

Council and the Protection of the Rule of Law in the EU

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Summary: This article explores the evolving role of the Council of the European Union in safeguarding the rule of law among its Member States, focusing on two key instruments: the annual Rule of Law Dialogue and the hearings under Article 7(1) TEU. While the Council has traditionally been criticized for its passivity, the study reveals a gradual shift in Member States' engagement, particularly among Central and Eastern European countries. Drawing on available Council documents, the article examines Member States' positions on rule of law issues. It finds that the annual Rule of Law Dialogue has become more structured and inclusive, yet remains a soft instrument lacking enforcement power. Its nature contrasts with Article 7 TEU, which was intended as a robust enforcement mechanism. However, the study shows that political divisions have hindered Article 7 TEU from functioning effectively. It highlights the influence of EU membership duration, the quality of democracy, party ideology, and responses to Russia's aggression in Ukraine as key determinants of Member States' behaviour. Ultimately, the article argues that while incremental progress is evident, the Council's capacity to enforce rule of law remains constrained.

Keywords: Council of the European Union, rule of law, annual rule of law dialogue, Article 7 TEU, democratic backsliding, Russian-Ukraine war

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1. Introduction

In its landmark ruling in Case 294/83, *Les Verts v Parliament*, the European Court of Justice defined the EU as „a community based on a rule of law“. Ten years later, the Member States agreed to the largest expansion of the European Union to date, which was finalised in 2004 with the accession of ten new countries, primarily from the former Eastern Bloc. However, concerns were raised about

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the stability and quality of these countries' democratic regimes. This was one of the key reasons why EU Member States deemed it necessary to include Article 2 on EU values in the Treaty on European Union (TEU) in its Amsterdam revision, among them rule of law.¹ Member States recognize that the rule of law is essential for the proper functioning of European law and, therefore, of European policies. It is also about mutual trust between states² – namely, trust that a partner in the integration process adheres to the principles of the rule of law.

However, the question is how to ensure compliance with common values, including the rule of law, once a country becomes an EU member. Unlike during the enlargement process, when a country is motivated to implement reforms, it is relatively difficult to address issues concerning the rule of law in a Member State after it has joined the EU. This is because these issues touch on the foundations of national political and legal systems. It is also related to the approach to European integration as such and to the degree of EU involvement in national matters.

Since the introduction of common values in the Amsterdam Treaty, several tools have been developed to safeguard the rule of law. This article will address two such instruments in which Member States play a pivotal role within the Council of the EU. The first is the annual Rule of Law Dialogue within the Council. The second is Article 7 of the Treaty on European Union (TEU), the only instrument directly embedded in primary law to address states' democratic backsliding. Member states are the only ones that can decide whether a breach of common values has occurred in a respective member state, and they also decide on the sanctions. So far, however, they have been reluctant to take decisive action against member states that are backsliding, namely Hungary and Poland. Therefore, analysing the behaviour of the Member States in the Council can help to understand their rather reluctant approach and reveal possible changes.

The article proceeds as follows. First, it reviews the extensive literature on the topic in both political science and law. Second, it analyses the rule of law dialogue within the Council, which has emerged as a soft instrument through which member states can safeguard the rule of law. The article addresses how member states perceive the purpose and the framework of the dialogue and the changes that have occurred since its introduction in 2014. This analysis will primarily be based on Member States' responses to the 2016 and 2023 evaluations of the rule of law dialogue in the Council. Third, it deals with the Council hearings with Poland and

¹ PECH, L. and SCHEPPELE, K. L. Illiberalism Within: Rule of Law Backsliding in the EU. In: *Cambridge Yearbook of European Legal Studies*. 2017, vol. 19, December, pp. 3–47. DOI: 10.1017/cel.2017.9.

² See the discussion in ŠIŠKOVÁ, N. Rule of Law as an Integral Part of the Common European Values. *European Studies – the Review of European law, Economics and Politics*. 2024, vol. 11, no. 1, pp. 21–24. DOI: 10.2478/eustu-2024-0001.

Hungary that followed the activation of the Article 7(1) TEU procedure. In the hearings, the Member States ask questions to the state concerned. The hearings were supposed to lead to a decision by Member States on whether there is a risk of breach of common values in these countries. However, no such decision has yet been taken, which highlights the division among Member States. This section of the article focuses on Member States' activity in asking questions, outlining factors that may explain their activity or inactivity. It also highlights shifts in Member States' positions on the EU's protection of the rule of law.

The article is based on publicly available sources, particularly Council of the European Union documents. However, it should be noted that some key documents relating to both instruments are not publicly available. This is detrimental to both researchers and the general public. Consequently, the analysis can only be based on partial information regarding the issue.

2. Literature overview

Effective protection of the rule of law in the Union, as enshrined in Article 7 of the EU Treaty, requires cooperation and consensus between key EU institutions (the Commission, Parliament, and the Council of the European Union/European Council). However, the cases of Hungary and Poland have shown that this is precisely what the Union lacks. Institutions have different approaches to the rule of law protection and the level of EU involvement in this matter. Some scholars³ have argued that the effective protection of the rule of law is hampered by rivalry between the EU institutions, especially between the Commission and the Council. Coman emphasized that the dissensus is shaping the rule of law policy in the EU.⁴

Article 7 TEU stipulates that a high majority is required for decisions to be adopted. In the Council, the Member States shall first determine whether there is a serious risk of a breach of the rule of law in a Member State (Article 7(1) TEU). Based on the hearings, they may decide that a Member State has seriously violated the principles of the rule of law (Article 7(2) TEU) and impose sanctions (Article 7(3) TEU). In the procedure under Article 7 (1) TEU, a four-fifths majority is required, and the imposition of sanctions must be decided by the European Council unanimously without the state concerned. Scholars,

