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**Power of the European Parliament and Democratic  
Legitimacy of the European Union  
- The Article 7 procedure against Hungary**

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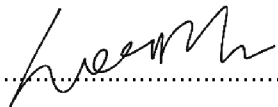
## **MA Programme Euroculture**

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I, Yerim Seo, hereby declare that this thesis, entitled "Power of the European Parliament and Democratic Legitimacy of the European Union - The Article 7 procedure against Hungary", submitted as partial requirement for the MA Programme Euroculture, is my own original work and expressed in my own words. Any use made within this text of works of other authors in any form (e.g. ideas, figures, texts, tables, etc.) are properly acknowledged in the text as well as in the bibliography.

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## **Abstract**

The European Union has been faced with the problem of democratic deficit since its foundation, and in order to properly address political issues within the Union, building solid legitimacy is essential. The recent rule of law crisis in Hungary have raised concerns over the capacity and willingness of the European Union to protect its fundamental values. The Article 7 procedure was triggered against Hungary with a proposal by the European Parliament, but there has been no meaningful and constructive progress. The thesis analyzes the role and power of the European Parliament in this context, examining whether and how it is engaged in the procedure, and how it has exercised its power as the only directly elected institution in the European Union. Political nature of the intervention of the European Union in national democracy and the rule of law can be understood the most when the European Parliament is actively involved. The thesis concludes that the weak parliament and institutional imbalance of power result in ineffective and inefficient actions by the European Union, and furthermore in order to ensure the legitimacy of the European Union, the European Parliament should be more empowered.

**Keywords:** democracy, legitimacy, democratic deficit, European values, Article 7 TEU, Hungary, rule of law backsliding

Word count: 21,479

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## Introduction

European countries have direct or indirect relations with the European Union, and today it is impossible to imagine Europe without the European Union. The primary goal of European integration was to secure lasting peace. After World War II ended in 1945, in order to make war “not merely unthinkable, but materially impossible,” the idea of joint control over coal and steel production was presented.<sup>1</sup> Historic rivals France and Germany made a settlement, together with other founding Member States of Belgium, Italy, Luxembourg and the Netherlands. A second goal of European integration is economic growth. The Treaty of Rome, signed in 1957, created the European Economic Community, the first step towards creation of a common market, followed by a Customs Union, the Single Market, four freedoms of movement and the introduction of a single currency, the euro.

European integration can be seen as an ongoing project towards further and deeper integration. The acceleration of the process of European integration, however, has triggered debate on democracy in the EU. The EU project started out from the mere economic cooperation of several states. In the initial form of the current EU, the European Coal and Steel Community, the integration process and Community institutions gained their legitimacy via the democratic legitimacy of Member States themselves. The idea of indirect democratic legitimacy, whereby as long as a body is composed of legitimate governments which are democratically elected, it can be regarded as legitimate, was accepted, and the political actions of the Community were justified in this way.<sup>2</sup> “Traditionally, the EU has been justified largely by its output – economic and, according to some, geopolitical benefits for its member states and citizens.”<sup>3</sup>

Democracy and legitimacy have always been fundamental themes of political debate, but the topic of the democratic legitimacy is not limited to the national level. In fact, the debate on a democratic deficit has been ongoing in EU politics with the concept of a democratic deficit having first been used in the Manifesto of Young European

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<sup>1</sup> “The Schuman Declaration of 9 May 1950” (European Commission, May 5, 2015), <https://op.europa.eu/en/publication-detail/-/publication/2fa0afe0-9f7c-426d-9933-fca909c50983/language-en>.

<sup>2</sup> Christopher Lord and David Beetham, “Legitimizing the EU: Is There a ‘Post-parliamentary Basis’ for Its Legitimation?,” *Journal of Common Market Studies* 39, no. 3 (2001): 443–62.

<sup>3</sup> Philippe C. Schmitter, Giandomenico Majone, and Andrew Moravcsik, “Democracy and Constitutionalism in the European Union,” *ECSA Review* 13, no. 2 (2000): 2–7.

Federalists in 1977, which was drafted by Richard Corbett.<sup>4</sup> Since then, the EU has regularly and constantly been seen to suffer from a democratic deficit, concerning the legitimacy and accountability of the EU governance. Especially in the time of crisis, for example the financial crisis in 2008, the migration crisis in 2015, and more recently the global health crisis by the COVID-19 pandemic in 2020, the idea of Euroscepticism is more apparent and the EU leadership is more challenged.

Legitimacy can be defined as the acceptability or justification of political power or authority to govern.<sup>5</sup> Focusing on the relationship between constituent and representative, democratic legitimacy can be understood as legitimacy achieved through adequate democratic representation. In other words, political authority through elected representatives is a key part of the democratic legitimacy. Because the European Parliament is the only directly elected institution, it is seen as the substantive and fundamental guardian of the democratic legitimacy within the EU.

Nevertheless, when it comes to legislation, the core function of parliaments, the European Parliament jointly share legislative power with the Council. The European Parliament does not possess full legislative power, and its legal power over the legislative agenda-setting is still limited and conditional. Since its foundation, the European Parliament has been continuously evolving. “Hence, Parliament has sought not only to influence day-to-day policies, but also to change the basic framework of the Union.”<sup>6</sup> In fact, with the Treaty of Lisbon, lots of developments in the European Parliament were codified, but the European Parliament constantly seeks to expand its power and exert its political influence.

Among the three main EU institutions involved in legislation, only the European Parliament is directly elected by citizens of the European Union from 1979. Within the framework of representative democracy, the competencies of the European Parliament have been significantly enlarged by the institutional changes. In regard to enhancing the EU mechanism on democracy, further involvement of the European Parliament in the EU

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<sup>4</sup> “The First Use of the Term ‘Democratic Deficit,’” Federal Union, October 10, 1977, <https://federalunion.org.uk/the-first-use-of-the-term-democratic-deficit/>.

