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Article 7 TEU in the News:

How the Media Framed the Discussion Around the "Nuclear Option"

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Abstract

The values shared by the Member States are the basis of EU membership, which is made increasingly clear in enlargement preparations. The protection of the values in the face of democratic backsliding is therefore vital for the continuation of the EU's success. The Treaties provide a protective mechanism: a *nuclear option*, in Article 7. But is it truly that powerful? The media's depiction of the activation of Article 7 against Poland and Hungary may shed some light on the answer. Using framing theory, this paper will analyse headlines of European news publications to find out how they reported the proceedings around the article's activation. Every aspect of reporting in the news could influence the perception of the public, from the actors involved, to the relationships between them and the aspects that may have been omitted. In general, they can provide an answer as to whether Article 7 really is a *nuclear option*.

Keywords: Article 7, nuclear option, framing theory, EU values

Abstrakt

Základem členství v EU jsou hodnoty, které členské státy sdílejí, což se stále zřetelněji projevuje v přípravách na rozšíření. Ochrana těchto hodnot tváří v tvář demokratickému ústupu je proto pro další úspěch EU zásadní. Smlouvy poskytují ochranný mechanismus: jadernou možnost v článku 7. Je však skutečně tak silná? Odpověď může osvětlit mediální obraz aktivace článku 7 proti Polsku a Maďarsku. S využitím teorie rámcování bude tento článek analyzovat titulky evropských zpravodajských publikací s cílem zjistit, jak informovaly o jednání kolem aktivace článku. Každý aspekt zpravodajství ve zpravodajství mohl ovlivnit vnímání veřejnosti, od zúčastněných aktérů přes vztahy mezi nimi až po aspekty, které mohly být opomenuty. Obecně mohou poskytnout odpověď na otázku, zda je článek 7 skutečně jadernou variantou.

Klíčová slova: Článek 7, jaderná opce, teorie rámcování, hodnoty EU

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1. INTRODUCTION

The European Union started as a collaboration of only six Member States. They had a declared shared goal of ensuring a lasting peace in Europe through economic integration. Seven decades later, the European Union reached an apex of membership which is based on shared principles and values, listed in Article 2 TEU. They enable a unique level of economic and social integration, allowing freedom of movement and protection of civil liberties across the continent. The diversity of European states is reflected in the diversity of democratic traditions, reflecting Europe's troubled past. Therefore, when the Member States have contemplated continuing enlargement, they also sought to ensure the respect of their shared values – if needed, by force.

The biggest single enlargement of the European Union, known colloquially as the “Big Bang Enlargement”, saw 10 Central and Eastern European nations join the bloc following the disintegration of the Soviet Union. In preparation for enlargement towards Member States which were viewed as potential victims of democratic backsliding, the bloc codified a sanctioning mechanism to protect the shared values in the Treaty of Amsterdam. The characteristics of what is now Article 7 TEU reflect the importance of the values it protects. A veritable “nuclear option”; or so it seems. Upon closer inspection, this tool of mutually assured destruction is dead on arrival. More a means of prevention and political pressure than a sanctioning mechanism, Article 7 allows access to powers so great that Member States withhold from using its punitive features. Instead, in the face of democratic backsliding, the supranational and intergovernmental EU institutions chose to carry out hearings, create additional frameworks and apply financial pressure, rather than pursue the “nuclear option”.

Article 7(1) was activated for the first time against Poland in December 2017, and against Hungary in September 2018. The two countries had breached Article 2 TEU through numerous measures, including subjecting courts to the control of the respecting ruling parties, encroaching on media freedom, repressing minority groups and harassing critics, to name a few¹. Faced with these developments, the EU institutions activated a mechanism which determines that a “clear *risk* of a breach” of

¹ De Búrca lists many more. G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, in *International Journal of Constitutional Law* (2022) 20:1, 13-34, 17, 18.

EU values exists and allows the European Commission to “address recommendations”. In other words, the institutions do not take any concrete action.

So, in a context where the Member States shy away from the use of their strongest weapon given complex constitutional and political arguments – difficult to access for those who may not be EU legal scholars – the media steps in to provide an abridged version. Its predilection for advertising political decisions while enhancing their gravity with sensationalist overtones is well documented. However, the media may be a somewhat unreliable narrator, one that highlights certain issues and omits others to create an enticing picture. Which leads to a key question:

How did the media frame the discussion around Article 7 TEU proceedings?

This will serve as the research question of this paper. As the central point, it will help identify the ideal research method, isolate the parameters of the data set, and interpret findings. The present research builds on existing literature on Article 7 by considering the role of the media in the proceedings. The review of the literature on Article 7 will show that many of the actors involved in its activation – EU institutions, individuals therein, Member States and their ruling parties – may guide their decision-making with a view to increasing their public appeal. Given the agenda-setting and issue framing functions of the media, the framing of Article 7 proceedings may have an impact on the success or failure of those proceedings.

The portrayal of the article as a sanctioning mechanism and a “nuclear option” may further the appeal of nationalist governments in the Member States, increasing the perceived legitimacy of their actions. Additionally, populist politicians may use any conflictual depictions of Article 7 proceedings to create an “other”, an antagonistic actor in the form of EU institutions, leading to a potential increase in Euroscepticism. Conversely, the media framing of Article 7 proceedings may serve a “naming and shaming” purpose and contribute to increasing dialogue and isolating solutions. Negative media coverage of illiberal leaders may also decrease their popularity and lead to changes in government.

Article 7 is a complex legal mechanism devised in enlargement rationales and informed by its history. For these reasons, this paper will begin by introducing the Article 7 mechanism through a comprehensive legal assessment of its functions. Subsequently, a brief history of the origins of the article in the run-up to the

Amsterdam Treaty will be presented, followed by a brief overview of the *Haider Affair*, which led to the conclusion in the article of a preventive mechanism. Having established this legal and historic basis, an analysis of the main discussion in the literature will be provided. The main debates therein discuss the difficulties with clearing the voting requirement for the activation of the sanctioning mechanism, namely, unanimity in the European Council. The difficulties therein are partly explained by the next main debate, which looks to the ambiguity regarding the concrete sanctions that could be applied under Article 7. These issues result in a political unwillingness to gather the support necessary to activate the sanctioning mechanism – this will constitute the third main literature debate. Since the European Commission, European Parliament and Council of the EU all have roles to play in the activation of the different mechanisms of the article, the dynamics within those institutions will all be discussed. Finally, building on these debates, the role of the media in Article 7 proceedings will be considered, from the importance of the media to its tendency to frame issues by highlighting certain aspects and omitting others, in order to attract the attention of the reader.

The following chapter will present the research method used – framing analysis of headlines - and its suitability regarding the research question. Given the role of headlines in attracting the attention of the reader and creating expectations about the content of a news article, they are best placed to reveal information about how the media framed Article 7 proceedings. The methodology involved selecting articles from two European news media outlets – *Euractiv* and *POLITICO* – published in a time frame covering roughly three years. The headlines of those articles were then processed according to a quantitative method to reveal the preliminary results of this research, consisting of the most frequently used words and phrases. Subsequently, based on the review of the literature as well as the preliminary results, three main frames were identified: *agency*, *procedure* and *interaction*. The preliminary results were subsequently classified under the three main frames, leading to the findings of this research. The final stage consisted of a qualitative analysis of the findings; to investigate the relationship between framing in headlines versus the text of articles, a random selection of articles was qualitatively analysed in contrast to their headlines.

In the conclusions, this paper will answer the research question based on the results of the analysis. It will draw conclusions both from the analysis of each frame in

headlines, and from the comparative analysis of article and headlines. The analysis of frames will provide an explanation of the ways in which the media depicts complex aspects of Article 7 proceedings, such as the actors involved and the dynamics within EU institutions. It will then show how the media simplified Article 7 proceedings, possible sanctions and future obstacles, in favour as depicting it as the “nuclear option”. Furthermore, the conclusions will show that the media chose to depict the relationship between EU institutions and Member States as an “us-versus-them” situation, rather than highlighting dialogue or collaboration between the two entities. In the end, possible further research on this complicated yet vital topic will be outlined.

2. LITERATURE REVIEW

Article 7 TEU is a complex procedure, rooted in enlargement rationales, which had never been used prior to the activation against Poland and Hungary. The literature on this subject has contemplated the obstacles to the article's activation from a legal, political and institutional standpoint. In this section, the characteristics of the Article will first be presented through a legal assessment. Subsequently, a background relating the article's drafting and its inclusion in the Amsterdam Treaty will be presented, in order to understand the reasons that led to the codification of the preventive mechanism in Article 7(1). Against this background, the main debates in the literature will be discussed. First, this paper will consider the discussion on the unanimous vote in the European Council required ahead of the application of sanctions under paragraph (3) of the article. Second, the existing examples of possible sanctions will be reviewed in the context of an uncertainty as to the types of sanctions that may be contemplated by the Member States. Third, this section will discuss how high voting requirements and ambiguity about sanctions serve to lower political appetite among the Member States to engage with this mechanism. Fourth, the dynamics in the EU institutions involved in the activation of Article 7 – Council of the EU, European Commission and European Parliament – will be awarded individual consideration. In conclusion, the role of the media in the depiction of these complex interactions and the politicisation of this matter will be presented.

2.1. Characteristics of Article 7 TEU

In order to achieve a good understanding of the debates surrounding Article 7 in the literature, an introduction of the characteristics of Article 7 is necessary. This section will present and discuss each of the paragraphs of the article, the powers contained therein, the voting requirements for their activation, and the EU institutions that can or must be involved at each step. The discussion in this section, as well as the rest of this thesis, will focus on the first three paragraphs. They make up the preventive and sanctioning mechanisms, and their importance in comparison to the last two paragraphs is evident.

Article 7(1) is usually described as the preventive arm². Its activation establishes that in one of the Member States there is a “clear *risk* of a serious breach”³ of the values in Article 2. It can be activated by 1/3 of the Member States, the European Parliament or the European Commission – the widest array of institutions of any of Article 7’s procedures⁴. Before triggering paragraph (1), the Council of the EU must organise hearings with the Member State in question and present recommendations to it. However, neither the article nor the rest of the Treaty provide any guidelines on the organisation of these hearings, or the format of the recommendations⁵. It seems aspects regarding the topics to be discussed, the number of hearings and the procedural rules applied are all left to the discretion of the General Affairs configuration of the Council.⁶ The lack of specific instructions regarding the hearings can turn them into missed opportunity to address serious issues in the Member States in an intergovernmental forum.

If Article 7(1) refers to a “clear *risk* of a serious breach”⁷, Article 7(2) refers to “the *existence* of a *serious* and *persistent* breach”⁸. The voting requirement in paragraph (2) is unanimity in the European Council, the highest requirement in the entire article; the successful vote must also be accompanied by the consent of the European Parliament. The high voting requirement is perhaps explained by the fact that while the activation of paragraph (1) is not a prerequisite to the activation of paragraph (2)⁹, the activation of paragraph (2) is a necessity ahead of the application

² L. Pech, K. L. Scheppele, “Il liberalism Within: Rule of Law Backsliding in the EU”, in *Cambridge Yearbook of European Legal Studies* (2017) 19, 3-47, 4; S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma”, in *Journal of European Integration* (2022) 44:7, 995-1010, 996; C. Closa, “Institutional logics and the EU’s limited sanctioning capacity under Article 7 TEU”, in *International Political Science Review* (2020) 42:4, 501-515, 502; D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, in *EUI Working Papers* (2017) 10, 5; P. Bard, M. Chronowski, *et al.*, “Is the EU Toothless? An Assessment of the EU Rule of Law Enforcement Toolkit”, in *MTA Law Working Papers* (2022) 8, 3; E. Wennerström, “Can the EU Protect Its Fundamental Values?” in A. Bakardjieva Engelbrekt, N. Bremberg, *et al.* (eds.), *The European Union in a Changing World Order* (Sweden: Palgrave Macmillan, 2020), 245-272, 252.

³ Consolidated version of the Treaty on the European Union [2012] OJ C326/13, Article 7; emphasis added.

⁴ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 7.

⁵ S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma”, 999.

⁶ For a detailed analysis and commentary on the hearings organised for Poland and Hungary, see L. Pech, “Article 7 TEU: From ‘Nuclear Option’ to ‘Sisyphian Procedure’?”, in U. Belavusau, A. Gliszczynska-Grabias, (eds.), *Constitutionalism Under Stress* (Oxford: OUP, 2020), 157-174.

⁷ Consolidated version of the Treaty on the European Union [2012] OJ C326/13, Article 7; emphasis added.

⁸ *Ibid.*, emphasis added.

⁹ S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma”, 997; D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 9; P. Bard, M. Chronowski, *et al.*, “Is the EU Toothless? An Assessment of the EU Rule of Law Enforcement Toolkit”, 4; E. Wennerström, “Can the EU Protect Its Fundamental Values?”, 256; A. Moberg, “When the Return of the Nation-State Undermines the Rule of Law: Poland, the EU, and Article 7 TEU”, in A. Bakardjieva Engelbrekt, K. Leijon, (eds.), *The European Union and the Return of the Nation State* (Sweden: Palgrave Macmillan, 2020), 59-82, 63.

of sanctions under paragraph (3); therefore, the unanimity requirement may serve to prevent over-policing of Article 2¹⁰.

Following a successful activation of paragraph (2), paragraph (3) of Article 7 contains the sanctioning mechanism of the article. It provides only one example of a sanction namely, the loss of voting rights in the Council of the EU¹¹. There is considerable discussion in the literature as to what other rights may be suspended under Article 7(3) and which institutions may be best suited to make that determination¹². Paragraph (4) allows the Council to vary or revoke sanctions applied under paragraph (3). Finally, paragraph (5) provides information regarding voting requirements for the previous paragraphs.

To conclude, Article 7 is composed of five individual paragraphs. Article 7(1) is a preventive mechanism which determines the “clear risk of a breach” of Article 2 values. Paragraph (2) determines that a “serious and persistent breach” of the values has occurred in a Member States. Finally, sanctions can be applied under Article 7(3). These first three paragraphs are the subject of most discussion in the literature and will most often be referred to throughout this paper.

2.2. The Road to Article 7 TEU

This section will discuss the political context that led to the encoding the values, as well as the mechanism designed to address possible breaches. Subsequently, this section will consider the Haider Affair, the first instance in which the Member States gave serious consideration to the possibility of activating Article 7, and the source of the preventive mechanism in paragraph (1).

Prior to the Treaty of Amsterdam, a literal description of the common values of the European Union – now in Article 2 TEU – had not been considered necessary. It was assumed that all Member States shared those values as a default aspect of their membership¹³. However, this opinion changed in the late 1990s as the European Union was preparing for the accession of ten new Member States, many of which had

¹⁰ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 9.

¹¹ Consolidated version of the Treaty on the European Union [2012] OJ C326/13, Article 7.

¹² That discussion will be analysed later in this chapter.

¹³ W. Sadurski, “Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider” in *Sydney Law School Research Paper* (2010) 10:1, 2.

only recently transitioned from autocratic to democratic political systems¹⁴. With the codification of the values of the EU, the Member States were seeking to ensure that the new members would continue to adhere to the principles that allowed the functioning of the Internal Market and of Free Movement. So, going beyond codification, they needed a mechanism to ensure that, should the new members backslide into authoritarianism and breach the values, the other Member States would dispose of a sanctioning mechanism¹⁵. That mechanism, which would eventually become Article 7 TEU, went through three stages in its development: the Reflection Group Report, the Inter-governmental Conference of 1996 (IGC '96), and the *Haider Affair*¹⁶.

The Reflection Group Report contained the first concrete suggestion for a sanctioning mechanism. For its activation, the presence of a “serious and persistent” breach of fundamental rights was required. Following a unanimous vote in the European Council¹⁷, possible penalties suggested were suspension of rights inherent in membership, and expulsion. While the latter is no longer considered an option¹⁸, the former is still the sanction that could be applied under Article 7(3). It is also important to note that enlargement as a notable cross-cutting theme¹⁹ in the Report, suggesting a sense of anxiety among the Member States regarding Eastern enlargement²⁰.

The conclusions of the Reflection Group Report were put to the Member States at the Inter-governmental Conference 1996²¹, which was the precursor to the Treaty of Amsterdam. Austria and Italy put forward a joint proposal for a sanctioning mechanism which could be used to protect the values – a mechanism that is the precursor to Article 7 TEU²². This mechanism was first introduced in the Treaty of Amsterdam. However, it did not include a preventive arm – a fact that would become an issue just a few years later, due to the Haider Affair.

¹⁴ G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, 15; D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 4.

¹⁵ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 4.

¹⁶ For a detailed description of the processes that led to the codification of Article 7 in the Treaty of Amsterdam, see W. Sadurski, “Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider”.

¹⁷ W. Sadurski, “Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider”, 5.

¹⁸ G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, 20-22.