³ UITZ, R. The perils of defending the rule of law through dialogue. *European Constitutional Law Review*. 2019, vol. 15, no. 1, pp. 1–16, doi:10.1017/S1574019619000051; OLIVER, P., STEFANELLI, J. Strengthening the Rule of Law in the EU: The Council's Inaction. *Journal of Common Market Studies*. 2016, vol. 5, no. 5, pp. 1075–1084. DOI: 10.1111/jcms.12402

⁴ COMAN, R. *The Politics of the Rule of Law in the EU Polity. Actors, Tools and Challenges*. Cham: Palgrave Macmillan, 2022.

especially in the legal field, conclude that precisely the construction of Article 7 TEU reduced in reality its effectiveness⁵, thus it could hardly be a real deterrent to the rule of law backsliding.

The practical impossibility of using Article 7 TEU led the Commission to introduce several soft law tools to protect the rule of law, such as the Rule of Law Framework, the EU Justice Scoreboard, or the annual Rule of Law Cycle, which results in Rule of Law Reports.⁶ Their effects consist in persuading and exerting pressure on a given state to change its behaviour on its own.⁷ The Council responded to the Commission's activity by introducing an annual rule of law dialogue as early as 2014, i.e., before Article 7(1) TEU was activated. However, very soon after its introduction, it was criticized for being too mild and failing to address the rule of law crisis that had emerged in some Member States. The Council was critiqued as passive and inactive⁸, contributing to the further deterioration of the rule of law in given member states. The EU policy in general has led to mixed results, and some scholars⁹ argue that the EU is avoiding addressing and solving this problem.

One explanation for this is the fact that dialogue has long been considered the main tool for addressing the rule of law backsliding. Dialogue is the backbone of the rule of law framework, but also of the annual rule of law cycle in which the national authorities and other stakeholders are involved. It has drawn on the principle of sincere cooperation, enshrined in the art. 4(3) TEU. In this approach, the EU did not differ from other international organizations, such as

⁵ KOCHENOV, D. Busting the Myths Nuclear: A Commentary on Article 7 TEU. In: *EUI Working Papers*, 2017/10. [online]. Available at: https://cadmus.eui.eu/bitstream/handle/1814/46345/LAW_2017_10.pdf?sequence=1; KOCHENOV, D., PECH, L. and SCHEPPELE, K. L. The European Commission's Activation of Article 7: Better Late than Never? In: *Verfassungsblog*, 23. December 2017 [online]. Available at: <https://verfassungsblog.de/the-european-commissions-activation-of-article-7-better-late-than-never/>; AMATO, G. and VEROLA, N. Freedom, Democracy, Rule of Law. In: AMATO, G., MOAVERO-MILANESI, E., PASQUINO, G., REICHLIN, L. (eds.). *The History of the European Union: Constructing Utopia*. Oxford: Hart Publishing, 2019, pp. 57–130.

⁶ For an overview see ŠÍŠKOVÁ, N. Rule of Law as an Integral Part of the Common European Values. *European Studies – the Review of European law, Economics and Politics*. 2024, vol. 11, no. 1, pp. 21–24. DOI: 10.2478/eustu-2024-0001.

⁷ SEDELMEIER, U. Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure. *Journal of European Public Policy*, 2017, vol. 24, no. 3, pp. 337–351. DOI: 10.1080/13501763.2016.1229358.

⁸ OLIVER, STEFANELLI: *Strengthening the Rule of Law*...p. 1081–1082.

⁹ GRABOWSKA-MOROZ, B. Constitutional Avoidance and Values Enforcement In *The European Union – Pattern Or Policy?* Democracy Institute WORKING PAPERS 2025/29. [online]. Available at: https://democracyinstitute.ceu.edu/sites/default/files/article/attachment/2025-04/Ba%20rbara%20Grabowska-Moroz%20Constitutional%20Avoidance%20and%20Values%20Enforcement%20in%20the%20European%20Union%20Pattern%20or%20Policy%20CEU%20DI%20WP%202025_29.pdf

the Council of Europe.¹⁰ However, the dialogue did not achieve any significant results in terms of halting or even reversing autocratic measures in the Member States concerned. In scholars' view, precisely the good faith in dialogue gave the backsliding governments a time to consolidate internal changes.¹¹ The activation of Article 7(1) of the EU Treaty therefore came too late and with little hope that the course set on the national level could be changed. The member states in the Council introduced the hearings with the member state concerned, so far with Hungary and until May 2024 also with Poland. But these hearings were just another dialogue, and they did not lead to any decision.

Scholars generally agree that the main reason for the Council's inaction is the division among member states on this issue. This dispute largely stems from differing views on the extent to which the EU should intervene in matters considered to be domestic affairs. One factor influencing member states' behaviour towards backsliding states is the ideological alignment of political parties belonging to the same party family. This applies to both the Council¹² and the European Parliament¹³. The long-term disregard of democratic backsliding in Hungary was, for example, related to Fidesz's long-standing membership in the European People's Party (EPP).

Given that there is not enough political will in the Council to sanction countries that are backsliding, the von der Leyen Commission has taken steps to make greater use of existing economic governance instruments (such as the Conditionality Regulation, the Cohesion Funds, the European Semester, and the Recovery and Resilience Facility). The enforcement mechanism in these cases is stronger as the states can lose European funding. The evaluation of these instruments is, however, out of the scope of this article.