<sup>5</sup> Alex Levitov, “Normative Legitimacy and the State” (Oxford Handbooks Online, October 2016), <https://doi.org/10.1093/oxfordhb/9780199935307.013.131>.

<sup>6</sup> Richard Corbett, Francis Jacobs, and Michael Shackleton, “Parliament and Constitutional Change,” in *The European Parliament* (London: John Harper Publishing, 2011), 382.

decision-making has been widely discussed. The empowerment of the European Parliament was considered as a means to improve accountability and enhance transparency of the EU and EU institutions, and therefore ameliorate the democratic deficit by balancing powers between the executive and the legislative branches.<sup>7</sup> Nevertheless, the democratic deficit does not seem to be solved yet. According to the recent Eurobarometer survey in 2020, 43% of the respondents are “not satisfied” with the way democracy works in the EU. Since 2011, the proportion of negative respondents are constantly over 40% except for once in 2019.<sup>8</sup> While the European Parliament is an essential institution with regard to the democratic legitimacy for the EU, why does the expanding and strengthening power of the European Parliament appear insufficient to achieve the democratic legitimacy of the European Union?

In this thesis, the democratic deficit which the European Union suffers from will be investigated, with a focus on the European Parliament. The principal research question of this thesis is, to what extent can the European Parliament function as a source of the democratic legitimacy for the EU?

This thesis is structured as follows. Considering that the democratic deficit is strongly related to the legitimacy of the system, the first chapter of the thesis will explore the concept of political legitimacy and its formation. In this chapter, the democratic legitimacy will be presented within the framework of parliamentary or representative democracy. The next chapter will be focused on contextualization and problematization of the European Parliament and its position in the EU decision-making setup. Also, in order to understand EU’s work and democratic capacity, the thesis will explore the role of the European Parliament in the European Union and its expanding power over time as a means of affording the EU greater democratic legitimacy. Following the theoretical discussion and conceptual background, this thesis will analyze the recent Article 7 procedure against the Hungarian government as a case study. This chapter will have a closer look at the system and operation of the European Parliament, in order to understand the persistent issue of democratic deficit in the European Union. From the case study, this

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<sup>7</sup> Berthold Rittberger, *Building Europe’s Parliament: Democratic Representation Beyond the Nation State* (Oxford University Press, 2005).

<sup>8</sup> European Commission, *Standard Eurobarometer 93: Public Opinion in the European Union, First Results* (European Commission, October 2020), <https://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2262>.

thesis will be able to investigate how the European institutions have dealt with democratic backsliding in Hungary. The European Parliament's action as the directly elected legislative chamber of the EU will be explored throughout the case study and following analysis. Furthermore, by analyzing current impediments and limitations of the European Parliament, this thesis will be able to present why the European Parliament as a legislative body is not yet sufficient enough to fully develop the democratic legitimacy of the EU.

## Literature review

Even though the debate on democracy in the EU, or the issue of democratic deficit in the EU is still relatively young, the state of democracy in the EU has nevertheless been widely discussed and debated among scholars. Some have concluded that the EU is not in fact suffering from a democratic deficit. For example, Majone argues that as long as “politics and economics are kept as separate as possible,” the EU by rather pursuing economic integration can achieve its goal without political integration, as political integration does not receive widespread support at present. As long as the power and scope of the European Union is restricted, “non-majoritarian sources of legitimacy – expertise, procedural rationality, transparency, accountability by results – should be sufficient to justify the delegation of the necessary powers.”<sup>9</sup> According to him, the European Union is not suffering from a democratic deficit, but a credibility crisis. And therefore, procedural changes for more transparent decision-making are what is required.<sup>10</sup> Klemen, meanwhile, sees the democratic deficit in the European Union in a different way. He argues that the main threat to democracy in the European Union does not lie on the EU itself, but rather that the democratic deficit comes from national democratic backsliding in some Member States, such as Hungary and Poland.<sup>11</sup>

Nonetheless, scholars share the assessment that there are democratic deficits or a lack of democratic legitimacy in the European Union. Robert Dahl, the prominent

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<sup>9</sup> Giandomenico Majone, “Europe’s ‘Democratic Deficit’: The Question of Standards,” *European Law Journal* 4, no. 1 (1998): 5–28, <https://doi.org/10.1111/1468-0386.00040>.

<sup>10</sup> Giandomenico Majone, “The Credibility Crisis of Community Regulation,” *JCMS: Journal of Common Market Studies* 38, no. 2 (2000): 273–302, <https://doi.org/10.1111/1468-5965.00220>.

<sup>11</sup> R. Daniel Kelemen, “Europe’s Other Democratic Deficit: National Authoritarianism in Europe’s Democratic Union,” *Government and Opposition* 52, no. 2 (April 2017): 211–38, <https://doi.org/10.1017/gov.2016.41>.



political theorist, agrees that the democratic deficit remains in the EU, which is even gigantic, despite its formal democratic structures such as parliament and popular elections.<sup>12</sup> There are two main aspects to the democratic deficit of the EU: institutional and socio-psychological.

The institutional argument regards the legitimacy of the EU from a normative-theoretical point of view, underlining that institutional design and structure is not democratic, which in turn leads to a lack of political representation and accountability at the EU level. Andersen and Eliassen explain that parliament is a central political institution in democracy with representatives elected by people.<sup>13</sup> However, according to this perspective, the division of power between European political institutions is not balanced. From the perspective of institutional deficiency, Decker further stresses that there the EU experiences a democratic deficit due to the fundamental lack of proper electoral and party systems at the European level.<sup>14</sup> In a similar sense, Chrysochoou points out that the EU's institutional arrangement gives too much power to the Commission, while the power of the European Parliament is limited.<sup>15</sup> The democratic deficit of the European Union thus results from "an undervalued role of the EP as a directly elected, democratic element of representation."<sup>16</sup>

Socio-psychological arguments, on the other hand, claim that the EU cannot have a real democracy in principle due to the absence of a common public sphere and demos. This perspective is based on the structural and social preconditions of democracy, pointing out that the democratic deficit is a result of shortcomings in legitimacy output. Thus, Grimm points out that "parliamentary process does not by itself guarantee democratic structures," but instead democracy stems from people. There is no European people, nor Europeanised communications system, and this weakly developed collective

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<sup>12</sup> Robert Dahl, "Varieties I: Democracy on Different Scales," in *On Democracy*, 2nd ed. (New Haven: Yale University Press, 2015).