¹⁹ V. Miller, T. Dodd, F. M. Watson, “Towards the IGC: Enter the Reflection Group”, *Research Paper in International Affairs and Defence Section, House of Commons Library* (1995) 76, 1, 2.

²⁰ C. Closa, “Institutional logics and the EU’s limited sanctioning capacity under Article 7 TEU”, 502; W. Sadurski, “Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider”, 6, 7.

²¹ European Council, 1996 Intergovernmental Conference (IGC '96) – Reflection Group report and other references for documentary purposes, Publications Office, 1996, <https://op.europa.eu/s/zJrk>, accessed 2 June 2024.

²² W. Sadurski, “Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider”, 7, 8.

The *Haider Affair* refers to the rise to power of extreme right-wing Austrian Freedom Party After (FPÖ), and its leader, Jörg Haider. After the 1999 elections in Austria, the Social Democratic Party that had been ruling the country for nearly 30 years failed to form a government, leading to the FPÖ joining the government coalition²³. What is more, the rise of political parties with similar ideologies in France and Italy showed that existing Member States were not invulnerable to breaches of the EU values.

In this context, the *Haider Affair* highlighted a fundamental issue with the sanctioning mechanism that is now Article 7 TEU. Triggering the sanctions in the article required a determination of a “clear and persistent breach” of the values, a determination which could not be made since the FPÖ had only recently joined the governing coalition. Yet, given their rhetoric regarding human rights – and especially that of leader Jörg Haider – other Member States felt that they *should* be able to act. This view was confirmed by the “*Wise Men Report*”²⁴, which suggested that a preventative measure should be included in (what would later become) Article 7. Such a mechanism would enable the Member States to determine that the values *risks* being breached, and request that the Member State in question rectify the situation before a “clear and persistent” breach occurred²⁵.

To conclude, Article 7 was initially codified in the context of pending enlargement, as the Member States sought to ensure they had a mechanism to protect against potential democratic backsliding in the new members. However, the *Haider affair* showed that existing Member States were not invulnerable to backsliding. That situation also led to the codification of a preventive mechanism – Article 7(1).

2.3. Literature Debates on Article 7 TEU

The previous sections have introduced the characteristics and powers of Article 7 TEU, the reasons for its conception, and its history prior to its first activation. In the next section, the main debates in the literature on Article 7 will be presented and

²³ Ibid, 11, 12.

²⁴ M. Ahtisaari, J. Frowein, M. Oreja, “Report on the Austrian Government’s Commitment to the Common European Values, in Particular Concerning the Rights of Minorities, Refugees and Immigrants, and the Evolution of the Political nature of the FPÖ (The Wise Men Report)”, in *International legal materials* (2001) 40:1, 101-123.

²⁵ W. Sadurski, “Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider”, 21, 22.

discussed: the unanimity requirement for the activation of Article 7(2), the uncertainty regarding possible sanctions under Article 7(3), the lack of political willingness to engage with the article, and the institutional dynamics at play.

2.3.1. Voting Requirements

The voting requirement in Article 7(2) is considered a major issue in the use of Article 7 as a sanctioning mechanism. As discussed in the previous section on the characteristics of Article 7, in order to reach the sanctioning mechanism in paragraph (3), a unanimous vote is required in the European Council. The main issues in this area are the political capital needed to engage with Article 7(2), and the voting dynamics that appear when more than one Member State is subject to Article 7 proceedings.

The unanimity requirement in the European Council can limit the political appetite to engage with the procedure at all²⁶. While not all Member States are required to vote in favour – an abstention does not count as a vote against – any vote against effectively amounts to a veto, as it would override all other votes²⁷. This leaves the European Council vulnerable to Member States working together, particularly in situations where more than one Member State is subject to Article 7 proceedings²⁸.

There is some indication in the literature that under the *effet utile* principle, a Member State that is subject to Article 7 proceedings should not be able to protect another.²⁹ In other words, literature suggests that once Article 7(1) has been activated against a Member State, it would no longer be allowed to take part in votes regarding Article 7. This safeguard would be particularly important in a situation where the two Member States vow to veto each other's votes³⁰, as was the case for Hungary and Poland. However, it could be argued that this exclusion from voting would constitute a sanction in itself. Voting in the European Council is an important right of each

²⁶ G. de Búrca, "Poland and Hungary's EU membership: On not confronting authoritarian governments", 23.

²⁷ P. Bard, M. Chronowski, *et al.*, "Is the EU Toothless? An Assessment of the EU Rule of Law Enforcement Toolkit", 3, 4.

²⁸ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU" 511; L. Pech, K. L. Scheppele, "Illiberalism Within: Rule of Law Backsliding in the EU" 5.

²⁹ L. Pech, K. L. Scheppele, "Illiberalism Within: Rule of Law Backsliding in the EU" 4; P. Bard, N. Chronowski *et al.*, "Is the EU Toothless? An Assessment of the EU Rule of Law Enforcement Toolkit" 3.

³⁰ J. Treeck, "Hungary's Viktor Orbán pledges to support Poland against EU 'inquisition'" in *POLITICO* (22 July 2017), <https://www.politico.eu/article/hungary-viktor-orban-pledges-to-support-poland-against-eu-inquisition/>, accessed 4 June 2024.

Member State; while Article 7(3) suggests that right may be suspended, this comes as a sanction against a “serious and persistent” breach of EU values. Article 7(1) only determines the risk of such a breach, so it is difficult to defend the idea that the *risk* of a breach is a serious enough transgression to warrant the suspension of voting rights, even if the suspension would be of such a limited nature.

There are some sources in the literature which propose an alternate solution – that Member States subject to Article 7 could be voted on in “bundles”³¹. However, this would option would require the situations in the two Member States to be extremely similar. The determination of a “serious and persistent breach” must only be made after careful analysis of the peculiar situations in each Member State. Therefore, making that determination jointly has the potential to disregard the particularities of each case.

2.3.2. Sanctions under Article 7(3)

Supposing that the hurdles relating to the voting requirements for the activation of Article 7(2), the following procedure may involve deciding what sanctions to apply. There are two main issues here: the overall effectiveness of sanctions, and the specific sanctions that may be applied under Article 7(3).

Firstly, the literature questions the effectiveness of sanctions outright. Closa³² points out that sanctions may have a “rally-round-the-flag” effect on nationalist systems, causing increased solidarity with the errant government. This may have an empowering and legitimising effect and undermine the goal of redressing breaches of Article 2. Additionally, Sedelmeier³³ argues that sanctions may alienate an errant government, which would undermine the co-operative decision-making system of the European Union. Kochenov³⁴, however, argues that “naming and shaming” may be a useful tool to compel Member States to redress breaches of Article 2. He argues that the co-decision system is undermined by the very act of breaching EU values,

³¹ P. Bard, N. Chronowski *et al.*, “Is the EU Toothless? An Assessment of the EU Rule of Law Enforcement Toolkit” 3; L. Pech, K. L. Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU”, 9; C. Closa, “Institutional logics and the EU’s limited sanctioning capacity under Article 7 TEU”, 511

³² C. Closa, “Institutional logics and the EU’s limited sanctioning capacity under Article 7 TEU”, 504.

³³ U. Sedelmeier, “Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure” in *Journal of European Public Policy* (2016) 24:3, 337-351, 340.

³⁴ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 10.

suggesting that the loss of trust between Member States is a logical consequence of the breach of EU values. In any event, the effectiveness of sanctions³⁵ must be contemplated ahead of their application.

Secondly, the types of sanctions that may be applied under Article 7(3) are relatively undefined. Two concrete examples exist: the suspension of voting rights in the Council, and the suspension of use of the European Arrest Warrant. Beyond these two options, the literature is rather reticent to provide other examples³⁶.

The text of Article 7(3) states that sanctions amount to the suspension of “certain of the rights deriving from the application of the Treaties”³⁷ the suspension of voting rights in the Council is an example that dates back to the very first proposal of a mechanism resembling Article 7 in the Reflection Group Report. This example is also a major reason for the association of the “nuclear option” label with Article 7³⁸ – although, there are no concrete reasons to think that this is the specific sanction that may be applied under paragraph (3).

Another possibility already available is the suspension of access to the European Arrest Warrant³⁹:

“The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.”

This mechanism is a prime example of the co-decision and mutual trust between Member States⁴⁰. Some scholars⁴¹ argue against undermining such mechanisms, stating that it would be counter-productive to alienate that trust.

³⁵ T. Dumbrovsky, “Beyond voting rights suspension: tailored sanctions as democracy catalyst under Article 7 TEU”, in *EU Working Papers RSCAS* (2018) 12, 11-12.

³⁶ L. Besselink, “The Bite, the Bark and the Howl: Article 7 TEU and the Rule of Law Initiatives” in *Amsterdam Centre for European Law and Governance Working Paper Series* (2016) 1: 7.

³⁷ Consolidated version of the Treaty on the European Union [2012] OJ C326/13, Article 7.

³⁸ This will be discussed in detail later in this thesis.

³⁹ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision (2002) OJ L 190, paragraph [10].

⁴⁰ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 10-11.

⁴¹ U. Sedelmeier, “Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure”, 340; S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma” 998.

Given the critiques against the suspension of voting rights in the Council of the EU, and the suspension of use of the European Arrest Warrant, Dumbrovsky contemplates a series of other rights that may be suspended under Article 7(3), pondering both economic and not economic options⁴².

2.3.3. Political Unwillingness to Engage

In the previous section, the issues with the sanctioning mechanism in Article 7 were highlighted – from the difficulties with the voting requirement in paragraph (2), to the uncertainty about the type and effectiveness of possible sanctions under paragraph (3). Those issues serve to lower the political appetite⁴³ to pursue the activation of Article 7. The heads of state in the European Council are unlikely to spend the type of political capital needed to pursue a vote on Article 7(2). The reasons for this reluctance are the high voting threshold in Article 7(2), and the general reluctance of members of international organisations to sanction each other.

Firstly, after the activation of Article 7(1), the Member States would face an uphill battle. As shown in previous chapters, paragraph (1) is widely thought of as the preventive arm of Article 7, and it does not allow any sanctions to be imposed. The power to sanction in paragraph (3) can only be reached as a result of a unanimous vote in the European Council, determining the existence of a “serious and persistent breach”. However, literature suggests a generalised belief among the Member States that the unanimity threshold for the activation of Article 7(2) would not be met⁴⁴, due to Member States sheltering each other⁴⁵. It was also shown previously that a vote on paragraph (2) is not contingent on the activation of paragraph (1). The choice to activate the preventive arm ahead of the sanctioning arm may have been owed to the reluctance to spend the political capital required to engage with Article 7(2).

⁴² T. Dumbrovsky, “Beyond voting rights suspension: tailored sanctions as democracy catalyst under Article 7 TEU” *Working Paper EUI RSCAS* (2018) 12; D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU” in *EUI Working Paper LAW* (2017) 10, 10-11.

⁴³ G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, 23; B. Bulgarič, “Protecting Democracy inside the EU: On Article 7 TEU and the Hungarian Turn to Authoritarianism”, in C. Closa, D. Kochenov (eds.), *Reinforcing the Rule of Law Oversight in the European Union* (Cambridge: Cambridge University Press, 2016), 3.

⁴⁴ G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, 23; S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma”, 997.

⁴⁵ L. Pech, K. L. Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU”, 9.

Conversely, the choice to activate the preventive arm of Article 7 instead of going directly to Article 7(2) may have been motivated by a general unwillingness of states in international organisations to sanction each other. De Búrca⁴⁶ suggests that this reluctance may stem from a fear that they may therefore bring the spotlight on their own existing or future transgressions. Furthermore, Sedelmeier suggests that this reluctance to sanction a fellow Member State may have been the reason for the insistence, in the drafting of Article 7 for the Treaty of Amsterdam, to maintain control over the sanctioning mechanism⁴⁷. In other words, although the European Commission generally plays the role of Guardian of the Treaties⁴⁸, the Member States insisted they should control sanctioning under Article 7 because of a generalised aversion to those measures.

Nevertheless, support among the Member States for taking action against breaches of Article 2 continues⁴⁹. Additionally, some of the EU institutions are also interested in pursuing this matter – though the dynamics within them form an entirely separate debate in the literature on Article 7. Having considered the political unwillingness on the side of the Member State to engage with this process, the next section will consider the roles that the EU institutions play in this mechanism.

2.3.4. Institutional Dynamics

In previous chapters, the concrete functioning of Article 7 was explained at length; one of the main features of the Article is that the Member States retain control of sanctioning powers⁵⁰. Therefore, it is understandable that the Council of the EU should have a large role to play in the activation of each function of the article. However, the European Commission is traditionally the Guardian of the Treaties⁵¹, and it is predictably difficult to step away from this role. The European Parliament

⁴⁶ G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, 29, 30.

⁴⁷ U. Sedelmeier, “Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure”, 340.

⁴⁸ D. Kochenov, L. Pech, “Better Late than Never? On the Commission’s Rule of Law Framework and its First Activation”, in *University of Groningen Faculty of Law Research Paper Series* (2016) 8, 2.

⁴⁹ H. von der Buchard, “Commission, 5 EU members clash in court with Poland over rule of law” in *Politico* (1 December 2020), <https://www.politico.eu/article/five-eu-countries-and-commission-clash-with-poland-over-rule-of-law-at-court-hearing/>, accessed 31 May 2024, in G. de Búrca, “Poland and Hungary’s EU membership: On not confronting authoritarian governments”, 24.

⁵⁰ U. Sedelmeier, “Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure”, 340.

⁵¹ D. Kochenov, L. Pech, “Better Late than Never? On the Commission’s Rule of Law Framework and its First Activation”, 2.

must also give its consent at various stages in the activation of the article. What is more, national party politics continue to play an important role in the European Parliament's decision-making, meaning that its actions are informed by this dimension. For these reasons, the literature on Article 7 plays special attention to the interplay between the institutions, which will be analysed in this section.

The Council of the European Union

The Member States' apprehension about Article 7 was discussed in the previous section. It explains why the Council of the EU, although having the power to do so, did not choose to activate Article 7(1) neither against Hungary nor Poland. The inaction of the Council of the EU is often documented in the literature⁵², alongside a variety of explanations for it. Closa⁵³ lists three main reasons for it: a reluctance to expand EU powers, particularly those of the European Commission; the popularity of Hungarian and Polish governments' ideologies among other Member States; and the fear that showing support for taking action against Hungary and Poland would mean swifter action could be taken against themselves in the future.

However, Moberg⁵⁴ argues that the Council's inaction comes from a flawed constitutional set-up. In other words, the way in which Article 7 was drafted by the Member States calls for both a supranational approach (of the European Commission), and intergovernmental approach (of the Council) to act in concert, which is against their institutional reflexes. The inaction by the Council, as well as the political difficulties faced by Member States who wish to address breaches of Article 2, may mean that the European Commission remains better placed to take action.

⁵² G. de Búrca, "Poland and Hungary's EU membership: On not confronting authoritarian governments", 25; A. Moberg, "When the Return of the Nation-State Undermines the Rule of Law: Poland, the EU, and Article 7 TEU", 70.

⁵³ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 511.

⁵⁴ A. Moberg, "When the Return of the Nation-State Undermines the Rule of Law: Poland, the EU, and Article 7 TEU", 70.

The European Commission

As Guardian of the Treaties⁵⁵, the European Commission is normally best placed to address breaches by the Member States. However, the European Commission's main arena for such conflicts is the Court of Justice of the European Union, and its most trusted tool is the infringement procedure. In order to exploit this opportunity, scholars have argued that the use of infringement procedures may bridge the gap in the EU's capacity to address breaches of Article 2⁵⁶. This matter must be approached carefully in order to bypass the frequent concern of Member States over the expanding powers of the European Commission⁵⁷.

Other mechanisms have also been launched over the past years to monitor and address the rule of law situation in the Member States through soft power tactics such as the annual Rule of Law Report and the Rule of Law Framework. The former was first published in 2020 and consists of an overview of the status of the rule of law in each Member State⁵⁸. The latter is aimed at preventing systemic breaches of the Rule of Law through an early warning mechanism and dialogue with the Member State⁵⁹. Neither of these mechanisms foresee any infringement procedures or sanctions.

Perhaps the most notable attempt by the European Commission to address the breaches of Article 2 is the Rule of Law Conditionality Mechanism⁶⁰. This new tool links respect for the rule of law to access to EU funding and has already been used against Hungary⁶¹. However, this solution seems to bypass a core ideological concern.

⁵⁵ D. Kochenov, L. Pech, "Better Late than Never? On the Commission's Rule of Law Framework and its First Activation", 2.

⁵⁶ K. L. Scheppele, D. Kochenov, B. Grabowska-Moroz, "EU Values Are Law after All: Enforcing EU Values through Systemic Infringement Procedures" in *Yearbook of European Law* (2020) 39:1, 3 – 121; C. Closa, D. Kochenov, J. H. H. Weiler, "Reinforcing Rule of Law Oversight in the European Union", 11, 12.