3. Annual Rule of Law Dialogue in the Council

The Council introduced an Annual Rule of Law Dialogue in 2014 in response to the Commission's Rule of Law Framework¹⁴. In its opinion, the Council's

¹⁰ UITZ: *The perils of defending...*, p. 3–4.

¹¹ See e.g. KOCHENOV, PECH, SCHEPPELE: *The European Commission's...*, PECH, SCHEPPELE: *Illiberalism Within...*, 7, UITZ: *The perils of defending...*

¹² OLIVER, STEFANELLI: *Strengthening the Rule of Law...*p.1081.

¹³ KELEMEN, R. D. Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union. *Government and Opposition*, 2017, vol. 52, no. 2, pp. 211–238. DOI: 10.1017/gov.2016.41, HERMAN, L. E., HOERNER, J. and LACEY, J. Why does the European Right accommodate backsliding states? An analysis of 24 European People's Party votes (2011–2019). *European Political Science Review*, 2021, vol. 13, no. 2, pp. 169–187. DOI:10.1017/S1755773921000023.

¹⁴ On the other hand, there was already a group of states that advocated for a greater protection of the rule of law in the Union. In March 2013, the Ministers of Foreign Affairs of Denmark,

Legal Service sharply criticized the new Commission's tool. According to it, the Commission overstepped the powers conferred on it by the founding treaties and stated that only the peer review is legally valid under EU law.¹⁵ The Member States opted for dialogue, but from the outset it was defined in an unclear and ambiguous manner. The Member States embraced it as a platform for sharing information and best practices, not as a problem-solving mechanism. The discussions were held behind closed doors with limited transparency.¹⁶ The enforcement was not an objective for the Council. In the General Affairs Council Conclusions from 16th of December 2014, the member states stressed that the role of the Council is "promoting a culture of respect for the rule of law within the European Union". The relative difficulty in reaching agreement among Member States on this instrument was also evident in setting the framework for the dialogue. The member states agreed on the timing of the dialogue, once a year. The principles guiding the dialogue were crucial. These were the principles of objectivity, non-discrimination, and equal treatment of all member states. The dialogue had to be conducted "on a non-partisan and evidence-based approach"¹⁷ and avoid duplication with other instruments on the rule of law protection, especially the art. 7 TEU.

Between 2014 and 2018, the dialogues focused on specific topics determined by the Presidency, as digitalisation¹⁸, migration¹⁹, media pluralism,²⁰ or trust in public institutions²¹. This focus hid problems of compliance with the rule of

Finland, Germany, and the Netherlands sent a letter to the Commission President and asked for more Commission involvement in the rule of law protection.

¹⁵ COUNCIL OF THE EUROPEAN UNION. Opinion of the Legal Service. Commission's Communication on a new EU Framework to strengthen the Rule of Law: compatibility with the Treaties. 10296/14, 27 May 2014.

¹⁶ PECH, L. From "Nuclear Option" to Damp Squib? – A Critical Assessment of the Four Article 7(1) TEU Hearings to Date. In: *Reconnect*, 18. November 2019 [online]. Available at: <https://reconnect-europe.eu/blog/blog-fourart71-teuhearings-pech/>, EUROPEAN PARLIAMENT. Ongoing hearings under Article 7(1) TEU regarding Hungary to strengthen Rule of Law and its budgetary implications. P9_TA(2024)0367.

¹⁷ COUNCIL OF THE EUROPEAN UNION. Conclusions of the Council of the EU and the Member States meeting within the Council on ensuring respect for the rule of law. 17014/14, 16 December 2014.

¹⁸ COUNCIL OF THE EUROPEAN UNION. Ensuring the respect for the rule of law – Dialogue and exchange of views. 13744/15, 9 November 2015.

¹⁹ COUNCIL OF THE EUROPEAN UNION. Presidency non-paper for the Council (General Affairs) on 24 May 2016
Rule of law dialogue. 8774/16. 13 May 2016.

²⁰ COUNCIL OF THE EUROPEAN UNION. Presidency conclusions after the annual rule of law dialogue on the topic "Media pluralism and the rule of law in the digital age". 13609/17, 24 October 2017.

²¹ COUNCIL OF THE EUROPEAN UNION. Presidency conclusions following the annual rule of law dialogue 2018 on the topic "Trust in public institutions and the rule of law". 14678/18, 23 November 2018.

law in certain countries, meaning they could effectively avoid scrutiny. Indeed, the Member states were very reluctant to criticise others.²² Under the Slovak presidency in the second half of 2016, the first evaluation of the Council's dialogue took place. The Presidency summarised the contributions of the member states²³, which provided valuable insights into the perceived role of the Council's dialogue and its future development. At the time of evaluation, the dialogue had only taken place twice.

Responses from Member States showed that opinions regarding the purpose and direction of the dialogue varied widely. Most countries²⁴ saw the dialogue as a place to share best practices and identify challenges. Some countries²⁵ saw the dialogue as a place to find a common approach to core values and the rule of law. And a small group of countries²⁶ directly considers that the dialogue should be used to safeguard the principles of the rule of law and ensure that member states adhere to them. The last two groups of countries generally agreed that the dialogue should focus more on issues directly related to the rule of law, and that some form of periodic review process should be established²⁷. However, there was a strong opposition to such a review by many member states from different geographical areas and with different lengths of membership.²⁸ They argued that such a review process would either duplicate the work of other EU or international bodies (e.g. the Council of Europe or the UN) or that the founding treaties did not provide a sufficient legal basis for such a step. Especially the Central and Eastern European member states wanted to maintain the established form of thematic-focused dialogue²⁹ and resisted changes to it. Some³⁰ needed to emphasise the principle of conferral and the respect for national specificities and national identity.