<sup>13</sup> Svein S. Andersen and Kjell A. Eliassen, *The European Union, How Democratic Is It?* (London: Sage, 1996).

<sup>14</sup> Frank Decker, "Governance beyond the Nation-State. Reflections on the Democratic Deficit of the European Union," *Journal of European Public Policy* 9, no. 2 (April 1, 2002): 256–72, <https://doi.org/10.1080/13501760110120255>.

<sup>15</sup> Dimitris Chrysochoou, "Europe's Contested Democracy," in *European Union Politics*, ed. Michelle Cini and Nieves Pérez-Solórzano Borragán, 3rd ed (Oxford: Oxford University Press, 2010), 377–89.

<sup>16</sup> Wolfgang Wessels and Udo Diedrichs, "The European Parliament and EU Legitimacy," in *Legitimacy and the European Union: The Contested Polity*, ed. Thomas F Banchoff and Mitchell P Smith, Political Dynamics of the EU Series (London: Routledge, 1999), 139.

identity is the true obstruction to European democracy.<sup>17</sup> Furthermore, Nicolaïdis expands on this by presenting the new term of demoiocracy, which means “a Union of peoples, understood both as states and as citizens, who govern together but not as one.” According to her, as there are no plausible European demos, European-level democracy is impossible.<sup>18</sup>

This thesis will primarily focus on the institutional point of view in order to understand democratic deficit in the EU through the European Parliament. As mentioned above, among the various European institutions, the European Parliament has been especially noted in the debate over democratic deficit in the EU, due to its distinctive characteristic as the only directly elected legislative branch. Based on theoretical discussion, this thesis will provide practical insight by examining current issues that the European Parliament is dealing with. To demonstrate the relative power of the European Parliament and its connection to the democratic deficit in the EU, an in-depth case analysis of the European Parliament’s work on the Article 7 procedure against the Hungarian government will be conducted. This case analysis will help in understanding the representative character and position of the European Parliament in practice, and figure out the meaning of parliamentary work for democracy in the EU since the last comprehensive institutional reform from the Lisbon Treaty.

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<sup>17</sup> Dieter Grimm, “Does Europe Need a Constitution?,” *European Law Journal* 1, no. 3 (1995): 282–302, <https://doi.org/10.1111/j.1468-0386.1995.tb00033.x>.

<sup>18</sup> Kalypso Nicolaïdis, “European Demoiocracy and Its Crisis,” *JCMS: Journal of Common Market Studies* 51, no. 2 (2013): 351–69, <https://doi.org/10.1111/jcms.12006>.

## I. Legitimacy and Democracy of the EU

### i. Understanding the democratic legitimacy

Regarding the concept of legitimacy, there are various theoretical approaches and it is discussed in many fields including philosophy, political science, law, and sociology, which brings different ideas and definitions of legitimacy. Recent discussion on legitimacy in politics is led by two scholars, David Beetham and Jean-Marc Coicaud. Beetham argues that what makes power legitimate or rightful is justifiable rules and evidence of consent, on the basis of legal validity, moral justifiability and belief in legitimacy. According to him,

[f]or power to be fully legitimate, then, three conditions are required: its conformity to established rules; the justifiability of the rules by reference to shared beliefs; the express consent, of the subordinate, or of the most significant among them, to the particular relations of power.<sup>19</sup>

Similarly, Coicaud regards legitimacy as “the recognition of the right to govern” which justifies political power and obedience. He points out that in order to make political power legitimate, three conditions, consent, law and norms, should be fulfilled. Focusing on the relationship between political power and the normative aspect of values, he states that “[t]he political function of coordinating and directing society is legitimate only when it expresses the identity of society” through two institutions of parliaments and courts.<sup>20</sup> Gaining legitimacy is necessary to make decisions valid and justified, and decisions made by a legitimate authority can be perceived as binding and authoritative.<sup>21</sup>

When legitimacy is understood as justification of political power or authority to govern which can be gained through rules and consent, how is it related to democracy? Legitimacy and democracy are often discussed together, and the study of legitimacy seems to lead to the study of democracy, but in fact, they are not equivalent. Democracy is an essential part of political legitimacy, but a government which is formed by non-democratic procedure can also have

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<sup>19</sup> David Beetham, “Towards a Social-Scientific Concept of Legitimacy,” in *The Legitimation of Power*, Issues in Political Theory (London: Macmillan Education UK, 1991), 19, [https://doi.org/10.1007/978-1-349-21599-7\\_1](https://doi.org/10.1007/978-1-349-21599-7_1).

<sup>20</sup> Jean-Marc Coicaud, “What Is Political Legitimacy?,” in *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility*, ed. David Ames Curtis (Cambridge University Press, 2002), 17, <https://doi.org/10.1017/CBO9780511490200>.