⁵⁷ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 511.

⁵⁸ European Commission, "2020 Rule of Law Report", https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2020-rule-law-report_en, accessed 2 June 2024; European Commission, "2020 Rule of law report - Communication and country chapters" (20 September 2020), https://commission.europa.eu/publications/2020-rule-law-report-communication-and-country-chapters_en, accessed 2 June 2024.

⁵⁹ European Commission, "Rule of Law Framework", https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en, accessed 2 June 2024. For an in-depth analysis of the functioning of the framework, see D. Kochenov, L. Pech, "Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality", in *European Constitutional Law Review* (2015) 11, 512-540.

⁶⁰ European Commission, *Rule of law conditionality regulation* (2021), https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en, accessed 7 April 2024. The European Commission has also began publishing annual Rule of Law Reports in 2020.

⁶¹ Council of the European Union Press Releases, "Rule of law conditionality mechanism: Council decides to suspend €6.3 billion given only partial remedial action by Hungary" (12 December 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/>, accessed 2 June 2024.

Respect for the rule of law, and indeed, all the values in Article 2 TEU, is a cornerstone of EU membership⁶². This position was confirmed by the judgement of the Court of Justice of the European Union in *Hungary v Parliament and Council* and *Poland v Parliament and Council*. The two cases questioned the legal basis of the Rule of Law Conditionality Regulation. They were both unsuccessful, with the Court of Justice's decision reiterating that the values in Article 2 TEU "define the very identity of the EU as a common legal order".

This makes the actions of the European Commission even more peculiar, as it is difficult to understand why the Guardian of the Treaties would reduce this issue to a simple financial matter, virtually ignoring the ontological questions many politicians, policymakers and academics find so difficult to answer. Questions such as what might happen if a Member State truly turned its back on democracy, how that may affect the arenas of collective policymaking in the EU institutions, and what the possible solutions may be.

The European Parliament

Article 7 reserves comparatively limited powers for the European Parliament to take action unilaterally. The consent of the European Parliament is needed to activate Article 7(2), but it can take very little action on its own. The European Parliament has been the most vocal of the EU institutions⁶³ in respect of rule of law violations, in spite of difficulties posed by party politics⁶⁴. This section will consider the activity in the European Parliament by looking at the interests of the different parties.

Firstly, it is crucial to consider the fact that Members of the European Parliament still campaign alongside national parties in the Member States. National parties have much better local visibility than the European Parliament parties, which leads to a tendency among MEPs to play to their national audiences. This also leads to a tendency to shelter autocratic governments in the Member States, as MEPs rely on

⁶² Joined Cases C-156/21, *Hungary v. Parliament and Council* and C-157/21, *Poland v. Parliament and Council*, ECLI:EU:C:2022:97, paras 144–145 in G. de Búrca, "Poland and Hungary's EU membership: On not confronting authoritarian governments", 26.

⁶³ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 506.

⁶⁴ U. Sedelmeier, "Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure", 340, 341.

the votes of the national parties in those governments for re-election⁶⁵. Therefore, the alignment of Hungarian and Polish ruling parties with parties in the European Parliament is an important point in the literature on Article 7, particularly in the case of Hungary.

The ruling party of Hungary, Fidesz, was aligned with the European People's Party at the beginning of Article 7 discussions. This membership, as well as Viktor Orbán's close relationships with MEPs belonging to the EPP group created major difficulties in the European Parliament's process of addressing Article 2 breaches in the country. Closa⁶⁶ argues that the EPP backlash⁶⁷ against the Tavares report⁶⁸ on the state of the fundamental values in Hungary was motivated by this close relationship. Closa⁶⁹ adds that Fidesz MEPs ensured the EPP's slim majority over left-wing Socialists & Democrats (S&D) in the 2014-2019 term of the European Parliament and insisted on their instrumentality in the elections of Commission Presidents Jean-Claude Juncker and Ursula von der Leyen. In return, the EPP helped to delay and undermine Article 7 proceedings in favour of Hungary⁷⁰. The same dynamics do not apply in the case of Poland's Law and Justice (PL: Prawo i Sprawiedliwość – PiS) party, which was aligned with the much smaller, far-right European Conservatives and Reformists group in the European Parliament.

The final concern relating to the actions of the European Parliament in the context of Article 7 is the parties' connection to their voters. As has been mentioned, parties in the European Parliament rely heavily on their national affiliations for support. Therefore, one can expect a certain level of agenda-setting at European Parliament level is informed by the issues considered priorities at national level⁷¹. The

⁶⁵ S. Priebus, "Watering down the 'nuclear option'? The Council and the Article 7 dilemma", 997, 998.

⁶⁶ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 506.

⁶⁷ EPP Group, "EP Report on Hungary: EPP group rejects the use of double standards" (3 July 2013), <https://www.eppgroup.eu/newsroom/epp-group-rejects-the-use-of-double-standards>, accessed 3 June 2024, in

C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 506.

⁶⁸ R. Tavares, "REPORT on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)", in *European Parliament Committee on Civil Liberties, Justice and Home Affairs* (24 June 2013), https://www.europarl.europa.eu/doceo/document/A-7-2013-0229_EN.html, accessed 3 June 2024.

⁶⁹ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 506, 507.

⁷⁰ G. Halmi, "The Alternatives to a Bite or a Bark: After Launching Article 7 TEU Against the Hungarian Government", in U. Belavusau, A. Gliszyńska-Grabias (eds.), *Constitutionalism Under Stress*, (Oxford: Oxford University Press, 2020), 63 – 94, 64.

⁷¹ An analogous logic is used to explain party politics in the European Parliament from an ideological standpoint. Sedelmeier explains that populist and radical right wing parties at national level may face opposition from center-right parties in the European Parliament. In the Polish case, the Law and Justice party, affiliated with ECR in the European Parliament, had faced opposition from their national rival, the Civic Platform, whose members sit with the EPP group. U. Sedelmeier, "Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure", 341.

driver of agenda-setting, at both EU and national level, is likely to be the media⁷². However, the literature on Article 7 awards very little attention to the role that the media may have played in Article 7 proceedings.

2.4. The Role of the Media

So far, this paper has looked at the main discussions in the literature on Article 7 TEU, from the legal uncertainties about voting requirements and possible sanctions, leading to generalised political unwillingness to engage with Article 7 proceedings, and finally to the institutional dynamics at EU level. Notably absent from the literature on Article 7 are discussions regarding the role of the media. Several of the issues presented throughout this chapter may be vulnerable to the media framing of Article 7 proceedings, including the possibility that sanctions can increase support of nationalist governments; the national party politics in the European Parliament; and the political will needed to seek the unanimous vote in the European Council.

Literature agrees that media has an influence on voters' choices⁷³. It can play an agenda-setting role for both voters and political parties, help conceptualise issues and shape public conception of politicians⁷⁴. In practice, the media has highlighted the importance of Article 7 proceedings once their likelihood of success grew. *Figure 1*⁷⁵ displays the increase in coverage of Article 7 since the European Parliament resolution⁷⁶ asking the European Commission to activate it against Hungary.

It has also been noted that sanctions can have a “rally-round-the-flag” effect, leading to increased popularity of the ruling party in nationalist states⁷⁷. Sanctions can fuel nationalist leaders' arguments by creating an antagonistic feeling towards the party imposing the sanctions⁷⁸. Although sanctioning does not appear to be a likely

⁷² A. Severin Jansen, B. Eugster, *et al.*, “Who Drives the Agenda: Media or Parties? A Seven-Country Comparison in the Run-Up to the 2014 European Parliament Elections” in *The International Journal of Press / Politics* (2019) 24:1, 7–26, 9.

⁷³ J. van Spanje, C. de Vreese, “Europhile Media and Eurosceptic Voting: Effects of News Media Coverage on Eurosceptic Voting in the 2009 European Parliamentary Elections” in *Political Communication* (2014) 31, 325 - 354, 325.

⁷⁴ *Ibid.*, 326, 327.

⁷⁵ Further explanation regarding the selection of news publications and time period will be provided in the next chapter.

⁷⁶ European Parliament, “European Parliament resolution of 10 June 2015 on the situation in Hungary”, 2015/2700(RSP), 10 June 2015, https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.html.

⁷⁷ C. Closa, “Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU”, 504.

⁷⁸ A. J. Lambert, J. P. Schott, L. Scherer, “Threat, Politics, and Attitudes: Toward a Greater Understanding of Rally-'Round-the-Flag Effects”, in *Current Directions in Psychological Science* (2011) 20:6, 343–348, 344.

outcome of Article 7 proceedings against Hungary and Poland, if the media depict it as a possible outcome, this may have important consequences. For example, it could increase the popularity of illiberal governments, or increase Euroscepticism by depicting a conflictual relationship with the EU institutions.

However, the opposite could also happen. Some of the main arguments for the importance of media freedom and independence is its role in ensuring governmental accountability⁷⁹. The media could fulfil a public shaming role⁸⁰, highlighting measures that illiberal governments may not want to advertise. This could put pressure on those governments to roll back decisions that constitute rule of law breaches. If successful, this process could lead to achieving the goal of rectifying respect for Article 2 values without the need for any sanctions.

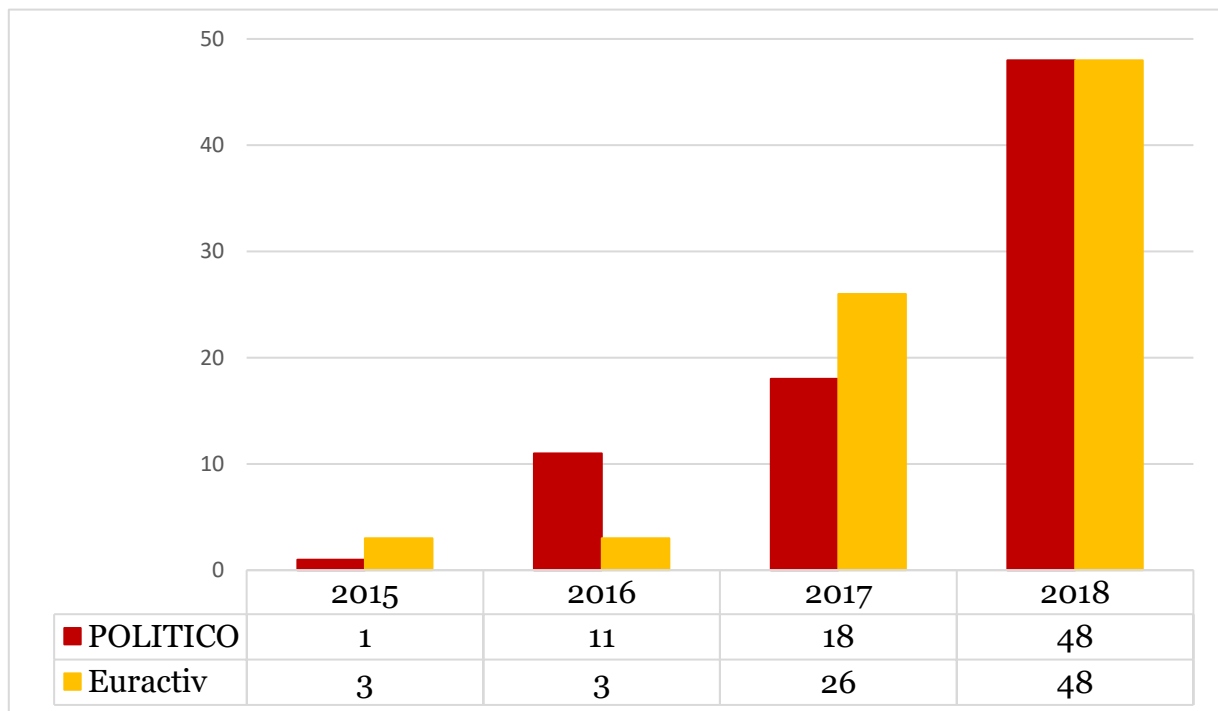


Figure 1: Number of articles published June 2015 - September 2018.

The number of articles published by POLITICO and Euractiv which reference Article 7 proceedings between June 2015 and September 2018.

⁷⁹ J. Whiten-Woodring, “Watchdog or Lapdog? Media Freedom, Regime Type, and Government Respect for Human Rights” in *International Studies Quarterly* (2009) 53, 595-625, 595, 596.

⁸⁰ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 10.

Given the relative lack of consideration in the literature of the role the media has played in Article 7 proceedings, and the potential effects that framing by the media could have on Member States and the EU, this paper will seek to answer the following research question: *How did the media frame the discussion around Article 7 TEU proceedings?* In the next chapters, the method used in this research, namely, framing analysis of news headlines, will be presented. Subsequently, the data set will be collected and processed, and the findings will be presented and interpreted.

Conclusion

Article 7 is a legally complex mechanism which has been extensively politicised. It was first encoded to protect against potential democratic backsliding in recently democratised states from Central and Eastern Europe, though the *Haider Affair* showed that established democracies were not invulnerable to illiberal ideologies. If activated, Article 7 could lead to harsh sanctions for Article 2 violations; however, the unanimity requirement in Article 7(2) makes its activation rather unlikely. Additional uncertainties about voting arrangements in situations where two or more Member States are subject to its activation also complicate this issue. Furthermore, ambiguity regarding rights that could be suspended under Article 7(3), coupled with the example given in the text of the article, lower the political will to engage with the article, necessary to attempt the unanimous vote in Article 7(2). What is more, the documented reticence of members of international organisations to sanction each other is yet another obstacle to activation. The European Union, though, has multiple supranational institutions in which different dynamics are at play. In the Council of the EU, flawed constitutional design may explain the lack of initiative. The European Commission, unable to use infringement procedures, attempts to create new frameworks and reports while awaiting the occurrence of specific breaches of EU law which it may be able to address directly. The European Parliament is vulnerable to national party politics and must consider at each turn what voters at home may think of its actions. In the midst of these complex legal, political and institutional dynamics, the media is side-lined by the literature. Though it could significantly help or hinder the goal of rectifying violations of Article 2 values through its framing of the issue, this matter is yet to be analysed.

3. METHODOLOGY

This chapter will discuss the research method of this paper, present its suitability and discuss the opportunities it creates to provide answers to the research question: *How did the media frame the discussion around Article 7 TEU proceedings?* The first section will define framing analysis and present the suitability of using headline framing analysis, given the attention-grabbing role of headlines. It will then explain why a mixed qualitative and quantitative approach will provide the best research results. Then, this section will look at data selection, including the news publications chosen, the time frame and the key search terms used for identifying articles. This will lead to the preliminary data set, which in the next chapter, will be processed to obtain the results of this research.

3.1. Framing Analysis

3.1.1. Definition and Main Features

No single definitive definition of frames can be identified in the literature. However, many scholars reference Entman's general definition which refers to framing as "some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation"⁸¹. Pan and Kosicki⁸² identify sociological and psychological conceptions of framing. In the sociological conception, they refer to Goffman's definition, whereby frames are "schemata of interpretation," which enable individuals "to locate, perceive, identify, and label"⁸³ occurrences or information. In the psychological interpretation, Pan and Kosicki refer to Minsky's definition from the field of computer science: a frame is a template or a data structure that both organizes various bits and pieces of information and is indicated by more concrete cognitive elements⁸⁴.

⁸¹ R. M. Entman, "Framing: Toward Clarification of A Fractured Paradigm", in *Journal of Communication* (1993) 43:4, 51-58, 52.

⁸² Z. Pan, G. M. Kosicki, "Framing Analysis: An Approach to News Discourse", in *Political Communication* (1993) 10, 55-75, 56, 57.

⁸³ E. Goffman, *Frame analysis: An essay on the organization of experience* (Boston: Northeastern University Press, 1974), 21 in Pan, Kosicki, "Framing Analysis: An Approach to News Discourse", 56.

⁸⁴ M. Minsky, "A framework for representing knowledge" in *The psychology of computer vision*, ed. P. H. Winston, B. Horn, 211-277, (New York: McGraw-Hill, 1975), in Pan, Kosicki, "Framing Analysis: An Approach to News Discourse", 56.

3.1.3. *Headline Framing*

The research question that this paper is seeking to answer is *How did the media frame the discussion around Article 7 TEU proceedings?* Therefore, this research will look at the place where the media frames issues the most, namely, headlines. Kong, Liu and Karahalios⁸⁵ state that “Exaggerated news article headlines are prominent, and they are often slanted or less neutral than the accompanying articles”. In other words, to fulfil their roles in attention-grabbing and creation of expectations regarding content⁸⁶, headlines can be designed to frame issues in a more exaggerated manner. As a result, whatever framing is used throughout the text of an article, the frame may be even more evident in its headline.

