



Blog

# REVIVING ‘THE DEAD PROVISION’: COULD QMV SAVE THE PROCEDURE UNDER ARTICLE 7 TEU?

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## About EUROPEUM

EUROPEUM Institute for European Policy is a non-profit, non-partisan, and independent think-tank focusing on European integration and cohesion. EUROPEUM contributes to democracy, security, stability, freedom, and solidarity across Europe as well as to active engagement of the Czech Republic in the European Union. EUROPEUM undertakes original research, organizes public events and educational activities, and formulates new ideas and recommendations to improve European and Czech policy making.



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## Introduction

With the ongoing debate on EU enlargement, the question of Treaty revision to ensure the EU's actionability in the future is on the table. While some member states believe that the current state of the Treaties is fitting for a Union of 35+ members, others call for Treaty revision before enlargement.<sup>1</sup> In 2022, the European Parliament took the discussion a step further by passing a [resolution](#) suggesting far-reaching revisions to the Treaties.

From the areas targeted by the European Parliament's proposed amendments, one should not go unnoticed in the debate on enlargement – the reform of Article 7 TEU, the EU's instrument to uphold its values and the rule of law. The provision contains two independent mechanisms. The preventive mechanism under Article 7(1) TEU allows the Council to determine a clear risk of a serious breach of EU values. The sanctioning mechanism under Article 7(2) and (3) TEU, which will be the focus of this blog, enables the Council to unanimously determine that a member state has breached the Union's values. Following such a decision, the Council may decide to suspend certain rights deriving from the Treaties to the member state in question, including its voting rights in the Council. Such a decision is made by a qualified majority.

Because of the high threshold for its activation and the political nature of its use, Article 7 TEU has earned the alias 'the dead provision'. This blog focuses on the sanctioning mechanism's political nature, analyses the European Parliament's proposed amendments, and argues for its reform to ensure the EU's actionability in defending the rule of law in its member states, both in an EU of 27 and an EU of 35+ member states.

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<sup>1</sup><https://ecfr.eu/publication/catch-27-the-contradictory-thinking-about-enlargement-in-the-eu/#qualified-majority-voting>

## A bark or a bite?

One of the core questions surrounding the sanctioning mechanism under Article 7 TEU is whether it was ever intended to be used. Some suggest it was designed as a deterrence tool, with several diplomats attending the Treaty of Amsterdam negotiations testifying that its initial purpose was to serve as a dissuasion tool, not only due to its highly political nature but also because reaching the situation it was designed to mitigate was considered highly unlikely<sup>2</sup>.

The use of the mechanism was first considered in 1999, only a few months after the entry into force of the Treaty of Amsterdam, when the far-right FPÖ received 26.9% of the votes cast in Austrian parliamentary elections, resulting in its participation in the Austrian government coalition. The member states, however, chose not to invoke Article 7 TEU. Instead, they suspended their bilateral diplomatic relations with Austria, creating a form of cordon sanitaire around the Austrian government.<sup>3</sup>

The political reality of the past decade has, again, raised concerns about the EU's ability to effectively protect its values and the rule of law. The European Parliament has declared Hungary an autocracy, a pro-Russian nationalist-populist government rules Slovakia, the FPÖ won the latest Austrian parliamentary elections, and the radical right has generally been on the rise across the EU.

The threat to the rule of law in some member states posed by populist and radical-right parties led the European Commission to invoke the preventive mechanism under Article 7(1) TEU for the first time in 2017 over Poland's extensive judicial reforms and the European Parliament to do the same in 2018 against Hungary for its judicial and constitutional reforms, as well as threats to media and academic

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<sup>2</sup> Fasone, C., Dirri, A., & Guerra, Y. (2024). EU rule of law procedures at the test bench: Managing Dissensus in the European Constitutional Landscape. Palgrave Macmillan, p. 22.

<sup>3</sup> Ibidem, p. 25.

freedom. Since then, however, the Council has not initiated a vote on determining the existence of a clear risk of a serious breach of EU values by those member states, despite its obligation to include the issue in its agenda and decide on it. Instead, the decision is consistently being postponed, as the provision does not set a time limit for it. This demonstrates the unwillingness of member states' leaders to openly take a stand in support of EU values at the expense of bilateral relations as the decision is, by nature, highly political.

### **A transactional approach to EU values**

An argument could be made that even if a clear risk of a serious breach of EU values was determined under the preventive mechanism, the unanimity needed to determine a serious and persistent breach of EU values under the sanctioning mechanism would not be reached, due to informal agreements between natural partners to veto the decision. This approach, however, only supports the view that Article 7 TEU in its current form, which requires unanimity in order to impose measures upholding the rule of law, is an insufficient tool to defend the EU's values in today's political landscape.