<sup>21</sup> David Easton, *A Systems Analysis of Political Life* (New York: Wiley, 1965).

legitimacy, if it is accepted as such by its citizens. Sometimes people acknowledge political legitimacy when the authority and governance is not sufficiently or even clearly democratic, which shows that there is another mechanism compensating for the democratic deficit. For example, it is not uncommon that citizens tolerate dictatorial government as legitimate or even democratic in order to achieve economic growth.<sup>22</sup>

Nevertheless, democracy is a very powerful political ideology in modern societies. And therefore, while legitimacy can be gained in many ways, a liberal democratic regime is generally considered as a prerequisite for legitimacy nowadays. From the late 18th century, political systems in Europe and the United States moved towards representative government. This representative democracy in turn brought ideas of equality, liberty and self-rule. Broadly understood, democracy is a specific form of government ruled by the people, which requires for example universal suffrage, free and fair elections, active citizen participation and adherence to the rule of law.<sup>23</sup> Schumpeter explains

the democratic method is that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will.<sup>24</sup>

Combining the two terms of democracy and legitimacy, the democratic legitimacy can be defined as a recognition or acceptance of an elected government as legitimate by its citizens, inasmuch as it represents the will of the people and protects common interest.

This definition of the democratic legitimacy has been mainly discussed at the level of the nation-state, and linked to concepts of national sovereignty and community. Therefore, concerning the democratic legitimacy of the EU, a question can be raised as to whether or how the definition above can be applied to a supranational authority. It is also related to the ambiguous or complicated characteristic of a political entity such as the EU: an intergovernmental

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<sup>22</sup> Kwanhu Lee, "A Critical Review on the Foundation of Democratic Legitimacy," *Journal of Contemporary Politics* 8, no. 2 (November 10, 2015): 97–123.

<sup>23</sup> Larry Diamond and Leonardo Morlino, "The Quality of Democracy: An Overview," *Journal of Democracy* 15, no. 4 (2004): 20–31, <https://doi.org/10.1353/jod.2004.0060>.

<sup>24</sup> Joseph A. Schumpeter and Joseph Stiglitz, "The Classical Doctrine of Democracy," in *Capitalism, Socialism and Democracy* (Florence: Taylor & Francis Group, 2010), 225.

cooperation between sovereign states, or a supranational sovereign European state. Despite its special characteristic to be neither a state, supranational nor intergovernmental organization, the most important point in terms of the democratic legitimacy of the EU is that the EU governs various economic, political and social policies, and holds the capacity and right to exercise authority within its Member States. The EU's process of governing has political structure, sharing functions of the political system such as "political socialization and recruitment, interest articulation, interest aggregation, rule-making, rule application, and rule adjudication."<sup>25</sup> As long as the EU holds responsibility and sovereignty over Member States, and governance of the EU functions and performs as a state-like entity, the EU will be constantly asked to prove its democratic legitimacy.

## **ii. Democracy and the democratic deficit of the EU**

Even though the definition of democracy at the European or transnational level is not clearly stated within EU treaties, since its foundation, the EU has recognized the value of democracy. Democracy is a constitutional principle of the EU, as it is explicitly stated in the Treaty of European Union. Moreover, the EU is a union of democratic states. One of the prerequisites of becoming an EU member, the so-called Copenhagen criteria, features prominently that the country has to have an effective liberal democratic system. Nevertheless, the EU is asked to prove its democracy and legitimacy.

Being non-democratic is not considered as a problem in other international organization such as the United Nations, the World Trade Organization, the North Atlantic Treaty Organization or Association of Southeast Asian Nations. It is because the European Union lies somewhere "between politics and diplomacy, between the domestic and the international, and between government and governance."<sup>26</sup> As mentioned above, this is related to the discussion of the EU's

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<sup>25</sup> Gabriel Abraham Almond, "Introduction: A Functional Approach to Comparative Politics," in *The Politics of the Developing Areas*, ed. Gabriel Abraham Almond and James Smoot Coleman (Princeton University Press, 1960), 45.

<sup>26</sup> Brigid Laffan et al., eds., "Democracy and the European Union" (London: Macmillan Education UK, 1999), 330–49, [https://doi.org/10.1007/978-1-349-27572-4\\_17](https://doi.org/10.1007/978-1-349-27572-4_17).

characteristic – supranational or intergovernmental. Simply speaking, on one hand, it is a matter of how much power the EU possesses or pursues to have on national governments. In fact, the problem of the democratic legitimacy was not raised when the EU (formerly, European Coal and Steel Community and the European Economic Community) was first established for economic cooperation. As the European Union is now getting developed towards ever-closer union, with further and deeper integration among European countries, the EU is required to solve its democratic deficit and build solid legitimacy. Deeper European integration has an influence on Member States' national democracy because "decision-making in more and more policy areas has moved up to the EU level while politics remains national." Schmidt explains that the Eurozone crisis shows that even though the use of the euro in everyday life may suggest that citizens have "tacitly accepted its authoritative legitimacy as currency," the legitimacy on the euro-related policies and processes has been increasingly politically contested.<sup>27</sup> The permissive consensus theory argues that European policy was technical in nature and therefore European public showed a lack of knowledge about and interest in the European policy, which has allowed political elites to push integration forward exclusively.<sup>28</sup> This permissive consensus has become eroding since the EU has been affecting citizens' daily life more and more visibly and perceivably. The EU set up a single market and a single currency, extending its power and activities to core elements which were exclusive to national sovereignty. It has gained a variety of new competencies in almost all fields of state activity. In other words, the EU is not a technical undertaking anymore, but rather political.

The EU is neither a state nor an international organization. It is partly intergovernmental and partly supranational. It is a new kind of polity, but it is one sort of political association. Political association has been made in order to provide secure environment for people, to encourage them to cooperate, and to protect individual and communal rights and resources. This also includes to safeguard natural resources for maximizing the interests of the community in the

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<sup>27</sup> Vivien Ann Schmidt, "Conceptualizing Legitimacy: Input, Output, and Throughput," in *Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone* (Oxford: Oxford University Press, 2020), 28.

<sup>28</sup> Clifford J. Carrubba, "The Electoral Connection in European Union Politics," *The Journal of Politics* 63, no. 1 (February 1, 2001): 141–58, <https://doi.org/10.1111/0022-3816.00062>.

long term, and to facilitate moral, cultural and technological development.<sup>29</sup> And considering that in democracy, political authority and power of political association come from public recognition and representation, for the EU, the public recognition or affirmation of authority is required to gain its legitimacy.