Andrew⁸⁷ adds that although the importance of news headlines on readers’ attitudes has been well documented, limited attention has been given to the framing of issues in headlines versus the corpus of news articles. This research accounts for this gap in literature by randomly selecting articles for in-depth qualitative analysis and comparison with the headlines. This way, the differences in framing between the headlines and the corpus can be thoroughly considered.

3.1.2. *Quantitative v Qualitative Framing Analysis*

Framing analysis can be carried out in either qualitatively or quantitatively. Quantitative framing analyses, such as those employed by Greussing and Boomgarden⁸⁸ or Dahlstrom and Scheufele⁸⁹, involve a “bag-of-word” analysis, whereby the data set of news articles is processed to identify the most commonly used words and phrases. This method contains a mix of inductive and deductive approaches. This is because the first step, the selection of the data set, involves searching news archives for relevant articles according to pre-selected key terms.

⁸⁵ H. Kong, Z. Liu, K. Karahalios, “Frames and Slants in Titles of Visualizations on Controversial Topics”, in *CHI Paper 438* (Canada: University of Illinois at Urbana-Champaign, 2018) 1.

⁸⁶ B. C. Andrew, “Media-generated Shortcuts: Do Newspaper Headlines Present Another Roadblock for Low-information Rationality?”, in *Harvard International Journal of Press/Politics* (2007) 12:2, 24-43, 28.

⁸⁷ B. C. Andrew, “Media-generated Shortcuts: Do Newspaper Headlines Present Another Roadblock for Low-information Rationality?”, 26, 27.

⁸⁸ E. Greussing, H. G. Boomgarden, “Shifting the refugee narrative? An automated frame analysis of Europe’s 2015 refugee crisis”, in *Journal of Ethnic and Migration Studies* (2017) 43:11, 1749-1774.

⁸⁹ M. F. Dahlstrom, D. A. Scheufele, “Diversity of Television Exposure and its Association with the Cultivation of Concern for Environmental Risks”, *Environmental Communication: A Journal of Nature and Culture* (2010) 4:1, 54-65.

Those key terms can pertain to frames already identifiable in previous research on a topic, as is the case in Greussing and Boomgarden⁹⁰. The articles identified are then processed to identify the most commonly used words or phrases. The resulting data set is then analysed according to the frames previously established to either confirm expected outcomes or identify new ways in which the media has framed an issue.

There is some criticism to the purely quantitative analysis as presented above. Wood states that “quantitative data cannot provide substantial insight into the texture and meaning of experiences”⁹¹. This critique suggests that a purely quantitative analysis of the data set would not provide a complete picture of the frames previously identified. Therefore, this thesis will also utilise a qualitative analysis of the data set in order to examine key words and narratives and identify aspects that may have been purposely excluded⁹². Qualitative framing analysis begins with the most frequently used words and phrases, which are assigned to the frames previously identified. The findings thus obtained are analysed qualitatively, looking at the narratives and intentions they convey, as well as the aspects that may have been omitted, and what they reveal about the framing of the issue.

Qualitative framing analysis has also been criticised for its reliability and validity. Tankard points out that this manual coding of the data set can be a subjective process, as “researchers might tend to define frames in a stereotypical or conventional way”.⁹³ The present research involved defining the frames according to the analysis of the literature, and following the quantitative analysis of the data set, in order to ensure to the extent possible that such subjectivity is avoided.

⁹⁰ E. Greussing, H. G. Boomgarden, “Shifting the refugee narrative? An automated frame analysis of Europe’s 2015 refugee crisis”, 1751.

⁹¹ J. T. Wood, *Communication Theories in Action: An Introduction* (Canada: Thomson Wadsworth, 2004) 69 in M. Linström, W. Marais, “Qualitative News Frame Analysis: A Methodology” 26.

⁹² C. Connolly-Ahern, S. C. Broadway, “To Booze or Not to Booze?” Newspaper Coverage of Fetal Alcohol Spectrum Disorders”, in *Science Communication* (2008) 29:3, 362-385, 369, in M. Linström, W. Marais, “Qualitative News Frame Analysis: A Methodology” 27.

⁹³ J. W. Tankard, “An empirical approach to the study of media framing” in *Framing public life: perspectives of media and our understanding of the social world*, eds. S. D. Reese, O. H. Gandy, A.E. Grants 98 (Mahwah, NJ: Erlbaum, 2001).

3.2. Data Selection

3.2.1. News Publications

The data set to be analysed will be composed of headlines of news articles from *Politico Europe*⁹⁴ and *Euractiv*⁹⁵. These two publications were chosen firstly because of their wide readership⁹⁶. Additionally, they have a clear focus on European news, while maintaining a transnational perspective. Publications such as *The Economist* and *Financial Times* had to be excluded because they do not meet those criteria. Additionally, to ensure uniformity of the data, only written news will be analysed; this excludes radio or televised news outlets such as *Euronews*, and social media channels such as X (formerly Twitter), and Facebook have also been removed. Initially, *EUObserver* was also selected, however, it had to be removed due to issues in regard to accessibility to the online archive. The *EUObserver* website does not allow filtering search results by time period and offers an amalgamation of articles from different years.

POLITICO Europe is a subsidiary of the German media organisation *POLITICO*, which is owned by Axel Springer. It reports on the EU Institutions as well as national news from the Member States, alongside a few pieces from around the world, especially the United States, China and Russia. It has a Brussels-based newsroom. They publish daily newsletters named *Playbooks* from capitals including Brussels, Paris and London. These newsletters are significantly more informal than *POLITICO*'s mainline news articles and provide very brief information on each of the topics listed. In later chapters, a randomised selection of articles will be carried out to assess the level of framing therein compared to their headlines. Therefore, the *Playbooks* newsletters will be excluded because they cannot be compared to the other articles in the data set. *POLITICO* also published opinion pieces, sponsored content, and has a subscription-based version named *POLITICOPro*. For this paper, articles will be selected exclusively from the free version of the website, due to the aforementioned random selection of articles for analysis.

⁹⁴ Politico Europe, <https://www.politico.eu/>.

⁹⁵ Euractiv, <https://www.euractiv.com/>.

⁹⁶ Burson-Marsteller Media-Consumption, "Brussels Media Consumption Survey" (2018), 3, https://bws-game.eu/wp-content/uploads/2020/11/Burson-Marsteller_Headline-Report_Media-Consumption-2018.pdf, accessed 4 June 2024.

Euractiv was founded by French media publisher Christophe Leclercq. It likewise focuses on news regarding the EU institutions but places more importance on reporting news from Member States. To do so, they partner with national media outlet including Hungarian publication *telex*⁹⁷ and Polish media outlet *Wyborcza.pl*⁹⁸. Their entire catalogue is freely accessible online. *Euractiv* publishes two series that may be compared to *POLITICO*'s *Playbooks*, *The Capitals* and *The Brief*. To ensure uniformity and comparability of the data set, these series will likewise be excluded. *Euractiv* also publishes opinion pieces and sponsored content, however they distance themselves from the messages of those articles by including disclaimers which state that they are not representative of *Euractiv*'s position. As a result, sponsored content and opinion pieces will be removed from the data set of this research, and to ensure they can be compared to the *POLITICO* data set, opinion pieces and sponsored content will also be removed from that data set.

3.2.2. Time Frame

The timeframe of the articles selected will follow that of the Article 7 proceedings. The timeframe selected must ensure the adequate selection of articles given the research question – *How did the media frame the discussion around Article 7 TEU proceedings?* Therefore, the timeframe must be limited to Article 7 proceedings. The assessment of the literature in the previous chapter suggests that some scholars were sceptical as to the likelihood that Article 7(1) would ever be triggered⁹⁹. Therefore, this research will consider headlines of articles published no earlier than the publication in June 2015 of the European Parliament resolution calling on the European Commission to put forward a proposal for the activation of Article 7 against Hungary¹⁰⁰. As detailed previously, the influence of Hungarian Prime-Minister Viktor Orbán, and his party Fidesz, in the European Parliament – and especially in the EPP, the largest party of the European Parliament – at the time created major difficulties in taking action against alleged breaches of Article 2 in Hungary. Therefore, the support of this resolution is a sign of the declining support for Orbán's party in the European

⁹⁷ Telex, <https://telex.hu/>.

⁹⁸ Wyborcza.pl, https://wyborcza.pl/o,o.html#logo_gora.

⁹⁹ D. Kochenov, L. Pech, "Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality", 517.

¹⁰⁰ European Parliament, "European Parliament resolution of 10 June 2015 on the situation in Hungary", 2015/2700(RSP), 10 June 2015, https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.html.

Parliament¹⁰¹. However, the resolution does not equate to the activation of the article; it was still contested whether the article would ever be activated. This finally happened in September 2018, though by then it was no longer an unprecedented action. In the meantime, in January 2016, the European Commission began preliminary proceedings for the activation of the article against Poland¹⁰² and activated it in December 2017¹⁰³. Therefore, the period between June 2015 and September 2018 covers the activation of Article 7(1) both against Hungary and Poland, an action which scholars doubted would ever occur. For that reason, this timeframe will be utilised in the selection of articles for this research.

3.2.3. Key Search Terms

As detailed previously, framing analyses often utilise a mix of inductive and deductive methods. The deductive portion appears in the selection of key search terms, as is the case in Greussing and Boomgarden¹⁰⁴. The same approach was employed in the present research – as a result of the literature review in the previous chapter, key terms including “Article 7”, “rule of law”, “nuclear option”, “sanction” and “Article 2” were identified. However, due to the high specificity of the topic, only the first two terms were used to search online databases of *Politico Europe* and *Euractiv*. The other terms are not specific enough to identify relevant articles as they can often be referring to other measures as “nuclear options”, they refer to “sanctions” in other contexts, or they mention “article 2” of other legislations. Additionally, the search terms “Article 7 TEU” and “Article 2 TEU” are overly specific filters, leading to the exclusion of numerous relevant articles. So, the initial selection included all articles on the *POLITICO* and *Euractiv* online data bases, published between June 2015 and September 2018, that appeared as a result of searches for the terms “Article 7” and “rule of law”.

¹⁰¹ G. Halmai, “The Alternatives to a Bite or a Bark: After Launching Article 7 TEU Against the Hungarian Government”, 68.

¹⁰² Euractiv, “EU takes unprecedented step against Poland over rule of law”, 4 January 2016, <https://www.euractiv.com/section/central-europe/news/eu-takes-unprecedented-step-against-poland-over-rule-of-law/>.

¹⁰³ DW, “EU triggers Article 7 against Poland”, 20 December 2017, <https://www.dw.com/en/european-commission-triggers-article-7-against-poland/a-41873962>.

¹⁰⁴ E. Greussing, H. G. Boomgarden, “Shifting the refugee narrative? An automated frame analysis of Europe’s 2015 refugee crisis” 1754, 1755.

Conclusion

This chapter has presented the research method utilised in this paper, the definition of framing analysis and the opportunities offered by headline framing analysis. The benefits and downsides of quantitative and qualitative framing analysis were detailed to explain the decision to employ a mixed method for the present research. The quantitative side of the research, namely, the “bag-of-word” process based on the method of Greussing and Boomgarden¹⁰⁵ was illustrated. Subsequently, the reasons for selecting the media outlets *Euractiv* and *POLITICO* were presented. The limitations in article selection were then listed, including the time frame selected. Finally, the key search terms deducted from the literature review were presented; based on this selection, a data set of headlines and articles was identified.

¹⁰⁵ E. Greussing, H. G. Boomgarden, “Shifting the refugee narrative? An automated frame analysis of Europe’s 2015 refugee crisis”.

4. PRESENTATION AND ANALYSIS OF FINDINGS

In this section, the initial data set identified at the conclusion of the previous section will be reviewed to determine their relevance to the topic. Subsequently, the data set will be processed to identify a set of preliminary results. The main frames deducted from the literature review, as well as the preliminary results, will then be outlined. The preliminary results will then be assigned to each of the frames, and an interpretation of the findings will be provided in order to answer the research question: *How did the media frame the discussion around Article 7 TEU proceedings?*

4.1. Data Processing & Preliminary Results

Following the steps detailed in the previous chapter, an initial data set, composed on headlines and articles, was identified. This initial data set was checked for relevance both automatically and manually. The automatic relevance check involved verifying whether at least one of the key words was repeated at least twice in each article¹⁰⁶. The manual relevance check involved ensuring that all remaining articles were relevant by looking at their headlines and analysing the text further if there was an indication in the headlines that the article may not refer to Article 7 discussions. Notably, several irrelevant articles had passed through previous checks due to a contemporary discussion among the EU institutions about the Energy Efficiency Directive. One of the main points of contention in that discussion was Article 7 of the Directive, hence the unintended inclusion of those articles.

A list of 158 headlines was thus identified; this list is available in Annex I to this paper. Subsequently, an online word frequency software was used in order to determine the words and phrases most commonly used in the headlines of those articles¹⁰⁷. Given the occurrence of key terms formed of multiple words – such as “Article 7” and “rule of law” – the analysis was run for single words, as well as two- and three- word phrases. Subsequently, stop words such as “for”, “and” or “how” were

¹⁰⁶ E. Greussing, H. G. Boomgarden, “Shifting the refugee narrative? An automated frame analysis of Europe’s 2015 refugee crisis”, 1754.

¹⁰⁷ The word frequency counter software does not discriminate words adjacent to commas, quote signs or columns. It also does not isolate word stems in order to count words e.g., in singular and plural form together. These checks were carried out manually, by counting the same words together (e.g., the words “trigger” and “triggering” were counted together).

removed, as they do not add any substantial information to the text. Finally, pronouns, verb participles, and other words whose meaning did not provide substantial information, such as “by” or “before” were also removed. A final count was conducted in order to review that of the online software and remove any remaining irrelevant words or phrases¹⁰⁸. *Figure 2* shows the preliminary results of the quantitative word processing.

4.2. Research Question & Frames

Greussing and Boomgarden identify frames inductively through analysing the literature on migration¹⁰⁹. Similarly, the analysis of the main debates in the literature on Article 7 serves as the basis for determining the frames in this research. Three main frames therefore emerge: the *agency* frame, the *interaction* frame, and the *process* frame. This section will introduce the frames and explain how the preliminary results were attributed to each of them, as illustrated in *Figure 3*.

The literature on Article 7 points to the importance of agency on this topic. As previously discussed, each of the institutions has a complex role both in regard to the text of the article, and in the context of its politicisation. The text of the article assigns different roles and powers to each of the EU institutions – such as the requirement of obtaining the consent of the European Parliament, or the unanimity voting threshold in the European Council. Additionally, the role of MEPs belonging to Hungarian Fidesz party, and the vow that Hungary and Poland would protect each other should a vote on Article 7(2) take place show the politicised dimension of the proceedings. In terms of the data set identified in *Figure 2*, all words and phrases referring to EU institutions (including political groups in the European Parliament), roles therein and the names of individuals fulfilling them, Member States’ names and leaders will all belong to the *agency* frame. Notably, the media utilises the names of cities where institutions are located, in order to refer to them, so “Brussels”, “Warsaw” and “Budapest” all fall under this frame as well.

¹⁰⁸ In this final review, words that appeared more than once, but had different meanings each time, were also removed.

¹⁰⁹ E. Greussing, H. G. Boomgarden, “Shifting the refugee narrative? An automated frame analysis of Europe’s 2015 refugee crisis”, 1751.

Word / Phrase	#	Word / Phrase	#
Poland (Polish/Poles)	93	Censure	4
EU	51	Battle	4
Hungary (Hungarian)	33	ECJ (European Court)	4
Rule of law	21	Judge(s)	4
Brussels	20	Face(s)	4
Against	19	Dialogue	3
Article 7	17	Up(s) the ante	3
(Polish Supreme) Court	14	Merkel	3
(European) Commission	13	NGOs	3
(Viktor) Orbán	13	Controversial	3
Warsaw	12	Test	3
Nuclear (option)	11	Push(es)	3
(European) Parliament	11	Seek(s)	3
MEP(s)	10	Talk(s)	3
EPP (Europe's centre-right)	10	Procedure(s)	3
Timmermans	9	Defiant/defies	3
Trigger(s/ing/ed)	9	Voting rights	2
Judicial(iary)	8	Romania(n)	2
Dispute(d)	8	S&D	2
(Polish Supreme Court) Reform(s)	8	Urges	2
Vote(s)	8	Support	2
Fight	7	Solution	2
(Jean-Claude) Juncker	6	(Polish) foreign minister	2
Sanction(s)	6	Report	2
(Manfred) Weber	5	Probe	2
Call(s)	5	Hearing	2
Threat(ens)	5	Divides	2
Warn(s/ing/ings)	5	Budapest	2
Back (read: support)	5	Ramps up	2

Figure 2: Preliminary results. Most commonly used words and phrases in the data set following processing.