However, in 2017 and 2018, Article 7(1) TEU was invoked in the cases of Poland and Hungary. Therefore, rule of law issues have become increasingly

²² COMAN: *The Politics of the Rule of Law*...p. 180.

²³ The document does not include the positions of Bulgaria, Romania, and Cyprus. COUNCIL OF THE EUROPEAN UNION. Rule of Law – Compilation of replies to the Presidency questionnaire 13230/1/16, 3. November 2016.

²⁴ This was explicitly mentioned by Greece, France, Croatia, Latvia, Lithuania, Hungary, Malta, the Netherlands, Poland, Slovenia, Finland, and United Kingdom.

²⁵ Germany, Spain, Italy and Sweden.

²⁶ Belgium, Denmark, and the Netherlands.

²⁷ The Benelux countries and Italy supported the idea of a periodic peer review process. The Nordic countries (Denmark, Sweden, and Finland) and Portugal proposed regular horizontal discussions focused on general trends in the rule of law within the Union. Germany and France were open to focusing more on the situation in member states during the dialogue.

²⁸ The Czech Republic, Poland, Estonia, Greece, France, Spain, Sweden, and the United Kingdom explicitly rejected the annual review process.

²⁹ It was the case of Czech Republic, Estonia, Latvia, Lithuania, Hungary, and Poland.

³⁰ This was the case of the Czech Republic, Latvia, Lithuania, Hungary, and Poland.

important for member states, as reflected in the European Council's strategic agenda. Regarding the annual rule of law dialogue, in March 2019, a Belgian-German initiative proposed organisational changes and the introduction of a peer review process.³¹ The second evaluation of the dialogue under the Finnish Presidency in the second half of 2019 stressed that the dialogue should be more focused on results, better organized, and have some follow-up. The Finnish Presidency wanted the dialogue to be linked to the annual rule of law cycle, conducted by the Commission from 2020. The rule of law reports should become the basis for the dialogue in the Council, a position strongly opposed by both Hungary and Poland. The Council was thus unable to reach a unanimous position on the changes to the rule of law dialogue. The Finnish Presidency nevertheless presented conclusions on this matter, which were accepted by the rest of the 26 member states.³²

The German Presidency in 2020 pushed through organisational changes, which were previously unthinkable. Rather than holding one debate per year, the rule of law was now discussed three times a year in the General Affairs Council. One debate covers the general situation and trends in the Union. The other two focus on specific Member States based on a peer review mechanism³³. These debates are based on the Commission's rule of law reports. Moreover, the rule of law is also addressed in other Council settings, particularly in the Justice and Home Affairs Council.

Since 2019, debates on rule of law issues have become more frequent and more focused on individual member states. However, the dialogue remains a political tool as there is no enforcement mechanism.³⁴ The core of the exercise is the exchange of best practices and experiences. The German presidency in 2020 stated clearly, "... the goal of this dialogue shall be to learn about and from each other, to understand how the rule of law works in every single Member State, to exchange best practices and to reach a common understanding of rule of law principles."³⁵ This would not be problematic, given that the dialogue is distinct from the Article 7 TEU procedure, which is designed to result in a decision and enforcement. Notwithstanding, the absence of transparency in the dialogue is a matter of concern. The only outcome is very general minutes, which do not

³¹ COM AN: *The Politics of the Rule of Law...*, p. 181–182.

³² COUNCIL OF THE EUROPEAN UNION. Presidency conclusions – Evaluation of the annual rule of law dialogue. 14173/19, 19 November 2019.

³³ In this moment, each country-specific dialogue covered five countries.

³⁴ LOBINA, B. Beating a Dead Horse. Is There Any Value in the Council's Annual Rule of Law Dialogue? In: *Verfassungsblog*, 7. December 2023 [online]. Available at: <https://verfassungsblog.de/beating-a-dead-horse/>

³⁵ COUNCIL OF THE EUROPEAN UNION. Annual Rule of Law Dialogue. 11094/20, 28 September 2020.

provide insight into the direction of the discussion on the rule of law issues between Member States. In this regard, it is valuable that the responses of the Member States to the latest evaluation of the rule of law dialogue, conducted under the Spanish Presidency in the second half of 2023, are public and available.

The third evaluation of the rule of dialogue revealed that the Member States' positions are converging in comparison to the first evaluation.³⁶ The vast majority of countries viewed the dialogue as a constructive forum for sharing best practices and identifying challenges. The dialogue was perceived as a political tool that should prevent the deterioration of the rule of law in Member States. Germany also stressed its role in building the democratic resilience of EU member states. Many countries valued country-specific discussions as a source of inspiration³⁷ and a means of acquiring best practice³⁸, as well as an accelerator of domestic reforms³⁹.

