what it seems and everything can be presented in an unending variety of ways. Moreover, the number of players and playing fields is huge and confusing, and they are working under an institutional framework called ‘the Treaties’ so complicated that no outsider understands it. Skilled operators find in it innumerable opportunities for obfuscation, procedural tricks, evasive ambiguity, pretence and excuses – differing interpretations and alternative facts cordially invited. And, importantly, there is on top of it all a deeply rooted tacit understanding among the members of that most exclusive and secretive body, the European Council of Heads of State and Government, that it is everybody’s duty to ensure that none of them has to return home looking like a loser, so all of them will remain willing to continue playing the game.

Take the Corona Recovery Fund. The first thing one must know is that it has nothing to do with Corona and everything to do with saving the Italian government from Signor Salvini. The second thing is that it has nothing to do with European solidarity either: every country gets something and nobody pays anything, as the fund consists of debt and debt alone: a supranational extension of the debt state. Moreover, nobody knows how that debt will be serviced and repaid, and nobody cares since this will start only seven years hence. Most likely repayment will be by new debt anyway or, through some arcane channel, by the European Central Bank. This, of course, would be illegal under the Treaties, but so may be taking up the debt in the first place. It also seems that all 27 national parliaments must agree to the fund, but nobody worries about this since they all get a share of the booty.

This doesn't mean it's all peace and friendship. Empires depend on a successful management of peripheral by central elites. In the EU, peripheral elites must be staunchly 'pro-European', meaning in favour of the 'ever closer union of the peoples of Europe' as governed by Germany with France through the Brussels bureaucracy. Germany and the European Commission have long suspected the present governments of Hungary and Poland of not being sufficiently 'pro-European'. Similar suspicions exist in the so-called European Parliament, which does not covet members who are not in favour of 'more Europe'. ('More Europe' is the *raison d'être* of this strange Parliament that has neither an opposition nor a right to legislate.) EP-members from Hungary's and Poland's liberal opposition parties therefore find ample support

for withholding European money from their home countries' non-liberal governments, to make voters there believe that they get more cash from 'Europe' if they vote for 'pro-European' parties. So why not make payments from the Corona Recovery Fund conditional on a country upholding the 'rule of law', defining 'rule of law' so that the policies of non-liberal elected governments do not conform to it?

Sounds good? Well, there are the Treaties. Under the Treaties, member countries, all of them, including Hungary and Poland, remain sovereign, and their domestic institutions and policies, for example family and immigration policies, are for their electorates to decide, not for Brussels or Berlin. When it comes to a country's legal institutions, the only legitimate concern of the EU is whether EU funds are properly spent and accounted for. Here, however, Poland has an immaculate record, and Hungary seems still on or above the level of 'pro-European' Bulgaria and Romania, not to mention Malta. So what to do?

In Brussels there is always a way. The Commission has for some time tried to punish Poland and Hungary under a different provision in the Treaties that forbids member countries interfering with the independence of their judiciary. But this is such a big bazooka that member states hesitate to let the Commission activate it. (It also raises uncomfortable questions on the political independence of, say, the French Conseil d'Etat.) Now, however, comes the Corona Fund, and with it the idea of a so-called 'Rule-of-Law Mechanism' (ROLM) attached to it, on the premise that if you don't have an independent judiciary, including a liberal constitutional court, and perhaps also if you

don't admit refugees as a matter of human rights and in obedience to EU distribution quotas, there is no assurance that your accounting for your use of European money will be accurate.

Can this work? Anything is possible in Brussels. The reasoning is similar to that with which the European Central Bank prevailed in the European Court of Justice against the German Constitutional Court (the PSPP ruling). The Treaties limit the ECB to monetary policy, reserving fiscal policy for the member states. But the ECB argued that monetary policy can today no longer be separated from fiscal policy, from which it follows that fiscal policy now falls in the domain of the central bank. In response, the German court, now cited by the governments of Poland and Hungary, insisted that European competences are strictly limited to what members have explicitly conceded in the Treaties, and if more European competences are needed the Treaties must be changed accordingly, which requires unanimity. This was the situation when the wrestling began in earnest.

Move I (the EU): We invite you to agree to the Corona Fund, including the ROLM and the possibility of you not getting anything unless you mend your illiberal ways.

Countermove (Poland and Hungary): We will never vote for this mechanism, so forget about your fund. Veto!

Move II: If you vote against the mechanism and thereby against the Fund, we'll set up a fund for the other 25, and we'll find a Treaty base for it, the Treaties are big and complex enough, paper is patient as the Germans say, and you won't get a damn cent.

Countermove: That won't be nice, it won't be European (little they know!), and it would be illegal.

The chorus, impersonated by the German press, singing and dancing: See, money works; they do as they are told because they want our cash. It's so good to be rich.

Enter the presidents, in the hour of truth, led by Merkel, *dea ex machina*, Mistress of the Closed Session, representing the country that happens to formally preside over the other countries in the second half of 2020, and informally anyway. Germany needs Eastern Europe for business. It also feels it cannot allow the Americans to have a monopoly on anti-Russian geopolitics. This precludes falling out with Poland over Polish sovereignty. After much back and forth, in the darkroom of intergovernmental diplomacy, Poland and Hungary agree to the Recovery Fund, complemented by a ROL document. According to it the Commission will issue a 'Budget Protection Directive' tying Corona and indeed any other EU subsidies to a national legal system independent enough to secure a correct accounting for EU moneys received. The Directive will not, however, take force until it is reviewed by the European Court. In the meantime – likely to last until early 2023 – the Commission will take no action under it, and money will flow to all 27. Once, and if, the mechanism has passed muster by the Court, the Commission may start proceedings against Poland,

Hungary or both, to claim back money already disbursed, on the ground that the Polish and Hungarian legal systems are so rotten that they cannot generally be expected to render judgments in line with, well, the ‘rule of law’. Clearly this will take more time, and nobody knows what the world will be like then and what member states will by then be concerned about.

In Europe, grace periods work wonders. For the time being there is universal happiness: among the various Presidents, the Parliament (which got its amendment passed), the Commission (which gets a new toy with which to harass member states and feel important), the Court (its jurisdiction growing by the day), and the national governments including Hungary and Poland (who won’t talk about the informal assurances they received under the counter). The politics of deferment, Merkel’s favourite discipline, knows only winners – as long as it lasts.