Agency	#	Procedure	#	Interaction	#
Poland (Polish/Poles)	93	Rule of law	21	Against	19
EU	51	Article 7	17	Dispute(d)	8
Hungary (Hungarian)	33	Nuclear (option)	11	Fight	7
Brussels	20	Trigger(s/ing/ed)	9	Call(s)	5
(Polish Supreme) Court	14	Vote(s)	8	Threat(en/ens)	5
(European) Commission	13	Sanction(s)	6	Warn(s/ing/ings)	5
(Viktor) Orbán	13	Censure	4	Back (i.e.: support)	5
Warsaw	12	Procedure(s)	3	Battle	4
(European) Parliament	11	Voting rights	2	Face(s)	4
MEP(s)	10	Report	2	Controversial	3
EPP (Europe's centre-right)	10	Hearing	2	Dialogue	3
Timmermans	9	Probe	2	Up(s) the ante	3
Judicial(iary)	8			Test	3
(Polish Supreme Court) Reform(s)	8			Push(es)	3
(Jean-Claude) Juncker	6			Seek(s)	3
(Manfred) Weber	5			Talk(s)	3
ECJ (European Court)	4			Defiant/defies	3
Judge(s)	4			Support	2
Merkel	3			Solution	2
NGOs	3			Urges	2
Romania(n)	2			Divides	2
S&D	2			Ramps up	2
(Polish) foreign minister	2				
Budapest	2				
ALDE	2				

Figure 3: Findings. Preliminary results sorted according to the three main frames identified.

The review of the functioning of Article 7 has emphasized the complexity of the procedure. Each of the first three paragraphs involves different EU institutions and confers them different powers, each requires different voting thresholds in the institutions, and some are contingent on others being triggered first. The second frame will therefore look at how this legal complexity has been conveyed to the public, through the *procedure* frame. This frame will therefore cover words and phrases belonging to the procedural aspects of the activation of Article 7. This includes “rule of law”, “sanction” or “hearing”. Crucially, Article 7 is closely associated with the label “nuclear option”, which will likewise fall under this frame¹¹⁰.

Finally, the third main frame appears both as a result of the literature review, and of the analysis of the preliminary results. In Chapter 2, it was highlighted that Article 7 proceedings have the potential to antagonise Member States subject to them. The proceedings can also create alliances or conflicts between the Member States, as well as at supranational level, in the European Parliament. Additionally, by looking at the preliminary results, we can observe a multitude of words and phrases which qualify the actions of interactions of the agents. Therefore, the third frame will be the *interaction* frame; through the use of this frame, the media depicts the nature and mood of the relationships between the actors. Therefore, words such as “fight”, “face”¹¹¹, “dialogue” or “support” will fall under this frame.

4.3. Findings

4.3.1. Agency Frame

As detailed previously, this frame refers to the depiction in the media of the actors involved in Article 7 proceedings. Two groups of actors can be distinguished in *Figure 3*: Member States and EU institutions.

Firstly, the media has depicted the two Member States subject to Article 7 proceedings, Hungary and Poland, very differently. Given that the total number of headlines in the data set is 158, Poland has been referred to in more than half of the

¹¹⁰ Further explanation of this label will be provided later in this chapter.

¹¹¹ Meaning *confront*.

total number. This includes numerous references to the reason for the activation of Article 7 against Poland, namely, the Supreme Court reforms undertaken by the country's government. This is evident through the use of words and phrases such as "Supreme Court", "reform" and "judiciary". Notably, only one person in the Polish government or ruling party, the foreign minister, is mentioned more than once in the headlines. Conversely, far fewer articles referred to Hungary overall, but of those that did, there was a high prevalence of references to the country's Prime Minister, Viktor Orbán. Here, the *agency* frame is evident – the Polish governing party was depicted as acting as a unit with no clearly defined representative from an external point of view. However, Viktor Orbán was clearly identified as the leader and representative of the Hungarian government and ruling party on the European stage.

Secondly, the media predominantly referred to the EU institutions as a unit by using the terms "EU" and "Brussels". Andrew suggests¹¹² that since news headlines are meant to provide information in an easily understandable format, this may come at the expense of accuracy. In the complex institutional framework of the EU, accuracy was oftentimes sacrificed to ensure the attention-grabbing role of the headline. In other words, the media may have opted to dispense with potentially confusing references to EU institutions or roles, in favour of a unified picture. We are aware, based on the literature review, that such a unified depiction lacks accuracy, as the institutional dynamics at EU level were influenced by a variety of factors.

The representation of Member States and EU institutions may also contribute to creating an "us-and-them" narrative. By overlooking the complexities of supranational EU institutions, the media may depict them as opaque entities whose internal decision-making is inaccessible to citizens in Member States. What is more, by depicting EU institutions as a bloc, the media fails to convey internal disagreements and dynamics which may have slowed down Article 7 proceedings. Conversely, by referring to the Member States as "Poland" and "Hungary" – or through the agency of Prime Minister Orbán – the headlines create two distinct parties. Of course, this is a false narrative since the Member States are *part of* the EU and each of the institutions.

¹¹² B. C. Andrew, "Media-generated Shortcuts: Do Newspaper Headlines Present Another Roadblock for Low-information Rationality?", 28.

A secondary level of the depiction of the EU institutions in news headlines refers to individual institutions. From this standpoint, the European Commission and European Parliament were depicted as the leading actors on Article 7 proceedings. In referencing the former, the media placed a high importance on individuals – European Commission President at the time, Jean-Claude Juncker, and First Vice-President in charge of the Rule of Law and the Charter of Fundamental Rights, Frans Timmermans. The two individuals were collectively referenced more times than the institution they represented. This may be explained by the dynamics between the two. Jean-Claude Juncker belonged to the EPP - the same European Parliament group as MEPs of Hungarian ruling party Fidesz. As discussed in the chapter on the literature, Viktor Orbán is believed to have stressed the importance of Fidesz MEPs in ensuring EPP's majority in the European Parliament, as well as the election of Juncker as President of the European Commission¹¹³. Frans Timmermans, on the other hand, belonged to rival party S&D, and was at the forefront of the push for rectifying rule of law breaches in Hungary and Poland due to his portfolio¹¹⁴. Therefore, the specific references to the two individuals may have been utilised at times to convey this dynamic within the European Commission's leadership.

We do not see the same duality in references to the European Parliament. References to the EPP group and its leader, MEP Manfred Weber, far outnumber references to any other political parties in the European Parliament, or any other MEPs. These references are easily explained by the relationship between Viktor Orbán and Manfred Weber, as well as their respective parties.

According to the literature on framing, it can be used to highlight some aspects and omit others¹¹⁵. Therefore, it is vital to consider the matters that seem to be missing from the *agency* framing. One aspect was already hinted at – references to the European Parliament largely exclude any specific groups or persons. The choice not to refer to individual MEPs may be motivated by a desire to depict a duality between the EU, represented by the European Parliament, and the Member States. The Council of the EU and the European Council were also not mentioned in news headlines, not even

¹¹³ C. Closa, "Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU", 506, 507.

¹¹⁴ D. Kochenov, L. Pech, "Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality", 513, 514.

¹¹⁵ B. C. Andrew, "Media-generated Shortcuts: Do Newspaper Headlines Present Another Roadblock for Low-information Rationality?", 28.

though reference to the “Member States”. A possible explanation is that Article 7(1) was activated in regard to Poland following a resolution of the European Parliament, and in regard to Hungary at the initiative of the European Commission. The Council of the EU therefore did not play a large role in these proceedings outside of organising hearings. The European Council does not have a role to play in the activation of paragraph (1), explaining its absence from headlines on this topic.

4.3.2. Procedure Frame

The activation of Article 7 is a complex process consisting of multiple steps and involving a variety of actors. Therefore, it is to be expected that the media would simplify those procedures in their headlines – it is rather likely that even the text of the articles only provide brief explanations of that process. *Figure 3* shows that even references to the article have been used more rarely than references to the rule of law.

Notably, Article 7 is often referred to as the “nuclear option” – the media and the literature¹¹⁶ both often use that label. However, the literature often critiques the use of that label¹¹⁷. Therefore, it is important to consider this label in order to understand its use in the media. The association of the label “nuclear option” with Article 7 came about when then President of the European Commission José Manuel Barroso referred to Article 7 TEU in those terms in his 2012 State of the European Union address:

¹¹⁶ S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma”, 995; L. Pech, K. L. Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU”, 4; G. Halmai, “The Alternatives to a Bite or a Bark: After Launching Article 7 TEU Against the Hungarian Government”, 64; D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 2, 3; T. Dumbrovsky, “Beyond voting rights suspension : tailored sanctions as democracy catalyst under Article 7 TEU”, 1, 2; D. Kochenov, L. Pech, “Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality”, 516; D. Kochenov, L. Pech, “Better Late than Never? On the Commission’s Rule of Law Framework and its First Activation”, 5; D. Kochenov, “Article 7: A Commentary on a Much Talked-About ‘Dead’ Provision” in *Polish Yearbook of International Law* (2018) 38, 166-187, 179; L. Pech, “Article 7 TEU: From ‘Nuclear Option’ to ‘Sisyphian Procedure’?”, 157, 158.

¹¹⁷ S. Priebus, “Watering down the ‘nuclear option’? The Council and the Article 7 dilemma”, 995; L. Pech, K. L. Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU” 4; G. Halmai, “The Alternatives to a Bite or a Bark: After Launching Article 7 TEU Against the Hungarian Government”, 64; D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU” 2, 3; T. Dumbrovsky, “Beyond voting rights suspension : tailored sanctions as democracy catalyst under Article 7 TEU” 1, 2; D. Kochenov, L. Pech, “Better Late than Never? On the Commission’s Rule of Law Framework and its First Activation” 5; D. Kochenov, “Article 7: A Commentary on a Much Talked-About ‘Dead’ Provision” 179; L. Pech, “Article 7 TEU: From ‘Nuclear Option’ to ‘Sisyphian Procedure’?” 157, 158.

*“We need a better developed set of instruments– not just the alternative between the “soft power” of political persuasion and the “nuclear option” of article 7 of the Treaty.”*¹¹⁸

President Barroso was referring to threats to EU values, notably, the rule of law, that had been signalled in the previous year. Whether intentionally or not, his illustration of the toolkit that the EU disposed of to address potential breaches of the EU values – from political “soft power” to Article 7 – immortalised Article 7 as the ultimate option. However, scholars disagree with this characterisation due to the unanimity voting requirement that must be met to activate Article 7(2), and uncertainty regarding the possible sanctions to be applied under Article 7(3). Both these issues were discussed at length in the literature review chapter. In short, calling Article 7 the “nuclear option” is “unhelpful and misleading: unhelpful because it has undermined the dissuasive nature of Article 7 and misleading because there is nothing ‘nuclear’ about stating that the existence of a risk of serious breach and adopting recommendations to address the situation.”¹¹⁹ Nevertheless, there are also those that consider that referencing the potential of Article 7 could lead to behind-the-scenes discussions and use of political pressure rather than legal sanctions¹²⁰.

Beyond the use of the “nuclear option” label, the media has framed Article 7 proceedings in terms of sanctions and loss of voting rights. The review of literature makes it clear that there is a low likelihood that Article 7(2) could be activated, due to high voting requirements, sanctioning uncertainties and political unwillingness. Therefore, framing Article 7 proceedings as a tool which can lead to the suspension of voting rights may be due to the desire of the media to sensationalise the topic¹²¹. However, a second aspect may be at play in this choice; namely, the complexities of these legal and political debates may not be easily available to journalists reporting on the subject, or to their readership. As a result, the choice to simplify the matter by simply referring to suspension of voting rights may be meant to attract readers without highlighting the complexities of Article 7 proceedings. This may also explain why

¹¹⁸ European Commission, *José Manuel Durão Barroso President of the European Commission State of the Union 2012 Address Plenary session of the European Parliament/Strasbourg 12 September 2012*, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_12_596, accessed 28 March 2024.

¹¹⁹ D. Kochenov, L. Pech, “Better Late than Never? On the Commission’s Rule of Law Framework and its First Activation” 5.

¹²⁰ C. Closa, D. Kochenov, J. H. H. Weiler, “Reinforcing Rule of Law Oversight in the European Union” in *EU Working Papers RSCAS* (2015) 25, 7.

¹²¹ K. Molek-Kozakowska, “Towards a pragma-linguistic framework for the study of sensationalism in news headlines”, in *Discourse & Communication* (2013) 7:2, 173-197, 174.

comparatively fewer references were made to reports and hearings, although they took place in the run-up to the activation of paragraph (1).

4.3.3. *Interaction Frame*

The activation of Article 7 requires the interaction of a variety of actors. As seen previously, through the use of the *agency* frame, the media have created a duality between the EU institutions and the Member States. Additionally, through the *procedure* frame, the media have depicted Article 7 as the “nuclear option”, a matter of “sanctions” including the loss of “voting rights”. Finally, through the *interaction* frame, they portray Article 7 proceedings as an antagonistic and conflictual relationship between the agents. This can be observed through the high prevalence of words or phrases such as “against”, “fight”, “threaten” or “warning”. The media have used such antagonistic frames much more often than words suggesting a calm or collaborative relationship, such as “dialogue”, “support” or “solution”.

Of the three frames analysed in this research, the *interaction* frame is perhaps the most visible. As was presented in the previous chapter on the literature review, paragraph (1) of Article 7 was designed and incorporated in the article as a precautionary measure. Its activation only determines the “clear *risk* of a breach”¹²² of Article 2 values. This determination can only be made after hearings are organised with the Member State, and recommendations are addressed by the European Commission. It does not facilitate the activation of paragraph (2) nor allow the application of any sanctions. At most, according to Kochenov¹²³, it has the role of “naming and shaming” an errant Member State. Therefore, the depiction of the media of hearings and reports in the run-up to its activation in such stark conflictual terms is a sign of misrepresentation of what could have been a constructive interaction between Member States and EU institutions.

It was discussed earlier under the *agency* frame that the representation of EU institutions and Member States as units serves to create an “us-and-them” narrative. Under the *interaction* frame, that narrative has been further skewed to include a

¹²² Consolidated version of the Treaty on the European Union [2012] OJ C326/13, Article 7.

¹²³ D. Kochenov, “Busting the myths nuclear: A commentary on Article 7 TEU”, 10.

conflictual, antagonistic component – turning it into “us-versus-them”. The depiction of interactions as inimical may contribute to further antagonising nationalist governments. Simultaneously, this may create a sense of solidarity nationally, leading to an increase in popularity for those governments in the Member States¹²⁴. Ultimately, the depiction of the relationship between Member States and EU institutions in these terms would undermine efforts to redress rule of law breaches, and push states further away from common EU values.

Conclusion

This chapter has presented the preliminary results of the quantitative analysis of the data set and classified them according to the frames deduced from the literature review. The analysis of the findings has revealed the main agents in the media depiction of the Article 7 proceedings. Namely, it has highlighted differences in the coverage of Poland and Hungary, as well as the contrast between the unitary view of Poland, and the frequent association of Hungary with its Prime Minister. Additionally, the analysis revealed that the EU institutions were often depicted as a collective. Individual references to the European Parliament and European Commission were often associated with individuals therein, such as President Juncker and MEP Weber.

Omissions also revealed information about the frames. The absence of references to the Council of the EU and European Council highlighted their lack of action on this issue. The complexity of Article 7 procedures was likewise often omitted from the headlines in favour of the article’s depiction as the “nuclear option”. The interactions between the various actors were framed as conflictual and antagonistic, not only due to the opposition of EU institutions and Member States hinted in the *agency* frame, but also due to a predilection of journalists to highlight the negative connotations of situations.

¹²⁴ C. Closa, “Institutional logics and the EU’s limited sanctioning capacity under Article 7 TEU”, 504.

5. CONTEXTUALISATION OF FINDINGS – HEADLINES V ARTICLES

This chapter will contextualise the findings in the previous chapter by conducting an in-depth comparison of the extent and manner of framing in headlines, to the text of articles. For this analysis, the data set of articles were divided between the two publications – *Euractiv* and *POLITICO* – and organised in chronological order. Subsequently, to ensure a random selection from the data set, every twentieth article, beginning with the first one, was selected for analysis.

As seen previously, following the adoption of European Parliament resolution calling for the activation of Article 7 against Hungary in June 2015, the popularity of the subject increased significantly. By beginning the selection from the first article of each publication, we can insure a good distribution across the timeframe. The number of articles in the data set is well distributed between the two publications, with 80 articles selected from *Euractiv* and 78 from *POLITICO*. The random selection of every twentieth article beginning with the earliest ones therefore leads to the selection of four articles from each publication. The full text of the selected articles is available in Annex II.

Based on the literature on headline framing detailed in the previous chapter, it can be expected that headlines will be more skewed and contain more negative slants than the text of articles¹²⁵. In other words, the expectation of this section is that texts of articles will contain a less biased description of *agency*, *process* and *interaction* than their headlines.