Without surprise, Hungary and Poland took a critical stance towards the dialogue, but remained largely isolated in their criticism. It turned out that there had been a shift in attitudes, particularly among southern European and post-communist countries, which had initially been very cautious about dialogue. Nowadays, most countries consider that the dialogue is objective and is consistent with the agreed principles. Poland and Hungary argued that the dialogue duplicated the hearings under Article 7(1) TEU, a view supported only by Lithuania. At the same time, they tried to convince the others that the dialogue is in fact directed by the Commission as it is based on the rule of law reports. They argued that the Commission's reports are biased because they do not adequately reflect the views of government officials. Poland, under PiS government, declared that it would no longer participate in preparing the report. These countries wanted the dialogue to be based on sources other than the Commission's report.⁴⁰ Conversely, other countries viewed the structuring of the dialogue around rule of law reports positively because it fulfilled the principles of equal treatment and an evidence-based approach. They differed, however, in the use of the Commission's recommendations. Many countries wanted to incorporate the recommendations in some way, but not as a follow-up to the national reforms. By adopting this stance, Member States have been indicating that dialogue should not be used as

³⁶ The Member States' replies to the questionnaire sent by the Presidency are available at the webpage asktheEU.org. PECH, L. Responses to Questionnaire for the Member States on the evaluation of the Council's annual rule of law dialogue. In: AsktheEU, August 2023 [online]. Available at: https://www.asktheeu.org/request/responses_to_questionnaire_for_t

³⁷ Mentioned by Romania.

³⁸ Mentioned by Slovenia, Austria, Finland, or France.

³⁹ Mentioned by Lithuania, Luxembourg, Sweden, the Netherlands, or Belgium.

⁴⁰ Other countries, such as France, the Czech Republic, and Latvia, requested that the government be consulted more before the recommendation is published to clarify the facts.

a means of enforcement. Most countries wanted to maintain the existing focus on the national level, with only Poland and Hungary pushing for a shift in attention to EU institutions.

The Member States subsequently agreed to partially modify the organisation of the dialogue. In addition to one horizontal debate, three country-specific debates, each covering four Member States, will be held annually. While the number of countries discussed has decreased, the frequency of the dialogue has increased. Another important issue was its transparency and the involvement of the civil society representatives and the experts. But the member states had diverging opinions on this matter. Many states emphasised that the dialogue should remain between states only⁴¹, in order to preserve its confidential nature and strengthen mutual trust. In principle, there is nothing to prevent side events from taking place with the participation of experts and civil society. Ultimately, however, the decision lies with the Presidency.

The Presidency conclusions of 12 December 2023 were not supported by all Member States again. Following the change of government in Poland, however, Hungary was left alone in the opposition. The member states confirmed that they are committed to “strengthening the rule of law and to contribute to the prevention of emerging and existing rule of law challenges, in an inclusive and constructive manner, through discussion and exchange of best practices and lessons learned.”⁴² The Council’s rule of law dialogue continued to be based on the Commission’s rule of law reports, with the inclusion of the recommendations in the debate. The next evaluation is scheduled for the end of 2027.

It can be concluded that Member States are paying more attention to the rule of law issues. However, dialogue remains a soft tool for safeguarding the rule of law. It cannot force a Member State to make changes or impose sanctions on it. Its purpose is to encourage Member States to change their approach and adopt reforms that will strengthen the rule of law in their countries, particularly through the exchange of best practices and open debate.

4. Council’s hearings under Article 7(1) TEU

The member states introduced the hearings with Poland and Hungary in consequence of the activation of art. 7(1) TEU by the Commission in case of Poland

⁴¹ This point was emphasised by Romania, Italy, Malta, Portugal, Greece, Belgium, the Czech Republic, Germany, and Hungary.

⁴² COUNCIL OF THE EUROPEAN UNION. Presidency conclusions = Evaluation of the annual rule of law dialogue. 16547/23, 12 December 2023.

(2017)⁴³ and the Parliament in case of Hungary (2018)⁴⁴. So far, the hearings can be described as disappointing, as the Member States were unable to reach any concrete decision. Article 7(1) TEU stipulates that the Council must decide by a four-fifths majority whether there is a risk of a serious breach of common values by a Member State. This means that at least 22 Member States must agree, which has not yet been achieved.

Furthermore, the hearings are not transparent. In July 2019, the Member States approved standards for conducting hearings.⁴⁵ Since then, the reports of the hearings reflect the procedural aspects, but not the substance. They give a brief account of the Commission's position, the responses of the Member State concerned, and which Member States asked questions. Except for hearings with Poland in 2018 and with Hungary in 2019, it is not possible to ascertain what the Member States asked. The minutes provide only a general scope of topics.

The conduct of the hearing also depends on the Presidency, as it is responsible for organizing them. As the study of Hernández⁴⁶ showed, the Presidency could be reluctant to organise hearings under Article 7(1) TEU. This was particularly evident in the initial phase, when the Commission under Jean-Claude Juncker requested that the hearings be included in the GAC agenda during the Bulgarian and Austrian presidencies in 2018. In the case of Hungary, the European Parliament could not request the Council to include this item on the agenda and had to wait for a proactive presidency, which came with Finland in 2019. The Covid-19 pandemic significantly restricted the Council meetings, and no hearings were organised under German and Croatian Presidencies in 2020. Even after that, the Presidency's approach varied. Only Portugal, France, and Sweden organised hearings with both countries involved. The Czech Republic only held a hearing with Hungary, while Spain did not hold any. The Commission under Ursula von der Leyen did not request the organization of hearings and shifted the attention from the art. 7(1) TEU towards other tools as the infringement procedure or economic governance tools.⁴⁷ In May 2024, the Article 7(1) TEU proceedings

⁴³ EUROPEAN COMMISSION. Commission's decision of 20 December 2017 to activate Article 7(1) TEU as regards the situation in Poland. COM(2017) 835 final, COM(2017) 835 final.

⁴⁴ EUROPEAN PARLIAMENT. European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)). P8_TA(2018)0340.