The EU has used various other tools to force member states to align their policies with its values. Besides the initiation of infringement proceedings, the [Rule of law conditionality regulation](#) was introduced, allowing the Council, upon a proposal by the European Commission, to withhold access to EU funds in case rule of law violations in a given member state threaten the EU's financial interests. Although tying access to EU funds with adherence to the rule of law is a step in the right direction, the mechanism's vulnerability to political agreements is problematic, as illustrated below.

In December 2022, following the adoption of the Conditionality regulation, the Council [suspended €6.3 billion from Hungary](#) for its rule of law violations, while the European Commission refused to reimburse Hungary another [€22 billion in](#)

[cohesion funds](#) for violations of the EU Charter of Fundamental Rights. In December 2023, however, the European Commission [unblocked €10,2 billion](#) of the frozen cohesion fund in what some considered a [trade-off](#) for Hungary lifting its veto on [opening accession talks with Ukraine](#) and the [€50 billion Ukraine Facility](#).

This highlights the core issue of the tools currently used by the EU to ensure member states' alignment with the rule of law. While the sanctioning mechanism under Article 7(3) TEU enables the Council to suspend a member state's voting rights in the Council, the infringement procedure and the procedure under the Conditionality regulation offer no such option. This allows a member state to use its veto in important votes requiring unanimity to gain concessions on rule of law issues – a transactional approach which would not be possible if the member state's voting rights had been suspended over rule of law violations.

Therefore, there is a need to make the procedure under Article 7 TEU actionable in the current political environment. At present, more than one member state has a populist or radical right government acting in violation of EU values, populist parties are on the rise across the whole EU, and a cordon-sanitaire approach is becoming more and more difficult to maintain.

Thus, I personally believe that unanimity should be abolished in the sanctioning procedure under Article 7 TEU. This is all the more important given the EU's efforts towards further enlargement as using a veto as a bargaining chip is a strategy not limited to member states violating the rule of law. For example, [the Republic of Cyprus vetoed EU sanctions against Belarus](#) in 2020 simply because it sought to use the veto to force tougher EU action against Turkey. Consequently, requiring unanimity in an EU of 35+ member states would only deepen the EU's current inability to act on rule of law violations.

## Could QMV make a difference?

As described above, the core issue with Article 7 TEU is that the Council needs to act unanimously to later be able to enact measures against a member state which violates EU values. Thus, one of the commonly proposed amendments is lowering the threshold for determining a serious and persistent breach of EU values to either a [4/5 majority](#) or a [qualified majority](#).

Nonetheless, the question remains whether changing the required threshold alone will result in the use of the mechanism. It would remain a politically sensitive topic, and the Council has proven to be reluctant to use it in the past. Consequently, I consider it necessary to involve politically neutral actors in the Article 7 TEU procedure.

The [European Parliament's proposal](#) offers such an approach. Under the proposed amendment of Article 7(2) TEU, the Council may decide by a qualified majority to submit an application to the Court of Justice, which would be obliged to determine whether a member state is seriously and persistently breaching EU values. If the Court of Justice concludes that a member state breaches EU values, the Council would, under Article 7(3) TEU, be obliged to take appropriate measures.

The proposal addresses several of the current issues of Article 7 TEU. Lowering the required threshold of votes ensures the mechanism's actionability even in situations where several member states would be acting in violation of EU values. Through including the Court of Justice, the mechanism ensures that the breach of EU values is determined by an independent actor rather than a political one while ridding the Council of part of the political responsibility for the decision. The same applies to the Council's obligation, rather than an option, to take measures against the member state concerned once the Court of Justice concludes a breach of EU values. While the measures may take many forms, some stricter than others, obliging the Council to enact them could help prevent the deterioration of

diplomatic relations between governments in reaction to the Council's decision. Lastly, the proposal imposes strict 6-month limits for each step of the procedure, ensuring that a decision on the matter is made in due time, contrary to the situation at present.

However, even the European Parliament's proposal leaves it only to the Council to make an application to the Court of Justice. Thus, the decision to initiate the proceedings is still largely a political one. While I agree that the decision on which measures to take against a member state acting in violation of EU values should remain with the Council, I suggest that even the European Commission and the European Parliament should be entitled to bring an application to the Court of Justice to determine whether a member state is breaching EU values. It is not only in the interest of the member states but also of the citizens of the EU and the EU as a whole for there to be an independent review of member states' compliance with EU values. Thus, their representatives should also be able to initiate such a review. In order to ensure a functioning and actionable EU of 27 and eventually 35+ member states, the values on which it stands must be upheld constantly and consistently, regardless of political shifts. Such an approach would also ensure that proceedings under Article 7 TEU could be initiated even in a hypothetical situation where a larger number of member states, constituting a blocking minority, would not comply with EU values.