¹²⁵ U. K. H. Ecker, E. P. Chang, S. Lewandowsky, “The Effects of Subtle Misinformation in News Headlines”, in *Journal of Experimental Psychology Applied* (2014) 20:4, 323-335, 330.

5.1. Euractiv

5.1.1. Hungary could lose EU voting rights, MEPs warn Orbán¹²⁶

All three frames previously outlined are immediately evident in the headline of the article. In terms of *agency*, we observe the reference to the Hungarian government both by its name, and as a direct link to Prime Minister Orbán. The *procedure* frame is also present through the erroneous depiction of Article 7(1) as a procedure whose activation could result in the loss of voting rights, which is not the case. Finally, the *interaction* frame is visible in the use of the word “warn”, which creates an antagonistic tone.

The article reports that the European Parliament called on the European Commission to initiate Article 7(1) proceedings against Hungary. In terms of *agency* framing, the article largely refers to the specific actors involved: the European Parliament and European Commission on the one hand, and the Hungarian government on the other.

The *procedure* frame is apparent in the erroneous depiction of the consequences of a potential successful activation of paragraph (1). The article states that a breach of the “EU Treaties and Charter of Fundamental Rights”¹²⁷ would lead to “sanctions, which would strip Hungary of voting rights in the Union”¹²⁸. The former quote misidentifies a breach of the Charter of Fundamental Rights as ground for the activation of Article 7. The latter quote contains an exaggeration of possible sanctions – paragraph (3) of the article only lists the suspension of voting rights in the Council of the EU as a possible sanction. However, this may not be an exaggeration; as was discussed in the previous section on possible sanctions, there is little indication as to what sanctions could consist of, which suggests that voting rights in other EU institutions such as the European Parliament or European Council may also be suspended. Nevertheless, the text of the *Euractiv* article does not communicate this uncertainty, and simply depicts it as the result of the activation of Article 7.

¹²⁶ G. Gotev, “Hungary could lose EU voting rights, MEPs warn Orbán” in *Euractiv* (10 June 2015), <https://www.euractiv.com/section/central-europe/news/hungary-could-lose-eu-voting-rights-meps-warn-orban/>, accessed 4 June 2024.

¹²⁷ Ibid.

¹²⁸ Ibid.

In terms of *interaction*, the article does not depict the same antagonistic tone as its headline. Conversely, it begins on a rather uncertain tone with the use of conditional tense: “would breach”, “could trigger”, “would strip”. This tone is more accurate to the situation presented in the article, which discusses a possible future activation of Article 7 as recourse to a potential future decision to reinstate the death penalty in Hungary. The text of the article continues on the same uncertain tone: “After some **hesitation**, a Commission spokesperson **hinted** that Hungary **risked** losing its voting rights in the Union if it went ahead with the plans.”.¹²⁹ The words highlighted build on this idea of a contemplated future action, while maintaining reservations.

The article therefore adheres to the expectation outlined in the introduction to this section, meaning frames are more visible in its headline compared to the corpus of the article. It is also notable that the erroneous depiction of Article 7 sanctions is present in both the headline and the text.

5.1.2. Merkel backs Brussels in row with Poland over courts¹³⁰

In the headline of this article, two frames are immediately visible. First, the *agency* frame is evident through the reference to the EU institutions as “Brussels”. This presents the supranational element of the EU in opposition to the Member State, Poland. Second, the use of “Merkel” to refer to the German Chancellor at the time suggests that the readers are familiar with the shorthand¹³¹ following a framing of the German government as represented by its Chancellor. Additionally, in terms in the *interaction* frame, the word “row” maintains the antagonistic relationship between “Merkel” and “Brussels” on the one hand, and “Poland” on the other.

The topic of the article is a declaration by German Chancellor Merkel, who stated that she is taking the issue of rule of law violations in Poland very seriously. The article also provides an overview of the subject matter, including the actions by the Polish government which allegedly amount to rule of law breaches. The *agency* frame

¹²⁹ Ibid, emphasis added.

¹³⁰ Euractiv.com with Reuters, “Merkel backs Brussels in row with Poland over courts” (30 August 2017), <https://www.euractiv.com/section/justice-home-affairs/news/merkel-backs-brussels-in-row-with-poland-over-courts/>, accessed 4 June 2024.

¹³¹ I. Hellsten, J. Dawson, L. Leydesdorff, “Implicit media frames: Automated analysis of public debate on artificial sweeteners” in *Public Understanding of Science* (2010) 19:5, 590–608, 590-592.

appears differently in the text of the article compared to the headline, as the text clarifies that “Brussels” refers to the European Commission – specifically, President Juncker. Poland’s government is continually referred to as such or as “Warsaw”, except for a quote by the justice minister.

The *interaction* frame becomes diluted as the article goes on, from the use of the word “row” once again at the beginning of the text, to stating that “the [European] Commission gave Warsaw a month to address its **concerns**”¹³². Additionally, the issue of EU competence to address rule of law issue in Poland is a topic in the article; this point is introduced through the heading: “**Commission refutes Polish claim of EU incompetence**”¹³³. Through the mistaken use of the word “incompetence” to mean the inability to do something successfully, instead of the lack of legal jurisdiction to act, the author seeks to suggest an insult addressed to the European Commission. This serves to intensify the antagonistic depiction of the relationship between the European Commission and the Polish government, suggested in the headline of the article.

The *procedure* frame is also visible in the text of the article, despite its absence from the headline. The text ends with a brief description of the possible consequences of the activation of Article 7: “The maximum, however unlikely, punishment under the procedure would be stripping Poland of its voting rights in the EU”¹³⁴. As seen in previous chapters, the characterisation of the suspension of voting rights as “unlikely” is accurate according to the literature. This description is explained elsewhere in the article: “[it would] require the unlikely unanimous support of all other EU governments.”¹³⁵ The article also states that the sanction under Article 7 would be the suspension of voting rights in the *EU*; as explained under the previous article, this is a mistaken description.

In conclusion, the headline and text of the article frame the issue in similar manners, with a slightly heightened intensity in terms of the *interaction* frame in the headline, and the presence of the *procedure* frame in the text. Generally, though, the expectation created in the headline is met in the article.

¹³² Euractiv.com with Reuters, “Merkel backs Brussels in row with Poland over courts”.

¹³³ Ibid, emphasis in original source.

¹³⁴ Ibid.

¹³⁵ Ibid.

5.1.3. Survey: Poles think Article 7 ‘nuclear’ decision is unjustified¹³⁶

In this headline, the *procedure* frame is immediately noticeable through the association of the “nuclear” label with Article 7. The *agency* frame is also represented, through the reference to the Polish people. The *interaction* frame is present through the use of “decision” – a rather unusual description of the activation of Article 7 not as an offensive or sanctioning device, but as a benign act. Comparatively, the qualifier “unjustified” is more powerful, though it does not suggest more than the expected backlash against sanctions. Overall, the headline suggests that the text of the article will present the results of the poll, with limited framing.

The article reports the results of a survey conducted on Polish citizens, which included questions regarding the justifiability of the activation of Article 7 against Poland, the possibility of sanctions being applied, and Poland’s membership of the EU. As expected based on the headline, the text of the article does not show major signs of framing, and is largely reporting results of the poll.

The *agency* frame is not particularly noticeable in the text of the article. The *interaction* frame is present in statements such as “nearly half of [Poles] believe the Commission is just acting because it does not like the current authorities in Warsaw”¹³⁷. However, this statement is directly supported by results of the poll presented thereafter. Statements of the Polish President and Prime Minister were also included in the text of the article; the gist of those statements is the belief that Poland is treated unfairly compared to other Member States. These statements are paraphrased or presented as quotes, and the writer does not engage with them.

The *procedural* frame is briefly noticeable through the presentation of poll results, as the poll included questions about the likelihood of sanctions being applied under Article 7 and the likelihood that other Member States would veto such proposals. While the choice to present the results of these specific questions highlights the matters the writer believes to be most pertinent to the subject, they do not differ greatly from, for example, the matters discussed most in the literature.

¹³⁶ B. Bodalska, “Survey: Poles think Article 7 ‘nuclear’ decision is unjustified” in *Euractiv* (1 February 2018), <https://www.euractiv.com/section/central-europe/news/survey-poles-think-article-7-nuclear-decision-is-unjustified/>, accessed 4 June 2024.

¹³⁷ B. Bodalska, “Survey: Poles think Article 7 ‘nuclear’ decision is unjustified”.

To conclude, the headline of this article did not create high expectations of framing, and the corpus met those low expectations.

5.1.4. EU member states can refuse arrest warrants issued by Poland¹³⁸

The *agency* frame is visible in this headline through the use of the phrase “EU member states”. It is immediately specific as to the actors involved on the EU side and does not attempt to depict the actor in a skewed manner. The *procedure* frame is also visible through the reference to arrest warrants, with the implication that the subject matter of the article is European arrest warrants. The *interaction* frame is not visible in this headline. The expectation thus created is that the text of the article will factually detail the situation.

The text of the article presents a decision of the Court of Justice of the EU which authorises Member States to refuse European arrest warrants issued by Poland if they suspect that the defendants would not be awarded a fair trial there. The article provides some background to the decision, as well as the activation of Article 7(1) against Poland.

Under the *procedure* frame we can once again observe the depiction of Article 7 sanctions as the suspension of voting rights across EU institutions. Additionally, Article 7(1) determines that a “clear risk of a breach”¹³⁹ of Article 2 exists in a Member State; the text of the *Euractiv* article depicts this statement as a criticism of the European Commission of the Supreme Court reforms in Poland. This amounts to a misrepresentation by the author of the text of Article 7.

In terms of the *agency* and *interaction* frames, there is very little in the text of the article. As expected based on the headline, the text is a factual presentation of the decision by the Court of Justice of the EU.

¹³⁸ Euractiv.com with AFP, “EU member states can refuse arrest warrants issued by Poland” (26 July 2018), <https://www.euractiv.com/section/justice-home-affairs/news/eu-member-states-can-refuse-arrest-warrants-issued-by-poland/>, accessed 4 June 2024.

¹³⁹ Consolidated version of the Treaty on the European Union [2012] OJ C326/13, Article 7.

5.2. POLITICO

5.2.1. Hungary, ‘canary in the coal mine’ of EU press¹⁴⁰

The headline utilises a metaphor which denotes an early warning of danger. This metaphor can be interpreted as belonging to the *interaction* frame as it is used to suggest to readers that the situation of the press in Hungary will only continue to worsen. While the text of the article is likely to contain less strong language, the expectation created is that it will provide details to uphold the claim in the headline. The *procedure* and *agency* frames are not present in the headline.

The subject of the article is a report by the Committee to Protect Journalists which discusses the situation of press freedom in the EU. The text of the article focuses heavily on the part of the report that analysis the situation in Hungary. The article uses the *interaction* frame to depict a dire situation through words such as “danger”, and quotes by the authors of the report which stated that “[Hungary is the] most egregious practitioner of controlled press.”¹⁴¹ While much of the strong language in relation to the situation of the free press in Hungary, including the metaphor in the title, are quoted from the authors of the report, the author’s choice to present them in this manner suggests a desire to highlight the critiques of the situation in Hungary.

The *procedure* frame is also present in the text. The section about Article 7 recalls comments by the European Commission regarding the possibility of its activation against Hungary. Regarding the sanctions that may follow, the *POLITICO* article states that it “could suspend a member state’s voting rights at the Commission if it is found in “serious and persistent breach” of treaty principles.”¹⁴² The misrepresentation of the possible sanction listed in the text of Article 7(3), as well as the reference to “treaty principles”, rather than EU values, likely serve to simplify the complexity of Article 7 procedures in order to communicate them to a readership unfamiliar with it.

The *agency* frame is also present in the text of the article, which makes recurring references to “Orbán’s Hungary”. As seen in previous chapters, this

¹⁴⁰ G. Hervey, “Hungary, ‘canary in the coal mine’ of EU press” in *POLITICO* (29 September 2015), <https://www.politico.eu/article/hungary-eu-press-freedom-orban-fidesz/>, accessed 4 June 2024.

¹⁴¹ Ibid.

¹⁴² Ibid.

association of the Hungarian government with its Prime Minister is often present in the media. Additionally, as mentioned before, the article discusses a report by the Committee to Protect Journalists; it also quotes two members of the Committee. Yet, the article gives no information about the Committee¹⁴³. This omission may hint to the expectation on the side of the author that the public is familiar with the Committee to Protect Journalists; more likely, however, the intention of the author is to increase the credibility of the source by associating it in the mind of the reader with the power or status to make suggestions to the EU institutions. The complex presentation of the *interaction* frame, contrasted with its relative absence in the headline of the article, further suggests that the author intended to improve the authority of the source by maintaining its relative obscurity.

To conclude, the expectation created by the headline was inaccurate in this case. The text did not provide details which would uphold the premise that the situation of press freedom in the EU would worsen incrementally. Although there was little indication in the headline of the *agency* and *procedural* frames, both were definitively present in the text of the article. This marks an exception in the overall expectation outlined in previous chapters, that frames would be more present in the headlines of articles, compared to the text of articles.

5.2.2. European Commission ‘very close’ to triggering Article 7 on Poland¹⁴⁴

The expectation created by this headline regarding the corpus of the article is that it will provide an update on the European Commission’s plans to trigger Article 7 proceedings in regard to Poland. The *interaction* frame is visible in the headline through the use of the word “triggering”, which conveys a degree of hostility, expected to be continued in the text of the article. The *agency* frame is also visible through the

¹⁴³ The Committee to Protect Journalists is an independent, international NGO made up of worldwide experts, which reports on violations of press freedom and attempts to rectify them through diplomatic means. More information can be found at CPJ, “What We Do”, <https://cpj.org/about/>, accessed 5 June 2024.

¹⁴⁴ M. de la Baume, “European Commission ‘very close’ to triggering Article 7 on Poland” in *POLITICO* (19 July 2017), <https://www.politico.eu/article/warsaw-judiciary-frans-timmermans-european-commission-very-close-to-triggering-article-7-on-poland/>, accessed 4 June 2024.

specific reference to the European Commission, however the *procedure* frame is absent.

The text of the article discusses a range of offenses by Poland which threatened respect for the rule of law in the country and led the European Commission to take action. The article reports that this would soon culminate in the activation of Article 7 against the country. The *agency* frame is present in the article through references to the European Commission and Vice President Frans Timmermans. Poland is referred to either by name or as “Warsaw”. The corpus of the article also details the Polish decisions that led to the European Commission contemplating Article 7.

Given the topic of the article, a strong *procedural* framing of the issue is to be expected. The label “nuclear option” is used, and an accurate depiction of Article 7 proceedings is provided, including the possible sanction under paragraph (3). The article adds that it is unlikely that any sanctions will be applied due to the high voting requirement and Hungary’s pledge¹⁴⁵ to veto any vote on Poland.

Finally, *interaction* framing is also present in the article, if only by omission. The article quotes Gianni Pittella, leader of the S&D group in the European Parliament, who stated that “all possible infringement proceedings against Poland for the violation of EU law”¹⁴⁶ would be considered. The author does not provide any interpretation of these statements. However, the quote by S&D leader Pittella, and the references throughout to Vice President Timmermans, who also belongs to the S&D group, depict only one ideological side. As presented elsewhere in this thesis, tensions were visible between Vice President Timmermans and the S&D group on one side, and European Commission President Juncker and the EPP group on the other. The choice to present only one side suggests the desire of the author to uphold the claim in the headline, rather than discuss the possible obstacles in the activation of Article 7.

Therefore, the expectation set in the title was only half-fulfilled: if the reader expected a factual update on Article 7 proceedings, the author provided a story from the point of view of supporters, but not of opponents of the procedure, thus creating an incomplete story.

¹⁴⁵ J. Treeck, “Hungary’s Viktor Orbán pledges to support Poland against EU ‘inquisition’” in *POLITICO* (22 July 2017).

¹⁴⁶ *Ibid.*

5.2.3. Poland retreats on controversial laws¹⁴⁷

In terms of the *agency* frame, the headline of this article suggests the existence of another actor, without naming it outright. This is done through the use of the word “retreats”, which is covered by the *interaction* frame, and through its conflictual nature implies that Poland’s action comes in response to a development as a result of the other actor’s activity. Therefore, the headline creates the expectation that the text of the article will clarify who the other actor is, and what development led to Poland’s “retreat”.

The article discusses several amendments to laws passed in Poland that had created issues with international partners included Israel, the United States and the EU. Therefore, from the *agency* standpoint, the expectation created by the headline is fulfilled by naming the actors who criticised Poland’s new laws. Numerous references to Polish ruling party PiS depict it as the leading agent in passing the controversial laws, and it is a member of parliament belonging to that party that introduced the amendments.

In terms of *interaction*, the article clarifies that PiS is appeasing critiques by the European Commission by proposing the amendments: “We took this decision to meet the expectations of the European Commission [...] We hope that this will end the conflict ... it is a gesture from our side.”¹⁴⁸ This quote denotes a desire on the side of Polish ruling party PiS to minimise changes in their behaviour, while maximizing the (positive) reaction of the critics.