⁴⁵ COUNCIL OF THE EUROPEAN UNION. Standard modalities for hearings referred to in Article 7(1) TEU. 10641/2/19, 9 July 2019.

⁴⁶ HERNÁNDEZ, G. The Powers of the Presidency of the Council of the EU to Shape the Rule of Law Enforcement Agenda: The Article 7 Case. *Journal of Common Market Studies*, 2024, vol. 62, no. 5., pp. 1159–1176. DOI: 10.1111/jcms.13551

⁴⁷ HERNÁNDEZ: *The Powers of the Presidency*.... p. 1169.

with Poland concluded when the Commission withdrew its reasoned proposal, thereby bringing the hearings in the Council to a close. Having analysed Poland's national action plan and the commitments made by the Polish government, the Commission concluded that there was no longer a clear risk of a serious breach of the rule of law in Poland. To date, only the hearings with Hungary are ongoing.

Table 1 below summarises the activity of the Member States in raising questions with the countries concerned. A total of 14 hearings were held: eight with Hungary and six with Poland. Although the setting of boundaries of each category will always be somewhat arbitrary, Table 1 shows that the EU-15 countries are indeed more active in the rule of law agenda, as confirmed by other works on this topic⁴⁸. The new Member States are less active, with some not participating at all.

Table 1: Activity of Member States in the Council's hearings with Hungary and Poland under Article 7(1) TEU

Friends of the Rule of Law	Supporters of the Rule of Law	Observers of the Rule of Law	Standby Participants	Absent from the Bench
Questions asked on 12-14 hearings	Questions asked on 8-11 hearings	Questions asked on 4-7 hearings	Questions asked on 1-3 hearings	Never asked
Belgium Denmark France Germany Ireland Luxembourg Netherlands Portugal Sweden	Austria Finland Spain	Estonia Greece Italy	Cyprus Czech Republic Latvia Lithuania Malta Poland Slovenia Slovakia	Bulgaria Croatia Romania
9	3	3	8	3

Source: Author, based on the information provided by Council's reports on the hearings with Poland and with Hungary.

Most of the founding EU member states, the so-called core EU countries (Belgium, France, Luxembourg, Germany, and the Netherlands), are highly active. These countries often raise questions on behalf of others; for example, Belgium

⁴⁸ COMAN: *The Politics of the Rule of Law*...p. 174, SEDELMEIER, U. Is there an East–West divide on democracy in the European Union? Evidence from democratic backsliding and attitudes towards rule of law interventions. *Journal of European Public Policy*, 2024, vol. 31, no. 3, pp. 825–849. DOI: 10.1080/13501763.2023.2198569.

raises questions on behalf of Luxembourg and the Netherlands, and France raises questions on behalf of Germany and vice versa. Including the medium-active countries (supporters of the rule of law), we see a group consisting of the Nordic countries, Ireland, Austria, and the countries of the Iberian Peninsula. Italy and Greece are the only countries that deviate from this pattern, displaying relatively low activity. This can be attributed to changes in their domestic political situations.

The positions of new member states, coming generally from Central and Eastern Europe, are more diverse. Estonia is undoubtedly the most active of the new Member States. The other countries are relatively inactive. These countries are more sceptical about the EU’s involvement in addressing rule of law issues. But their activity is steadily rising in recent years, indicating that they now place greater importance on the rule of law than in the past and are making greater use of the EU level. The length of their membership of the Union and familiarity with EU instruments and procedures may be a factor. Another factor can be the change in the political climate following Russia’s aggression against Ukraine (see further). In the last group, there are indeed the countries that are the most recent members of the Union.

Another factor that may influence how active a state is in protecting the rule of law is the state of its democracy. It could be argued that the better the situation, the more the state will uphold the Union’s values. In this respect, however, the results are mixed (see Table 2). The state of democracy is measured using various indices, such as the Varieties of Democracy and Freedom House indices. On the democracy scale, we can distinguish between liberal democracy (LD) and electoral democracy (ED). Except for Hungary⁴⁹, EU countries fall into one of these categories. However, the quality of democracy differs in each member state.

Table 2: State of Democracy and Regime Categorization in 2018 and 2024

Group	Liberal Democracy Index (2018)	Liberal Democracy Index (2024)	Regime Category (V-dem, 2018)	Regime Category (V-dem, 2024)
Friends of Rule of Law	0,8-0,89	0,75-0,88	9 LD	8 LD 1 ED
Supporters of the Rule of Law	0,78-0,85	0,74-0,8	3 LD	2 LD 1 ED

⁴⁹ In its 2020 report on the state of democracy, V-Dem classified Hungary as an electoral autocracy. V-DEM INSTITUTE. Autocratization Surges–Resistance Grows – DEMOCRACY REPORT 2020. In: V-dem, 2020 [online]. Available at: https://v-dem.net/documents/14/dr_2020_dqumD5e.pdf

Observers of the Rule of Law	0,77-0,86	0,61-0,85	2 LD 1 ED	2 LD 1 ED
Standby Participants	0,52-0,76	0,62-0,79	4 LD 4 ED	2 LD 6 ED
Absent from the Bench	0,48-0,62	0,45-0,62	3 ED	3 ED

Source: Author based on V-dem Liberal Democracy Index and Democracy Reports (2019, 2025).

