



Blog



# THE USE OF ARTICLE 7 AS A PROTECTION TOOL FOR THE RULE OF LAW AND EUROPEAN VALUES

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## About EUROPEUM

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As Hungary takes over the EU Council Presidency in July 2024, many question the European Union's ability to uphold its values within the member states. The EU is indeed preparing to hand over its presidency to a state criticized for its actions threatening the rule of law and subject to the procedure laid down in Article 7 of the Treaty on European Union (TEU).

Hungary is not the only country to be subjected to possible breaches of the Article for its repeated threatening behavior against the rule of law. A similar situation was persistent in Poland under the previous PiS government, when Article 7 TEU was also activated, and it might potentially be addressed in Slovakia, where recent developments suggest a comparable trajectory to the Hungarian and Polish cases. It is thus a timely and relevant matter to consider the usage of Article 7 as an instrument for protecting the founding values of the European Union since its creation under the 1997 Amsterdam Treaty.

## The two-dimensional functioning of Article 7 TEU to defend EU values

The first component of Article 7 TEU is what is commonly referred to as preventive action. It can be triggered by a proposal from the Member States, the European Parliament (EP) or the European Commission (EC). The Council can then decide on the existence of a clear risk of a substantial breach of the values set out in Article 2 TEU. The use of this preventive aspect is intended to enable action to be taken beforehand, to avoid actual violations of the rule of law and to avoid a politically delicate balance of power if the procedure were to continue through to the adoption of sanctions)<sup>1</sup>.

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<sup>1</sup> Treaty of the EU, article 7 paragraph 1 ([https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF))

The sanctions component of Article 7 is for its part subject to a similar, albeit more restrictive, procedure. It can only be triggered by the Member States or EC.<sup>2</sup> The Council must then decide unanimously on the existence of a clear and persistent breach of the values set out in Article 2 TEU by the Member State in question. After that, sanctions can be taken, which may include suspension of the member state's voting rights in the Council. Although other sanctions are possible, it is this last hypothesis which has earned this article the title of "nuclear weapon", making the repressive potential dimension of the EU clear. The possibility of suspending a country's voting rights in the Council is not only politically restrictive, but also symbolically powerful, even humiliating.

This instrument, with its preventive and repressive aspects, clearly highlights the political approach taken by the EU in defending its founding values. This approach is demonstrated not by the political nature of the sanctions that may be taken, but by the decision-making process that leads to these potential sanctions. Indeed, the use of Article 7 and the triggering of sanctions rests entirely on the European Council. This dimension suggests a new condition, obviously not contained in the treaties, which is the political balance within the European Council: this includes the geopolitical balance of power between member states, as well as the influence of the political agenda and the decisions debated over the period.

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<sup>2</sup> Treaty of the EU, article 7 paragraph 2 and 3 ([https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF))

## The political condition for the use of Article 7 TEU

EU institutions have always been reluctant to activate this mechanism. This situation was already recognized by the European Commission itself, and led to the creation in 2014 of the Rule of Law Framework, a true pre-Article 7 instrument involving an assessment of the Member State's situation and potential sanctions that could go as far as the activation of Article 7. Here again, the results have not been convincing: despite recommendations made within this new framework, Poland and Hungary have not changed their behavior significantly. It was therefore in 2017 that the Commission decided for the first time to activate Article 7 TEU against Poland, and in 2018 the Parliament voted in favor of investigation of the breaches in the case of Hungary. In both cases, only the preventive mechanism of Article 7(1) TEU was launched, implying the absence of a threat of sanctions. However, the recommendations made within the Rule of Law Framework attest to clear and repeated violations of the rule of law in both countries, demonstrating that the failure to activate the sanctions procedure under Article 7(3) TEU is indeed due to political considerations.

These political considerations stem from several factors that need to be highlighted to understand what makes Article 7 TEU politically unusable. The first issue is that the unanimity required to determine the existence of a serious and persistent breach gives all Member States a right of veto. This inherent difficulty may therefore seem insurmountable if two Member States are subjected to this procedure: mutual support between them is enough to ensure that Article 7 never leads to any sanction. From a doctrinal point of view, however, this problem is solved by the "effet utile" rule, which stipulates that in the event of doubt, the legal text must be interpreted in the way that gives it effect. In this case, the Polish vote under the Article 7 procedure concerning Hungary would not be taken into account, and reciprocally

However, this interpretation cannot be applied to other Council decisions. In this case, an indirect right of veto applies, enabling the countries concerned to block key issues on which unanimity is required. This political pressure can also be seen in other mechanisms for protecting the rule of law. One example is the Conditionality Mechanism, which allows European funds to be blocked for countries that do not respect the Union's values. Last December, blocked funds from the Cohesion Fund were released to Hungary shortly before a crucial vote on the Ukrainian question, which was being blocked by Orbán's government. In addition to rendering the Article 7 mechanism ineffective, this situation tends to show that the founding values of the European Union can be subject to political bargaining, which is highly regrettable and damaging.

## What can we expect in the upcoming year?

The question then remains as to how this situation will be dealt with in the near future. The above-mentioned stalemate is being criticized, including by the EU institutions themselves: it notably led the EP to adopt a resolution on January 18, 2024, regretting the failure of the Council of the European Union to make use of Article 7 TEU.

The presidency of Hungary to the EU Council in the coming months could represent a significant power to influence the European agenda, specifically away from Rule of Law matters. This could happen with Hungary simply diverting discussions away from EU values towards topics such as illegal migration, family policy, and demographic issues. The power of the Presidency in shaping the agenda of the Council of the EU will be even more important given the post-European elections context: the other EU institutions in transition will make the Council of the EU an element of stability. The EU therefore needs to guard itself against the perpetuation of these breaches as quickly as possible and respond to

Parliament's calls for action. In principle, the EU Council Presidency is supposed to be a neutral intermediary to find compromises and shape European policies. In this regard, the contentious relationship between Hungary and the EU appears to be a long-lasting dispute that will be difficult to overcome. This is all the more important with the ongoing war in Ukraine where we see a real need to uphold the EU values and avoid situations in which irreversible harm could be done in regards to Ukraine's accession process.