From the very basic meaning of democracy that government by the people, democratic deficit can be understood as the problem of unsatisfactory political institutions and of processes that do not fully meet democratic standards. One important question is whether the EU is or can be sufficiently democratic or legitimate. The European Union consists of different political systems; what Daniel Innerarity defines as “the Aristocracy (the Commission), direct democracy (the European Parliament) and indirect democracy (the Council).”<sup>30</sup> European citizens are represented through the coexistence of different channels and institutions. This plurality of legitimation and democratic credentials of the EU has been largely based on two elements: European elections by citizens through the European Parliament, and on the democratic states represented in the European Council which is composed of democratically elected leaders. The EU has built a legitimate political system which derives from the point that its authority is recognized and confirmed by the act of legitimate national authorities.<sup>31</sup> There are two channels of representation in the EU: “a double democratic mandate through a Parliament representing EU citizens and a Council representing the elected governments of the Member States.”<sup>32</sup>

Notwithstanding, public recognition and affirmation by established authority seems be insufficient with regard to procedures of democratic participation or quality of representation.<sup>33</sup> It has been constantly pointed out that

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<sup>29</sup> Sabrina P. Ramet, “The Purpose of Political Association,” in *The Liberal Project and the Transformation of Democracy: The Case of East Central Europe*, Eugenia and Hugh M. Stewart ’26 Series on Eastern Europe (College Station: Texas A&M University Press, 2007), 110–23.

<sup>30</sup> Daniel Innerarity, “What Should Be Democratized? The Peculiarity of Democracy in Europe,” in *Democracy in Europe: A Political Philosophy of the EU*, The Theories, Concepts and Practices of Democracy (Cham: Palgrave Macmillan, 2018), 74, [https://doi.org/10.1007/978-3-319-72197-2\\_4](https://doi.org/10.1007/978-3-319-72197-2_4).

<sup>31</sup> David Beetham and Christopher Lord, “Legitimacy and the European Union,” in *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship*, ed. Albert Weale and Michael Nentwich (London: Routledge, 1998), 15–33.

<sup>32</sup> European Commission, *European Governance A White Paper* (Brussels: Commission of the European Communities, July 25, 2001), [https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_01\\_10](https://ec.europa.eu/commission/presscorner/detail/en/DOC_01_10).

<sup>33</sup> Daniel Innerarity, “On Behalf of Whom? The Multiple Representation of Europeans,” in *Democracy in Europe: A Political Philosophy of the EU*, The Theories, Concepts and Practices of Democracy (Cham: Springer International Publishing, 2018), 123–61, [https://doi.org/10.1007/978-3-319-72197-2\\_6](https://doi.org/10.1007/978-3-319-72197-2_6).

the EU is still technocratic, which means that decision making processes are depoliticized, independent and expert-driven rather than by popularly elected officials as recognized in representative democracy.<sup>34</sup> Simply speaking, citizens of the EU see the EU and its decisions distant and unaccountable. Thomassen and Schmitt add that Member States' national parliaments have lost part of their power and control, and this loss of power is not fully compensated by the power of the European Parliament.<sup>35</sup> Also, continued expansion of power of the EU has not been followed by similarly increasing power of the parliamentary institution compared to the executive institution.

### iii. The European Parliament and EU legitimacy

The lack of legitimacy of the process of integration has been widely pointed out especially when the process faces extensive changes and challenges. "Lack of legitimacy, in turn, is frequently regarded as being due, at least in part, to the 'democratic deficit' of the Union."<sup>36</sup> As the powers of the EU expand, its structure and institutional framework has become complicated and more closely linked to the issue of legitimacy. From the previous analysis of legitimacy and the relationship between legitimacy and democracy, it is widely accepted that if the EU becomes more democratic, it would also gain legitimacy.<sup>37</sup> Naturally, the European Parliament has been at the center of the issue, because the European Parliament is regarded as the institution which is the most likely to provide and add a democratic element to the EU. Therefore, it was suggested that direct election and an increase of power would automatically increase the legitimacy of the EU and of European integration. The report written by Leo Tindermans, the former Belgian Prime Minister, shows that belief and expectation. Published on

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<sup>34</sup> Marina Costa Lobo and Ian McManus, "The EU between Technocratic and Democratic Legitimacy," in *The Technocratic Challenge to Democracy*, ed. Eri Bertsou and Daniele Caramani (New York: Routledge, 2020), 199–215, <https://doi.org/10.4324/9780429342165-15>.

<sup>35</sup> Jacques Thomassen and Hermann Schmitt, eds., *Political Representation and Legitimacy in the European Union*, *Political Representation and Legitimacy in the European Union* (Oxford University Press, 1999).

<sup>36</sup> Jean Blondel, Richard Sinnott, and Palle Svensson, "Electoral Participation, Democracy, and Legitimacy in the European Union," in *People and Parliament in the European Union: Participation, Democracy, and Legitimacy* (Oxford: Oxford University Press, 1998), 6, <https://doi.org/10.1093/0198293089.003.0001>.

<sup>37</sup> Beetham and Lord, "Legitimacy and the European Union."



29 December 1975, the report which is commonly known as the Tindemans Report, developed proposals for direct elections to the European Parliament and for European integration towards the European Union. It argued that the EU must “strengthen democracy through a set of institutions which have legitimacy conferred upon them by the will of our peoples,” and therefore “[d]irect elections to the Parliament will give this Assembly a new political authority” and will reinforce the democratic legitimacy of the European integration project.<sup>38</sup>

In the same context, the idea of increasing the power of the European Parliament was presented, because the relative weakness of the European Parliament was seen as a main reason for the democratic deficit of the EU, when it comes to the ultimate basis for the democratic legitimacy, which is citizens of the EU. Accordingly, the European Parliament has gradually gained capacities and authorities with major treaty revisions in general. For example, the Treaty of Lisbon, the latest large-scale EU treaty reform signed in 2007, extended the ordinary legislative procedure, which shows the clear determination of the EU to strengthen responsiveness in policy-making and to improve the democratic deficit.<sup>39</sup> The European Parliament has maintained its institutional position as an active legislative branch by exercising various democratic control, and its action has demonstrated greater influence on European policy-making. By empowering the European Parliament, the EU has sought to solve democratic deficit and to become more democratic and citizen-friendly.