According to Table 2, the first two groups meet the assumption that countries with a high rating on the Liberal Democracy Index will be active. Similarly, the final group comprises the EU countries with the poorest quality of democracy. Until recently, Bulgaria and Romania were monitored by the Commission under the Mechanism for Cooperation and Verification (CVM) with regard to the rule of law and fighting corruption. However, it is the middle groups that present the greatest challenge. These include countries that are highly rated in terms of the quality of democracy, yet are less active or almost inactive in Council hearings. One such country is Estonia, the most active new member state on rule of law issues, as mentioned above. Next are the Czech Republic and Latvia, which are also considered liberal democracies but have been rather passive in the hearings. Another exception is Italy, one of the EU's founding members. Although it is considered part of the EU core and a liberal democracy, it has stopped participating in the hearings in recent years. Each of these cases, therefore, requires a more in-depth analysis.

Ideological alignment is a strong explanation for why a particular state is active or passive in protecting the rule of law at the EU level (as mentioned above). For the Council, it is about the affinity of the political parties currently in government. Certain party families, such as the liberal, social democratic, green, and Christian democratic parties, consider issues of the rule of law to be important. These political parties also generally view their country's EU membership positively, with some even advocating deeper integration.

Therefore, it is possible to link the activity of states in hearings with the composition of the parties in government at the moment. This is particularly relevant for groups with states that did not always participate. Table 3 below illustrates the activity of countries in relation to the governments in power at the time. The party composition shows that these were mostly centre-right or centre-left governments comprising parties belonging to the aforementioned party families. Far-left and conservative parties also demonstrate moderate participation. The exception is the participation of far-right parties. However, they have typically been junior coalition partners or have undergone ideological shifts (e.g. the Italian M5S).

Table 3: Countries' activity concerning party composition of governments

Country	Participation Activity/Total number of hearings	In years (number of hearings)	Prime minister (governing parties/ coalition)	Parties in European Parliament Group
Austria	8/14	2021 2022 (1, 2) 2023 2025	Kurz II (ÖVP, Grüne) Schallenberg (ÖVP, Grüne) Nehammer (ÖVP, Grüne) Stocker (ÖVP, SPÖ, NEOS)	EPP Greens/EFA S&D Renew
Cyprus	2/14	2018 (1, 2)	Anastasiadis (DISY)	EPP
Czech Republic	2/14	2024 2025	Fiala (ODS, KDU-ČSL, TOP09, STAN)	ECR EPP
Estonia	5/14	2018 (1) 2022 (1, 2) 2023 2025	Ratas I (EK-SDE-Isamaa) Kallas I (ER-EK) Kallas II (ER-SDE-Isamaa) Kallas III (ER, SDE, E200) Michal (ER, SDE, E200)	Renew S&D EPP ECR
Finland	11/14	2018 (1, 2, 3) 2021 2022 (1, 2) 2023 2025	Sipilä (Kesk, Kok, PS, Korj) Marin (SDP, Kesk, Vihr, Vas, SFP) Orpo (Kok, PS, SFP, KD)	Renew EPP ECR S&D Greens/EFA GUE/NGL
Greece	4/14	2021 2022 (1)	Mitsotakis I (ND)	EPP
Italy	5/14	2018 (3) 2019 (1, 2) 2021 2022 (1)	Conte I (M5S-Lega) Conte II (M5S-PD-Art.1-IV) Draghi (M5S-Lega-PD-Art.1-IV-FI-IpF-A)	EFDD, Non-inscrits ID S&D Renew EPP

Latvia	1/14	2022 (1)	Kariņš I (JKP, AP!, NA, V)	Renew ECR EPP
Lithuania	3/14	2022 (1) 2024 2025	Šimonitė (TS-LKD, LS, LP) Paluckas (LSDP, PPNA, DSVL)	EPP Renew S&D Greens/EFA
Malta	1/14	2022 (1)	Abela II (PL)	S&D
Poland	1/14	2024	Tusk (KO, PSL, PL2050, Lewica)	EPP Renew S&D
Slovakia	3/14	2022 (1, 2) 2023	Heger I (OĽaNO, SaS, Sme Rodina, ZL) Heger II (OĽaNO, Sme Rodina, ZL) Ódor (technocratic government)	EPP ECR ID
Slovenia	3/14	2022 (1, 2) 2023	Golob (GS, SD, Levica)	Renew S&D GUE/NGL
Spain	10/14	2018 (1, 2, 3) 2019 (1, 2) 2021 2022 (1, 2)	Sánchez I (PSOE) Sánchez II (PSOE, UP)	S&D GUE/NGL

Source: Author.

Some specific examples can help to illustrate this factor. For example, Sebastian Kurz's first government, which was made up of the Christian Democratic ÖVP and the far-right FPÖ, did not participate in the hearings. It was only with the replacement of the FPÖ by the Greens as coalition partners that change came. In contrast, Italy was active during the centre-left governments of Prime Ministers Conte and Draghi, but Meloni's far-right government stopped participating in the hearings.

The final issue that requires closer examination is the impact of Russia's aggression in Ukraine⁵⁰, which began on 24 February 2022. Poland and Hungary

⁵⁰ For a reflection on the Commission's different approaches to Poland and Hungary following Russia's aggression in Ukraine, see JARACZEWSKI, J. Unexpected Complications: The impact of the Russian invasion of Ukraine on the rule of law crisis in the EU: An anti-rule of law alliance. In: *Verfassungsblog*, 23. December 2022 [online]. Available at: <https://verfassungsblog.de/une>

have adopted contrasting positions on the war and their approach to Russia. While Poland has emerged as a leader in taking a hard line against Russia and supporting Ukraine, Hungary has adopted a pro-Russian position. As shown in Table 4, hearings with Hungary took place more or less regularly after 24 February 2022, whereas those with Poland gradually ceased. Table 4 excluded the group of rule of law friends, as these countries participated regularly in hearings with both countries, as well as those who never participated. Thus, its focus is on those who have more irregular participation rates (supporters, observers, and standby participants). It can be seen that countries that had not previously participated began to take part in the hearings. These included the Baltic republics (especially Estonia and Lithuania), the Visegrad Group countries (Slovakia and the Czech Republic), and Slovenia. Especially, the remaining Visegrad Group countries have long been seen as supporters of Poland and Hungary⁵¹, turning a blind eye to their rule of law backsliding. But both Slovakia and the Czech Republic participated under governments which have strongly supported Ukraine (under prime ministers Heger and Fiala). These states exclusively focused on Hungary.