The *procedure* frame is present in the article through the brief explanation of the activation of Article 7 by the European Commission, as well as the recommendations the institution addressed to the Polish government.

In conclusion, the expectations created by the headline were fulfilled in the article through the provision of additional information under the *agency* and *interaction* frames.

¹⁴⁷ A. Wróbel, “Poland retreats on controversial laws” in *POLITICO* (22 March 2018), <https://www.politico.eu/article/poland-law-and-justice-retreats-on-controversial-laws/>, accessed 4 June 2024.

¹⁴⁸ Ibid.

5.2.4. Polish PM to EU: Don't lecture us¹⁴⁹

In terms of *agency*, this headline refers to the Polish Prime Minister; as seen in the previous chapter, there have been so few direct references to individuals in the Polish government in the data set, that only one reference – to the Polish foreign minister – was identified in the preliminary results. The use of the collective term “EU” instead of a specific institution creates the impression of an ‘us-versus-them’ narrative. This is further nuanced by the *interaction* frame in the statement “Don’t lecture us”¹⁵⁰, which creates the expectation of antagonism in the text of the article.

The topic of the article is a debate that took place in Strasbourg as part of the Conference on the Future of Europe, that Polish Prime Minister Mateusz Morawiecki took part in. In terms of *agency*, the text of the article clarifies that the Polish Prime Minister was speaking about the European Commission, and later makes reference to Vice President Timmermans. Additionally, quotes by MEPs belonging to a group of ideologically diverse parties – centre-right EPP, left wing S&D and liberal Renew Europe - were included in the article, providing a variety of opinions.

Regarding *interaction*, the article quotes Prime Minister Morawiecki: “I have to think whether or not the European Commission is really an honest broker”¹⁵¹. The repetition of the “honest broker” quote by the author seems to frame a breakdown in the relationship between the European Commission and the Polish administration. This is further highlighted by the use of words and phrases such as “confrontation”, “countless warnings” or “demands for clarifications”.

The *procedure* frame is also present in the brief reminder about the activation of Article 7 against Poland. It is associated with “nuclear option” label, and the author adds that the activation followed “warnings, requests for dialogue and demands for clarification”¹⁵². Though brief, the description is accurate.

The corpus of the article meets the expectation set in the headline in that it maintains an antagonistic and confrontational tone. Through the provision of quotes from ideologically diverse sources, it seems the author seeks to provide a diverse range

¹⁴⁹ M. de la Baume, “Polish PM to EU: Don’t lecture us” in *POLITICO* (4 July 2018), <https://www.politico.eu/article/polish-pm-mateusz-morawiecki-to-eu-dont-lecture-us/>, accessed 4 June 2024.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

of opinions to substantiate the sense of disagreement between the EU institutions – European Commission and European Parliament – and Poland.

Conclusion

In this chapter, a random selection of articles from the data set was analysed. As expected, some of the articles displayed a more noticeable slant in the headline compared to the corpus. Though fewer frames were generally observed in the headlines compared to the articles, the frames sometimes contained more skewed in the headlines. For example, the *agency* frame was visible in headlines through references to the EU institutions as a group, with the articles then clarifying which specific institution was discussed. The *procedure* frame was often visible through the mistaken description of possible sanctions under Article 7. As discussed in the introduction to this section, the *interaction* frame was often used to create a conflictual tone in headlines, which was at times not supported by the text of the article, or was supported by the strategic selection of quotes and interviewees.

6. CONCLUSION

This research has built on the existing literature debates regarding Article 7 by investigating the portrayal of the proceedings by the media, to answer the central research question: *How did the media frame the discussion around Article 7 TEU proceedings?* This research found that the answer is that the media depicted Article 7 proceedings as an antagonistic and conflictual relationship between an elusive “EU” and a cohesive “Poland” on the one hand, and “Hungary” – represented by its Prime Minister, Viktor Orbán – on the other, regarding rule of law issues. Through the selection of the *agency*, *procedure* and *interaction* frames, this thesis was able to investigate a variety of aspects suggested by the analysis of the literature on Article 7.

The use of the *agency* frame revealed that the media portrayed the EU institutions as a collective or represented skewed interests of individuals in the institutions. Although the literature showed that the European Commission, European Parliament and Council of the EU all have different and separate roles in Article 7 proceedings, the media did not portray these complex roles. The headlines of articles discussing the proceedings predominantly referred to the institutions as a unit. Individual institutions were largely associated with individuals therein – see the recurrent references to President Juncker of the European Commission, and EPP chair Manfred Weber in the European Parliament. These specific references are skewed by the ideological orientation of the individuals mentioned; for example, the previous chapter showed how a headline referring to the European Commission¹⁵³ may misrepresent the actions of one leader therein without giving adequate consideration to internal institutional dynamics.

The *agency* frame also showed the differences in the depiction of the two Member States subject to Article 7 proceedings. The analysis looked into the recurrent references to Hungarian Prime Minister Orbán as an agent for the Hungarian party. Conversely, the Polish government and ruling party were largely grouped together, with only few articles discussing actions of specific individuals¹⁵⁴.

This contrasting portrayal of the EU and the Member States served to create a duality between them. Therefore, the media framed Article 7 proceedings as the

¹⁵³ M. de la Baume, “European Commission ‘very close’ to triggering Article 7 on Poland”.

¹⁵⁴ M. de la Baume, “Polish PM to EU: Don’t lecture us”.

interaction between the EU and the individual Member States, creating an “us-and-them” narrative.

The *procedure* frame allowed the investigation of the portrayal of Article 7 procedures in the media. The most prevalent reference to this frame was the use of the “rule of law” phrase to briefly describe the subject matter of the proceedings. Notably, the media also often used the phrase “nuclear option” to refer to Article 7. Although the literature strongly disagrees with the use of this label for a variety of reasons, the research found that it is still heavily associated with the article. The associations were found not only in the headlines, but also in the texts of article, which often depicted the possible sanctions under Article 7 erroneously. The documented tendency of the media to exaggerate and sensationalise may explain these findings. However, some margin must be allowed for an alternative interpretation of the errors found in articles, especially ones published towards the beginning of the time frame. Namely, it could be argued that Article 7 is a complex procedure whose details may not be accessible to everyone, perhaps not even to those specialised in reporting EU news, or their readership.

The *interaction* frame revealed information about the portrayal of relationships between the EU and Member States in the media. This research found an abundant use of words and phrases connoting conflict and animosity. The frequency and variety of such terms far outnumbered the use of terms suggesting cooperation or dialogue. This frame revealed the extent to which that hostility was introduced and highlighted by the media in headlines compared to the corpus of articles¹⁵⁵. Therefore, though the *interaction* frame, this research found that the media transformed the previously observed “us-and-them” narrative into “us-versus-them”.

Several limitations were encountered in this research, which create opportunities for future research into the depiction of Article 7 in the media. First, the scope of the data set was limited to a three year time period to maintain relevance to the research question. However, more attention should be awarded to the continued depiction of Article 7 in the media. The European Commission has decided to retract

¹⁵⁵ Euractiv.com with Reuters, “Merkel backs Brussels in row with Poland over courts”; G. Gotev, “Hungary could lose EU voting rights, MEPs warn Orbán”.

the Article 7(1) activation against Poland¹⁵⁶ following changes in the country's leadership which began rectifying rule of law violations; this creates an opportunity to investigate framing by the media from the beginning of proceedings to the end. Second, another interesting avenue may be a comparative study between EU media such as *Euractiv* and *POLITICO* and national media channels. This was not explored in this paper due to concerns about the feasibility of large-scale translation of articles and headlines into English. Finally, this research looked at the headlines of articles predominantly due to the exaggeration of framing therein. Future research could consider a similar method aimed at the corpus of articles, in order to investigate how the prevalence of words and phrases differ in headlines versus articles.

The common values are at the centre of the economic integration and social freedoms that the EU provides for citizens. In that context, each round of enlargement poses the question of their continued protection. With a view to possible new Member States including Moldova, Ukraine and Georgia, the question about the capacity of the EU to defend the values is becoming ever more pressing. In this regard, a secondary conclusion of this research is that Article 7 in its current form is not suitable to protect the values. This is largely based on the unanimity voting requirement and the ambiguity regarding possible sanctions. These concerns could be addressed by the Council of the EU through the provision of specific guidance as to the concrete sanctions that could apply. Nevertheless, the most long-lasting solution would be the update of Article 7 through treaty change.

¹⁵⁶ A. Krzysztozek, "Commission withdraws Article 7 proceedings against Poland", in *Euractiv* (20 May 2024), <https://www.euractiv.com/section/politics/news/commission-withdraws-article-7-proceedings-against-poland/>, accessed 5 June 2024.

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Hungary could lose EU voting rights, MEPs warn Orbán – Euractiv



Hungary could lose EU voting rights, MEPs warn Orbán



The Visegrad countries can lead the Western Balkans through the process of state-building and EU accession. [EPP/Flickr]

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Reinstating the death penalty in Hungary would breach the EU Treaties and Charter of Fundamental Rights, and could trigger EU article 7 sanctions, which would strip Hungary of voting rights in the Union, says a European Parliament resolution passed today (10 June).

On 28 April, Orbán raised the possibility of the death penalty being reintroduced in Hungary. After some hesitation, a Commission spokesperson hinted that Hungary risked losing its voting rights in the Union if it went ahead with the plans.

>> Read: [Hungary's Orbán angers EU over death penalty, migrants](#)

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<https://www.euractiv.com/section/central-europe/news/hungary-could-lose-eu-voting-rights-meps-warn-orban/>

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>> Read: Commission hardens tone with Orbán

This time it was the European Parliament who took over the issue, asking the European Commission in a resolution to assess the situation in Hungary and to establish an EU mechanism to monitor democracy, the rule of law and human rights annually across the EU.

This particular demand may look strange, because the EU executive has already adopted a mechanism for addressing “systemic threats” to the rule of law in any of the EU’s 28 member states, inspired by recent lurches toward authoritarianism in Hungary and Romania.

>> Read: Brussels lays out plans to counter ‘systemic threats’ to EU rule of law

The resolution says that reinstating the death penalty in Hungary would breach the EU Treaties and Charter of Fundamental Rights, and the wording of the Hungarian government’s public consultation on migration is “highly misleading, biased and unbalanced”.

Orbán launched the consultation last month to sound out the public, sending a questionnaire to every Hungarian adult.

One of the questions put to the public reads, “There are some who think that mismanagement of the immigration question by Brussels may have something to do with increased terrorism. Do you agree with this view?”

Another asks: “Do you agree with the Hungarian government that support should be focused more on Hungarian families and the children they can have, rather than on immigration?”

Recently a politician from Orbán’s Fidesz party said that the government wants to draw up legislation to effectively close its southern borders to illegal migrants.

>> Read: Hungary’s ruling party wants to close southern border to migrants

Although “public consultation can be an important and valuable tool for governments to develop policies”, “the content and the language used in this particular consultation is “highly misleading, biased, and unbalanced; establishing a biased and direct link between migratory phenomena and security, MEPs say.

According to the resolution, the death penalty is “incompatible with the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights on which the Union is founded,” they stress, adding that any member state reintroducing the death penalty would be “in violation of the Treaties and of the EU Charter of Fundamental Rights”. They note that a serious breach by a member state would trigger the EU Treaty Article 7 procedure, which could lead to the withdrawal of its voting rights in the Council.

The resolution was passed by 362 votes to 247, with 88 abstentions.






Merkel backs Brussels in row with Poland over courts



German Chancellor Angela Merkel attends her annual press conference at 'Bundespressekonferenz' in Berlin, Germany, 29 August 2017. [EPA-EFE / CLEMENS BILAN]

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German Chancellor Angela Merkel on Tuesday (29 August) threw her weight behind the European Commission in its row with Warsaw over the freedom of Poland's court system.

Speaking in Berlin, the previously reticent Merkel said she took the issue "very seriously" and would talk about it with European Commission President Jean-Claude Juncker on Wednesday (30 August).

In July, the Commission gave Warsaw a month to address its concerns about ongoing reforms it sees as interfering with an independent judiciary.

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Warsaw's reply on Monday (28 August) signalled that the ruling nationalist and eurosceptic Law and Justice (PiS) party had no intention of backing down and even doubted the EU executive's right to intervene.

Merkel: "We cannot simply hold our tongues"

While two of the new Polish laws questioned by the European Commission have been sent back for re-working by an unexpected presidential veto and after a week of mass street protests, a third one, giving the justice minister powers to fire judges, has become law.

The Commission says it undermines the independence of the courts and therefore EU rules.

"This is a serious issue because the requirements for cooperation within the European Union are the principles of the rule of law. I take what the Commission says on this very seriously," Merkel told a news conference.

"We cannot simply hold our tongues and not say nothing for the sake of peace and quiet," she added.

Polish Justice Minister Zbigniew Ziobro said Merkel's remarks showed the criticism was political, rather than factual.

"I'm convinced that the Polish government will be executing its targets despite political emotions that appear in politicians' statements," Ziobro told a news conference in Warsaw.

"Every country which is independent within the EU has its own laws and should settle its problems within democratic mechanisms," he said in remarks broadcast on state TV.

In its reply to the European Commission on Monday (28 August), the Polish foreign ministry said the legislative process of overhauling its judiciary was in line with European standards.

It called the Commission's concerns groundless and noted that judiciary was the competence of national governments, not the executive.

Commission refutes Polish claim of EU incompetence

"We have received the reply from the Polish government. Regarding the point that we have no competence in this sphere, this is something that we would actually quite powerfully refute," a Commission spokeswoman said.

"The rule of law framework sets out how the Commission should react should clear indications of a threat to the rule of law emerge in a member state. The Commission believes that there is such a threat to the rule of law in Poland," she said.

The Juncker Commission said in July that it would launch legal action against Poland over the judicial reforms.

It also said that if the government started firing Supreme Court judges, the Commission would move to suspend Poland's voting rights in the EU – an unprecedented punishment which would, however, require the unlikely unanimous support of all other EU governments.

Merkel's remarks on Tuesday follow openly critical statements from French President Emmanuel Macron, who said last Friday (25 August) that Poland was isolating itself within the EU and that Polish citizens "deserved better" than a government at odds with the bloc's democratic values and economic reform plans.

Logging

In another unprecedented sign of defiance against the EU, the Polish government of the Law and Justice party has also ignored an order by the EU's highest court to cease logging in the Bialowieza forest.

The court will convene on 11 September to decide how to react to Warsaw's failure to honour the injunction, the first in EU history.

As the EU's spats with the PiS government get increasingly tense, the bloc's member states are due to discuss again this autumn whether the situation in their largest ex-communist peer merits launching an unprecedented Article 7 punitive procedure.

The maximum, however unlikely, punishment under the procedure would be stripping Poland of its voting rights in the EU over not respecting democratic principles on which the bloc is built.

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Survey: Poles think Article 7 'nuclear' decision is unjustified



A recent survey shows that despite the frictions between the Polish government and the EU over the rule of law, a vast majority of Poles remains pro-European. [EPA/CLEMENS BILAN]

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Polish authorities claim that the launch of Article 7 against their country is unjustifiable. Citizens are divided on the issue and nearly half of them believe the Commission is just acting because it does not like the current authorities in Warsaw. **EURACTIV Poland** reports.

According to a January survey by the Polish Centre for Public Opinion Research (CBOS), 43% of Poles agree the 'nuclear option' against Poland is unjustified, while 38% think the opposite. Almost half (46%) think the Commission's decision was based on a dislike of the current government.

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Since the moment the **Article 7 procedure on the state of the rule of law in Poland was initiated**, Polish government officials were convinced that it was groundless.

President Andrzej Duda said on Monday (29 January) that he “totally disagrees” with the Commission. “I think this is a very unfair treatment that we are facing,” he said in an interview with Polish television channel TVP.

The Polish authorities, Duda explained, had only introduced changes to the legal system that are already in force in other EU countries, but only Poland is accused of violating democracy.

“Let’s take into consideration the real image of our country: we have freedom of association, everyone can demonstrate, there is no problem when it comes to freedom of speech,” said Duda.

Prime Minister Mateusz Morawiecki, who only took office in December, also insisted that the launch of Article 7 was unfounded and argued that the country has the right to implement reforms.

Polish public opinion divided

The CBOS survey also shows that for 45% of respondents, this form of pressure on the Polish authorities is unacceptable, while 34% consider it acceptable and 21% said they have no opinion on the matter.

Researchers point out that Poles are also divided over whether the country should heed the Commission’s recommendations and withdraw some of the changes in the judicial system. 44% of respondents believe Poland should meet the Commission’s expectations while 41% think the opposite.