Understanding the role of the European Parliament in fostering the legitimacy of the Union starts from the recognition that “the European Parliament constitutes the representative-democratic element par excellence in the structure of the Union.”<sup>40</sup> As a directly elected institution, expressing democratic will and interests of European citizens and constituting democratic element of representation in the EU, the European Parliament is the one of the two sources

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<sup>38</sup> Leo Tindemans, “Report on European Union,” Bulletin of the European Communities, December 29, 1975, <http://aei.pitt.edu/942/>.

<sup>39</sup> Ignacio Sánchez-Cuenca, “From a Deficit of Democracy to a Technocratic Order: The Postcrisis Debate on Europe,” *Annual Review of Political Science* 20, no. 1 (May 11, 2017): 351–69, <https://doi.org/10.1146/annurev-polisci-061915-110623>.

<sup>40</sup> Blondel, Sinnott, and Svensson, “Electoral Participation, Democracy, and Legitimacy in the European Union,” 10.

of the democratic legitimacy of the EU. Of course, the European Parliament is not the only element of the EU democracy. National governments are represented in the European Council and also in the Council of the European Union. Moreover, national parliaments are involved in EU governance. They can also contribute to democratic link between EU citizens and EU policy-making process. Nevertheless, as the only EU institution directly legitimized by the EU citizens via election, the European Parliament is considered as the foremost democratic pillar of the EU.

The role of the European Parliament in the democratic legitimacy of the EU is related with its capacities to engage in decision-making process, to set political agendas, to promote constitutional development and to provide a means for citizens to influence European governance. As suggested in the previous chapter, the fundamental problem of the democratic legitimacy of the EU is a lack of democratic control over supranational institutions and European governance. In other words, democratic deficit of the EU has been related to the “shift in decision-making powers from the national to the EU level, without accompanying strengthening of parliamentary control of executive bodies.”<sup>41</sup>

In nation-states and their democratic political systems, “parliaments are considered strongholds and symbols of legitimacy,” because they represent their citizens as directly elected bodies.<sup>42</sup> The European Parliament is different from national parliaments in terms of its form and function, but its importance lies in its potential to act as a collective of European citizens in the European policy decision-making process. Therefore, it is the most direct and visible bridge between the EU and its citizens. More specifically, the European Parliament provides crucial link between civil society and the executive branch of the government. Within the constitutional framework of the EU, Article 10(2) of the Treaty on European Union (TEU) states that “[c]itizens are directly represented at Union level in the European Parliament.”<sup>43</sup> Habermas argued that EU citizens should be able to participate in EU decision-making process as citizens of Member State democracies and at the same time as citizens of the EU. He added that the

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<sup>41</sup> Clive Archer, “The EU’s Institutions and Budget,” in *The European Union: Structure and Process*, 3rd ed. (Continuum, 2000), 58.

<sup>42</sup> Wessels and Diedrichs, “The European Parliament and EU Legitimacy,” 137.

<sup>43</sup> Consolidated Version of the Treaty on European Union, OJ C 202 (2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M014>.

European Parliament should “establish a bridge between the political battles of opinions in national arenas and the momentous decisions taken in Brussels.”<sup>44</sup> Furthermore, the European Parliament has a special position as the most diverse EU institution, because “it includes parties belonging to political majorities and minorities at national level.”<sup>45</sup>

Having analyzed the concept of the democratic legitimacy and the importance of the European Parliament in the democratic legitimacy of the EU, the thesis will move on to its second part. In the following chapter, the evolution and expansion of the roles and powers of the European Parliament will be discussed in order to understand how the European Parliament has struggled and found its position in a new kind of democratic polity. Based on understanding the current status of the European Parliament, the thesis will present how much influence the European Parliament actually exercise in EU governance and in protecting EU values in terms of legitimate and effective EU actions.

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<sup>44</sup> Jürgen Habermas, “The Lure of Technocracy: A Plea for European Solidarity,” in *The Lure of Technocracy*, 1st edition (Malden: Polity, 2015), 3–28.

<sup>45</sup> Matteo Bonelli, “Safeguarding Values in the European Union: The European Parliament, Article 7 and Hungary,” SOG-Working Paper (LUISS School of Government, October 2015).

## **II. Development of the European Parliament**

The European Parliament has been in a process of constant evolution and development, rather than recognized as a fully established political institution within the EU institutional framework. Over a few decades, the European Parliament has acquired greater influence and power, and has become a co-legislator, evolving significantly beyond the original European Communities.<sup>46</sup> This chapter will look at how the European Parliament has transformed itself into a core institution in the EU and has enlarged its procedural position in the EU integration and governance. Also, in addition to formal expansion of power of the European Parliament, it is also important to figure out its informal powers and how or whether they have resulted in increased capacity when it comes to defending objectives and fundamental values.

### **i. From consultant to co-legislator**

The European Parliament (originally, it began as the Common Assembly) was set up with the Treaty of Paris which established the European Coal and Steel Community and was signed in 1951. Under the original treaties of the European Communities, the parliamentary Assembly was only consultative and given no legislative power. Even though its consultation and opinion were not totally insignificant in the EU decision-making procedure and this was the first step towards including the European Parliament in the legislative process, they were not binding upon the Council as to its content. While a conciliation procedure was established through a joint declaration by the European Parliament, the Council and the Commission on 4 March 1975, the Council maintained its exclusive power of decision-making and the European Parliament did not have cooperative responsibility.<sup>47</sup>

In order to make the European Community decision-making democratic and to give the European Parliament more political authority, the idea of the election of Members of the European Parliament (MEPs) by direct universal

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<sup>46</sup> Richard Corbett, Francis Jacobs, and Michael Shackleton, "The Parliament in Context," in *The European Parliament* (London: John Harper Publishing, 2011), 2–10.