Table 4: Countries' activity in hearings before and after the Russian aggression in Ukraine

Hearings (number)/ Country Activity	Poland before 24. 2. 2022 (4)	Poland after 24. 2. 2022 (2)	Hungary before 24. 2. 2022 (3)	Hungary after 24. 2. 2022 (5)	Group
Austria	1	2	1	3	Supporter of RoL
Cyprus	2	0	0	0	Standby Participant
Czech Republic	0	0	0	2	Standby Participant
Estonia	1	0	0	4	Observer of RoL
Finland	4	2	1	4	Supporter of RoL
Greece	1	1	1	1	Observer of RoL
Italy	1	0	3	1	Observer of RoL
Latvia	0	0	0	1	Standby Participant

pected-complications-the-impact-of-the-russian-invasion-of-ukraine-on-the-rule-of-law-crisis-in-the-eu/

⁵¹ COMAN: *The Politics of the Rule of Law...*, p. 174.

Lithuania	0	0	0	3	Standby Participant
Malta	0	1	0	0	Standby Participant
Poland	-	-	0	1	Standby Participant
Slovakia	0	0	0	3	Standby Participant
Slovenia	0	0	1	3	Standby Participant
Spain	4	1	3	2	Supporter of RoL

Source: Author.

5. Conclusions

The rule of law is a challenging issue for Member States as it concerns the core principles of European integration and the scope of European institutions' powers in relation to Member States. Protecting the rule of law involves national and supranational levels, as well as a number of actors, including non-governmental ones. At the EU level the effective protection of the rule of law requires close cooperation between EU institutions. The approach adopted by the Member States in the Council of the EU is crucial to the effective protection of the rule of law. Member States have agreed to hold an annual dialogue on this issue. The activation of the Article 7(1) TEU procedure has also prompted them to hold hearings with the concerned countries.

The article showed that, in the initial period of addressing the rule of law backsliding, the attitudes of member states were very cautious. These issues were considered a matter of national politics. In the early years, the annual rule of law dialogue was more of a general exchange of views and did not address the core of the problem. Despite Article 7(1) TEU being invoked in the cases of Poland and Hungary, member states were reluctant to hold hearings. The countries concerned were thus able to effectively avoid any kind of scrutiny.

However, noticeable changes in the attitudes of Member States have emerged since 2019. The organisation of the annual dialogue has changed, with rule of law issues now being discussed more frequently. This process is largely based on peer review and linked to the annual rule of law cycle. It is evident that countries now view the dialogue positively as a source of best practice and a catalyst for national-level reform. Nevertheless, as a political tool and preventive mechanism,

the dialogue cannot be expected to enforce change at a national level. Like other soft instruments, it relies on soft pressure and persuasion. Ultimately, it is up to the countries themselves to decide whether they are willing to strengthen the rule of law at home.

Article 7 (TEU) was designed to be an EU instrument for effectively enforcing changes regarding the rule of law in member states. However, no results have been achieved in this regard. Nevertheless, it is clear that Member States have changed their approach to the procedure, as reflected in their activity at Council hearings. Initially, it seemed that the hearings were only taking place between the Member States concerned and the ‘old’ Member States (EU-15). The new Member States, mainly from Central and Eastern Europe, were inactive, confirming the view of a division between East and West in terms of EU values. Over time, however, these countries have also become more active. This raises the question of what explains the behaviour of states in the Council. One possible explanation is length of membership, as most EU-15 countries have participated in these hearings regularly. This is also supported by the fact that these countries have higher quality of democracy. However, the importance of quality of democracy as a factor is less evident among the new Member States, which include countries that are considered to be liberal democracies, yet have been rather reluctant in their approach towards backsliding countries. Another factor is party-ideological orientation. The study showed that governments were generally more active when their governing parties belonged to the Christian Democratic, Social Democratic, Green or Liberal party families. To a lesser extent, parties from conservative or far-left groups were also involved, but these were usually junior members of governments. The same can be said of the very rare participation of political parties associated with the far right.

In the case of new Member States, particularly those from Central and Eastern Europe, it has become clear that the impact of Russian aggression on Ukraine must be addressed. These states were divided in their support for Ukraine, and it was precisely those that unequivocally stood behind Ukraine that began to take action in Article 7(1) TEU hearings against Hungary, which took a pro-Russian stance. In this regard, it is worth mentioning a change in the Visegrad Group countries.

Russia’s aggression in Ukraine has shown that this agenda is influenced not only by domestic factors, but also by the international situation. However, according to the author, domestic factors remain decisive. The political situation in member states may change. Political parties are largely polarised in terms of both the degree of protection of the rule of law and the acceptable level of intervention by EU institutions. Changes at the national level are reflected logically in the

approach of EU institutions, primarily the Council of the EU as an intergovernmental institution. Therefore, it is very difficult to predict whether the EU will move towards a more robust protection of the rule of law.

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