Poles do not fear sanctions, count on Hungary

According to the survey, Poles are not afraid that the current situation will result in sanctions. Although more than a half of the respondents (51%) believe that sanctions could be an option, the majority are convinced that the Council will fail to secure the unanimity necessary to approve sanctions.

Here, 28% of respondents believe that at least one country would take the Polish side and 35% think it would be more than one – expecting solidarity from post-communist countries like Hungary (77%), the Czech Republic (22%), Slovakia (16%), Bulgaria (14%) and Lithuania (8%), with 7% betting on Germany as well.

At the same time, as many as 87% of respondents (up on 85% in the previous survey), were still in favour of Poland’s presence in the EU and only 10% opposed it.

The survey was carried out on January 9-17 on a sample of 951 adult Poles.

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<https://www.euractiv.com/section/central-europe/news/survey-poles-think-article-7-nuclear-decision-is-unjustified/>


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EU member states can refuse arrest warrants issued by Poland



German and Polish policemen arrest a thief after a pursuit during Polish and German Police cross-border exercises in Żgorzelec, Poland, 28 January 2015. [EPA]

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The European Court of Justice (ECJ) yesterday (25 July) authorised EU members to refuse arrest warrants issued by Poland if they doubt defendants will get a fair trial there.

The judgement provides the legal framework for countries to reject Polish arrest and extradition warrants and is not binding.

The decision states legal authorities in the country which receives the warrant must “postpone executing it if they believe there is a “real risk of breach...of fundamental” human rights.

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However, judgement on the fairness of other EU legal systems is for each member state to decide on an individual basis when it receives a European arrest warrant, clarified the Luxembourg-based court.

The High Court of Ireland brought the case to the ECJ after Poland issued an arrest warrant for a Polish national living in Ireland on charges of drug trafficking.

The ECJ decision allows the Irish government to reject the European extradition warrant if they have “objective, reliable, specific and properly updated” evidence of a “real” risk of a defendant being denied their right to a fair trial due to “deficiencies in the Polish system of justice”.



Not found



In March, an Irish High Court Judge questioned whether extradition to Poland under a European Arrest Warrant should be executed in spite of the rule of law crisis. Polish politicians smeared her as incompetent lesbian. Today the ECJ confirmed her stance: <https://t.co/COV4LFCERs>

— Dagmar Schiek (@DSchiek) **July 25, 2018**

The move follows a series of controversial judicial reforms in Poland.

The Commission launched the Article 7 procedure against Warsaw last December after concluding that the Polish judiciary reforms pose a systematic threat to the country's rule of law. Warsaw could be stripped of its voting rights in the 28-nation bloc under the Article 7 procedure of the EU treaty – covering systemic threats to the rule of law – which had never been previously used against an EU state.

Supreme Court judges, who hold their position until retirement, saw their pension age lowered from 70 to 65, a decision described by critics as an attempt to give the government more judicial control.

The European Commission criticised the reforms in Poland on 20 December as representing “a clear risk” of a “serious” breach of the rule of law by handing the government control over legal matters.

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NEWS POLITICS

Hungary, 'canary in the coal mine' of EU press

A report calls Hungary the “most egregious practitioner of controlled press.”

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Employers of Hungary's opposition radio, the 'Klubradio' and their sympathizers hold a photo of Orbán reading 'take it to reason already breaks off on it your tooth' during a 2013 demonstration for the freedom of speech. | ATTILA KISBENEDEK/AFP/Getty Images

FOURTH ESTATE

SEPTEMBER 29, 2015 6:27 PM CET

BY GINGER HERVEY

Press freedom in Europe — and specifically, Hungary — is in danger, according to a report released Tuesday by the Committee to Protect Journalists.

The report states that while the EU maintains an outward commitment to press freedom, safeguards implemented are often cosmetic and offenders are seldom

punished.

Case in point, according to the report and to CPJ members, is Viktor Orbán's Hungary.

Since Orbán's nationalist Fidesz party took power in 2010, it has been accused by activists and journalists of meddling in newsrooms, imposing taxes and regulations unfairly on media outlets critical of the government, and taking control of the Media Council, which is supposedly independently elected.

According to Kati Marton, a Hungarian-American board member of the CPJ, Orbán's Hungary is the "most egregious practitioner of controlled press."

"They are making it virtually impossible for journalists to do their job," Marton said.

The Hungarian government's practices have not escaped the notice of the European Commission, which has twice raised the possibility of sanctioning Budapest via Article 7, a clause in the treaty that could suspend a member state's voting rights at the Commission if it is found in "serious and persistent breach" of treaty principles.

The CPJ said in their report, which was presented in Brussels Tuesday, that Article 7 should be reconsidered in Hungary's case. Press freedom is the "canary in the coal mine," according to Marton.

"This is about more than the press," said Marton, an author, journalist and the widow of former U.S. diplomat Richard Holbrooke. "When a country starts rolling back press freedoms, it never stops there."

When asked to comment on the CPJ report, the Hungarian Permanent Representation to the EU referred POLITICO to the Venice Commission's [Opinion on Media Legislation of Hungary](#).

The opinion, released in June, said that while the country had made progress in recent years, it needs to continue to improve the situation of media freedom in the country.

Jean-Paul Marthoz, the Belgian journalist and activist who penned the CPJ report, warned that Hungary's suppression of the free press was a threat to Europe's democratic values.

“Hungary is the first ideological attempt to undo the liberal construct of Europe,” said Marthoz. “Orbán has said very clearly that he is against liberal democracy, that his models are Erdoğan or Putin.”

The CPJ made a series of recommendations to EU leaders that would increase accountability among member states, including more openness in negotiations and the creation of a commission that could monitor member states’ compliance to human rights standards. Marthoz told POLITICO he believed a system with this aim could be created within six months, if key leaders cooperate.

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LETTER TO THE EDITOR

Hungary’s response to the refugee crisis

BY RÉKA SZEMERKÉNYI

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European Commission 'very close' to triggering Article 7 on Poland

Government plans to bring the judiciary under its control prompt Brussels to consider severe sanction.

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Polish Prime Minister Beata Szydło and Hungarian Prime Minister Viktor Orbán shake hands during a meeting of the Visegrad Group Prime Ministers | Wojtek Radwanski/AFP via Getty Images

JULY 19, 2017 2:24 PM CET
BY MAÏA DE LA BAUME

The European Commission is “very close” to triggering the EU’s Article 7 procedure against Poland — a move that can lead to the suspension of a member country’s voting rights, Commission Vice President Frans Timmermans said Wednesday.

<https://www.politico.eu/article/warsaw-judiciary-frans-timmermans-european-commission-very-close-to-triggering-article-7-on-poland/>

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The Commission will also prepare to start infringement proceedings against Warsaw for breaching EU law over its plans to bring the judiciary under government control, Timmermans told reporters.

Timmermans said triggering Article 7 — sometimes described as the EU's "nuclear option" — was "part of the discussion" on Poland. "Given the latest developments, we are coming very close to triggering Article 7," he said.

The EU has never used Article 7, which was established more than 17 years ago as a way to ensure "that all EU countries respect the common values of the EU."

Speaking to reporters at the Commission's daily briefing, Timmermans said he was concerned about four recent Polish legislative measures, including a law that would revamp the National Council of the Judiciary (KRS), the body that nominates Poland's top judges, ending the terms of its 15 judges and allowing parliament, where the ruling party Law and Justice party (PiS) has a narrow majority, to nominate their successors.

Should Poland's new legislative measures be implemented, they would "greatly amplify the threat to the rule of law" and "seriously erode the independence of the judiciary," Timmermans said, adding that he had "not seen any initiative to re-start the dialogue" with Poland.

"If this all leads to nothing, there is no choice than to set the next step," he said.

Under EU law, the Commission may determine "that there is a clear risk of a serious breach by a Member State" of the EU's fundamental values. The Commission's decision would then set in motion a process that could lead to the country losing its right to vote in the Council.

Nevertheless, the loss of voting rights under Article 7 requires the unanimous consent of all EU member countries — and Hungarian Prime Minister Viktor Orbán has stated that he would veto any attempt to sanction Poland.

On Wednesday, Timmermans said he would prepare infringement proceedings against Warsaw for breaching EU law and submit them to the college of commissioners next week. This type of disciplinary procedure depends on the Commission identifying a

specific piece of EU law that Poland has violated. In another recent controversy involving Poland — government reforms to the Constitutional Court — the Commission was unable to identify such a violation.

Timmermans also announced that he would prepare a third recommendation for Poland as part of the institution's rule of law probe, launched in January 2016, after Law and Justice made constitutional changes that the EU considered "systemic threats" to the rule of law. The recommendation would be "formally adopted" by the college of commissioners next week, Timmermans said.

Poland's EU affairs minister, Konrad Szymański, told Polish press on Wednesday that if the Commission introduces its rule of law recommendations, "we will respond."

"In the current reform process, questioning of judges' independence is not the intention of either the Minister of Justice or the parliamentary majority," Szymański said. "The Polish parliament, with help of the president, will find appropriate solutions for the reform of the judiciary, without external help."

The Commission's approach on Poland was welcomed by many in Brussels.

The European Parliament's Socialists and Democrats group said it would consider the use of "all possible infringement proceedings against Poland for the violation of EU law" as required "should the Polish government and authorities continue to disregard the warning signals from Brussels concerning the independence of the judiciary," said Gianni Pittella, the group's leader.

"The independence of the judiciary power, as well as the freedom of the press, are the fundamental pillars on which the European Union is based," he added.

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NEWS POLITICS

Poland retreats on controversial laws

The moves make few real changes, but Warsaw hopes the ‘gesture’ will calm foreign critics.

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People hold candles and Polish national flags as they take part in a demonstration in front of the Polish Supreme Court on July 23, 2017 in Warsaw | Janek Skarzynski/AFP via Getty Images

MARCH 22, 2018 9:09 PM CET

BY ALEKSANDRA WRÓBEL

Poland’s ruling Law and Justice (PiS) party on Thursday presented a series of amendments to its highly contested judiciary bills and backtracked on a Holocaust law that soured relations with Israel and the United States.

The right-wing Polish government has come under enormous pressure from the European Commission and many EU countries for its controversial changes to the legal system, which critics say has put judges under the control of the ruling party.

The amendments to controversial court reforms were filed Thursday in the lower house of the Polish parliament by PiS lawmaker Marek Ast.

One bill would publish past verdicts issued by the Constitutional Tribunal, the country's highest court, which the government refused to publish in 2016 when it was trying to take control of the tribunal. That action was widely criticized, and forms the basis for ongoing EU complaints that Poland is violating the rule of law.

However, even Ast admitted that publishing the verdicts at this point will make only a cosmetic difference.

“Justice Minister Zbigniew Ziobro has already removed many judges and the government recently took control of the KRS.”

“We took this decision to meet the expectations of the European Commission,” Ast told reporters, clarifying that the verdicts apply to laws no longer in force. “We hope that this will end the conflict ... it is a gesture from our side.”

Another bill concerns the ability of Justice Minister Zbigniew Ziobro to remove court presidents and vice presidents.

At the moment, he has free rein to fire judges without cause, but the amendment would introduce a two-stage consultation procedure, under which Ziobro would have to seek agreement from bodies like the National Judiciary Council (KRS), which oversees the court system.

However, Ziobro has already removed many judges and the government recently took control of the KRS.



Zbigniew Ziobro, during a night debate on a Supreme Court bill in Warsaw | Bartomiej Zborowski/EPA

The bill also backtracks on an earlier law that set different retirement ages for male and female judges — 65 for men and 60 for women. The Commission used that issue to criticize changes to the Polish legal system. The amendment proposes 65 as a retirement age for both men and women, but women will still keep the right to retire earlier.

“The expectations of women from our party converge with the expectations of the European Commission, which said the bill was inconsistent with principles of the European law,” Ast told reporters.

The Commission in December took the unprecedented step of invoking Article 7 against Poland, a procedure that could see Poland lose its voting rights as an EU member for violating the bloc’s democratic principles, if the measure is supported by all other EU countries. Brussels said there was “a clear risk of a serious breach of the rule of law” in Warsaw and gave the Polish government three months to respond to its recommendations.

The deadline expired on Tuesday, with the Polish government failing to convince Brussels of its position. A 94-page “white book” — explaining the government’s view that the reforms were legitimate — was rejected by Commission Vice President Frans Timmermans who said it was “not the answer to the Commission’s recommendations.”

Poland also appeared to retreat on the Holocaust law, which criminalizes statements made anywhere in the world that ascribe guilt for wartime Nazi atrocities to the Polish state or nation. The law was condemned for aiming to stifle discussions of darker chapters of Poland’s wartime past, when some Poles helped Germans kill Jews.

On Thursday, the Polish prosecutor general’s office said that parts of the law applying to foreigners were “dysfunctional” and violated the Polish constitution. Ziobro is the prosecutor general as well as the minister of justice, and it was his ministry that prepared the initial law.



Demonstrators carry cartoons of Jarosław Kaczyński, center, leader of the ruling Law and Justice party, former Polish Prime Minister Beata Szydło and President Andrzej Duda | Janek Skarzynski/AFP via Getty Images

President Andrzej Duda, a PiS ally, signed the bill into law, but then sent it to be examined by the Constitutional Tribunal, now under the control of the ruling party.

Thursday’s moves, largely aimed at placating external problems, come as PiS faces growing domestic challenges. The party has seen a recent dip in support, according to opinion polls, although it is still ahead of the opposition. It also faces a PR blowback after ministers granted themselves juicy financial rewards, and a protest scheduled for Friday over a tough new anti-abortion law.

NEWS **POLITICS**

Polish PM to EU: Don't lecture us

Mateusz Morawiecki questions whether the European Commission is an 'honest broker' in fight over rule-of-law sanctions.

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Poland's Prime Minister Mateusz Morawiecki arrives for a debate on the future of Europe during a plenary session at the European Parliament on July 4, 2018 in Strasbourg | Frederick Florin/AFP via Getty Images

JULY 4, 2018 12:55 PM CET

BY MAÏA DE LA BAUME

STRASBOURG — Poland's prime minister called on the EU to stop "lecturing" his country and questioned whether the European Commission is an "honest broker" in the fight over rule of law during a tense debate with MEPs Wednesday.

At a debate on the future of Europe in the Strasbourg plenary, Mateusz Morawiecki said he would not back down on Poland's judiciary changes and made a plea for a "union of nations 2.0" that needs to "renew the social contract" in Europe. "Judges are more independent now than they were in the past," he said.

"Poland is a proud country, please don't lecture us about these sort of things," he said, calling the Commission's efforts to apply its rule-of-law procedure "disappointing."

"I have to think whether or not the European Commission is really an honest broker," he said. "We've made a great deal of efforts to reach out a hand ... Today I think we've come to a point in time where we've made changes."

The debate took place at a critical moment in the confrontation between Poland and the EU, coming just after Polish President Andrzej Duda used a new law to force the top judge on the country's Supreme Court into early retirement. It also took place a day after Commission First Vice President Frans Timmermans announced he would open an infringement procedure against Poland for bringing down the retirement age for Supreme Court judges to 65, which effectively allows the government to dismiss serving judges above that age. Morawiecki said Wednesday that Poland would "respect the judgement" of the European Court of Justice.

The Commission took the unprecedented step of triggering Article 7 — the so-called nuclear option — against Poland in December, following countless warnings, requests for dialogue and demands for clarifications about changes that it says risk undermining judicial independence in the country.

But Poland has shown little sign of stepping back from its controversial actions, forcing the retirement of Poland's Supreme Court president, Małgorzata Gersdorf. She defied that move Wednesday, showing up for work and telling reporters: "I continue to be the first president of the Supreme Court. I presided over the court's collegium this morning and I took and signed several decisions."

Morawiecki's initial lack of responsiveness about the rule of law caused an outrage among leading MEPs, who called on him to amend his controversial laws and to stop dividing Europe. "There are questions on the table," said Manfred Weber, the leader of the conservative European People's Party. "I think you missed today an opportunity to clarify these questions."

Weber also described Poland as "that one single member blocking everything."

Udo Bullmann, who leads the Socialist group in the Parliament, lashed out against Poland's actions. "What is the Polish contribution to the well functioning of the eastern lung?" he said, referring to a [speech by former Pope John Paul II](#), who was Polish, in which he said that Europe needed to breathe with both its eastern and western lungs. "She [Gersdorf] is obviously paying tribute to the Polish contribution," he said. "Don't destroy the democratic culture in your country and don't say in this house you are protecting our values," Bullmann added.

Liberal leader Guy Verhofstadt urged Morawiecki to "turn the wheel and bring Poland back into the group of democratic nations."

The Polish leader also told MEPs that his country would listen to those who are not enthusiastic about more European integration. "If citizens don't share their view (of more EU integration) then no further integration can be possible," Morawiecki said. "If the EU project is to move forward therefore its democratic legitimacy has to be reinforced."

"You can call it populism if you like," he said.

Michał Broniatowski contributed reporting.

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