<sup>47</sup> Hans-Joachim Glaesner, "Formulation of Objectives and Decision-Making Procedure in the European Union," *Fordham International Law Journal* 18, no. 3 (1995): 765–88.

suffrage got introduced in the Treaty of Rome, signed in 1957.<sup>48</sup> Democratically elected MEPs were designed to bring greater democratic legitimacy of the EU, to draw more public debate on European issues, and to enable MEPs to fully focus on representing European citizens.<sup>49</sup> In fact, before direct election, the members of the Assembly were appointed by the national parliaments, who “used their dual mandate to bring the European positions back to their national parliaments.”<sup>50</sup> The first direct election of MEPs took place in 1979, and this European election has been held every five years across all Member States.

The Single European Act, signed in 1986, introduced two new procedures of the cooperation procedure and the assent procedure. The Single European Act made a step toward European unification, extending the powers of the EU to include political areas, and it also officially confirmed the title to be the European Parliament. The introduction of new procedures strengthened the European Parliament’s legislative power and influence on decision-making process in that the opinion of the European Parliament was an essential requirement for a decision by the Council.<sup>51</sup> Nevertheless, co-legislative relationship between the European Parliament and the Council was limited to the enlargement or the conclusion of association agreements where the assent of the European Parliament by an absolute majority was binding and was required for the Council’s action according to the assent procedure, and the Council continued to have greater power over the European Parliament in most of areas of Union law.

The co-decision procedure was introduced under Article 189(b) of the Treaty of Maastricht signed in 1992, where an act is to be adopted jointly by the European Parliament and the Council as it requires the approval of both.<sup>52</sup> The co-decision procedure was initially only applied to limited areas, none of which were

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<sup>48</sup> Treaty Establishing the European Economic Community (1957), Article 138, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11957E%2FTXT>.

<sup>49</sup> Corbett, Jacobs, and Shackleton, “The Parliament in Context.”

<sup>50</sup> Andrea Manzella, “Legislation and Legislative Procedures between the Parliament, the Council and the Commission,” in *The History of the European Union: Constructing Utopia*, ed. Giuliano Amato et al. (Oxford: Hart, 2019), 201.

<sup>51</sup> Hans-Joachim Glaesner, “The Single European Act: Attempt at an Appraisal,” *Fordham International Law Journal* 10, no. 3 (1986): 446–502.

<sup>52</sup> Treaty on European Union, OJ C 191 (1992), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11992M%2FTXT>.

the core competencies of the Community.<sup>53</sup> However, it was of great political importance as the right of veto was given to the European Parliament. In addition to introduction of the new procedure, the Treaty of Maastricht expanded the areas where the existing cooperation procedure and assent procedure apply. It is also noteworthy that the right of initiative was introduced with the Treaty of Maastricht. Pursuant to Article 138(b) TEU,

[t]he European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.<sup>54</sup>

With the Treaty of Lisbon, this provision was moved to Article 225 of the Treaty of the Functioning of the European Union (TFEU) with an additional sentence that “[i]f the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.”<sup>55</sup>

Since the Treaty of Maastricht, the scope of the co-decision procedure has been gradually extended through subsequent treaty amendments, reinforcing the democratic legitimacy of EU legislation. Especially the Treaty of Lisbon, signed in 2007, further developed the co-decision procedure into the ordinary legislative procedure, whilst the cooperation procedure was deleted. The ordinary legislative procedure is stated in Article 294 TFEU.<sup>56</sup> This now applies to nearly all EU legislation, covering 85 specific legal bases,<sup>57</sup> and “allows a meaningful and democratically legitimate debate on legislative proposals between the Council and the EP in various rounds of negotiation.”<sup>58</sup> Under this procedure, the European Parliament has the right of amendment, and is able to negotiate at a Conciliation Committee or terminate the legislation process by rejecting amended proposals by the Council. With the Treaty of Lisbon, the position of the European Parliament became equal to the Council as co-legislators, because both are invited

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<sup>53</sup> Sari K. M. Laitinen-Rawana, “Creating a Unified Europe: Maastricht and Beyond,” *The International Lawyer* 28, no. 4 (1994): 973–93.

<sup>54</sup> Treaty on European Union, Article 138(b) paragraph 2.

<sup>55</sup> Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 326 (2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

<sup>56</sup> Consolidated version of the Treaty on the Functioning of the European Union.

<sup>57</sup> The full list of legal bases providing for the ordinary legislative procedure can be found at [https://www.europarl.europa.eu/cmsdata/198025/List\\_of\\_legal\\_bases.pdf](https://www.europarl.europa.eu/cmsdata/198025/List_of_legal_bases.pdf)

<sup>58</sup> Wim J. M. Voermans, “The Birth of a Legislature: The EU Parliament After the Lisbon Treaty,” *The Brown Journal of World Affairs* 17, no. 2 (2011): 167.

to present their position at first reading.<sup>59</sup> The ordinary legislative procedure has increased the influence of the European Parliament on EU legislation in relation to the Council and the Commission.

Despite constant expansion of its power and role, the European Parliament has relative weakness vis-à-vis the Commission and the Council. The ordinary legislative procedure allows input from the European Parliament which represents citizens and from the Council of the European Union which represents state interests. This applies to 83 policy areas, covering approximately “72% of all subject areas for which the Treaty of the Functioning of the European Union provides for legislative procedures.”<sup>60</sup> Thus parliamentary co-decision is today considered as the standard or common procedure for EU law making. Nevertheless, there are some areas to which the special legislative procedure continues to apply, whereby the Council is the sole legislator in practice. Under special legislative procedures, based on Article 289(2) TFEU, the role of the Parliament is limited to consultation or consent, depending on the case.<sup>61</sup> The cases are not precisely or specifically described in the treaties, so it is decided based on the relevant treaty articles. For example, in case of taxation, internal market exemptions and competition law, the European Parliament delivers non-binding advisory opinion. Regarding the accession of new Member States, the ratification of certain international agreements by the EU, and new legislation on combating discrimination, the consent procedure applies, in addition to the cases of serious breach of fundamental rights under Article 7 TEU.<sup>62</sup>

Furthermore, the Commission has an almost exclusive right to initiate legislative proposals, while at the national level, it is conferred upon both governments and parliaments. Article 17(2) TEU clearly states that “Union legislative acts may only be adopted on the basis of a Commission proposal,

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<sup>59</sup> Edward Best, “Legislative Procedures after Lisbon: Fewer, Simpler, Clearer?,” *Maastricht Journal of European and Comparative Law* 15, no. 1 (2008): 85–96.

<sup>60</sup> Christilla Roederer-Rynning, “Passage to Bicameralism: Lisbon’s Ordinary Legislative Procedure at Ten,” *Comparative European Politics* 17, no. 6 (December 1, 2019): 960, <https://doi.org/10.1057/s41295-018-0141-2>.

<sup>61</sup> Consolidated version of the Treaty on the Functioning of the European Union.

<sup>62</sup> Richard Corbett, Francis Jacobs, and Michael Shackleton, “The Parliament and Legislation,” in *The European Parliament* (London: John Harper Publishing, 2011), 232–71.

except where the Treaties provide otherwise.”<sup>63</sup> Only in very specific cases,<sup>64</sup> the European Parliament may adopt regulations on its own initiative. It applies to the regulation concerning its own composition, the election of its members, the performance of the duties of its members, the duties of the Ombudsman, and setting up a temporary committee on inquiry, which requires the consent of the Council, and when it comes to the exercise of the right of inquiry, the consent of the Commission as well.<sup>65</sup>

In addition, pursuant to Article 225 TFEU, the European Parliament can initiate a legislative proposal in an indirect way. Also, the Treaty of Lisbon extended the indirect right of initiative and further implemented the practice of democracy at the EU level by establishing the European Citizens' Initiative under Article 11 TEU.<sup>66</sup> The indirect right of initiative by the European citizens or the European Parliament can call on the Commission to propose the legislation, but it is not legally binding. The Commission is not obliged to propose the legislation requested, and the Treaty of Lisbon only codified the Commission's obligation to justify its refusal.<sup>67</sup> With regards to the indirect initiative by the European Parliament between 2010 and 2019, the Commission only put forward the request to some extent with a proposal in only 8 cases out of 26 cases.<sup>68</sup> Accordingly, the European Parliament continues to strengthen its power for the full right of initiative and to be further involved in formulating the EU policy agenda.

## **ii. Parliamentary agenda-setting within the EU**

In the European Union political system, the European Parliament shares legislative agenda-setting power with the Commission and the Council. Agenda-

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<sup>63</sup> Consolidated version of the Treaty on European Union.

<sup>64</sup> Article 289(4) TFEU further explains that “In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.”

<sup>65</sup> Andreas Maurer and Michael C. Wolf, “The European Parliament’s Right of Initiative” (European Parliament, July 9, 2020), [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL\\_STU\(2020\)655134](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2020)655134).

<sup>66</sup> Consolidated version of the Treaty on European Union.

<sup>67</sup> Maurer and Wolf, “The European Parliament’s Right of Initiative.”

<sup>68</sup> Milan Remáč, “Parliamentary Scrutiny of the European Commission: Implementation of Treaty Provisions” (European Parliamentary Research Service, 2019), <https://data.europa.eu/doi/10.2861/267160>.



setting or agenda-building can be defined as “the process of turning public issues into actionable government priorities.” It connects public problems with policy-making and its implications for democratic politics.<sup>69</sup> Different institutions impact on policy outcomes through agenda control, and also policy agenda determines ideas and understandings of problems within the political system.<sup>70</sup>

Setting the agenda is not limited to initiate a legislative proposal, but it refers to a formal means of shaping and influencing EU policy formulation. At the EU level, the Commission maintains quasi exclusive power on the initiative for legislative acts. Edward Best explains that it is because each Member State has different interests and sizes, and the European Community had to ensure the balance between the general European interest and national interests. The right of initiative was considered as a mechanism to “push ahead with the integration process, but also to help maintain stability through what has been known as the ‘institutional balance’” in order to protect Member States in the minority and to guarantee fairness in the policy-making process.<sup>71</sup>

Therefore, unlike national parliaments, the European Parliament lacks the power to formally introduce legislations and to set the policy agenda. Setting policy agenda is important as it determines and establishes contents and directions of political discourse and legislative debate.<sup>72</sup> Treaty revisions have granted more and more decision-making powers to the European Parliament during the legislative process regarding the content and character of policy outcomes. Scholars, such as Tsebelis,<sup>73</sup> Kreppel,<sup>74</sup> and Selck and Steunenberg,<sup>75</sup> have

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<sup>69</sup> Nikolaos Zahariadis, “Setting the Agenda on Agenda Setting: Definitions, Concepts, and Controversies,” in *Handbook of Public Policy Agenda Setting*, ed. Nikolaos Zahariadis (Edward Elgar Publishing, 2016), 1–22.

<sup>70</sup> Thomas Bräuninger and Marc Debus, “Legislative Agenda-Setting in Parliamentary Democracies,” *European Journal of Political Research* 48, no. 6 (2009): 804–39, <https://doi.org/10.1111/j.1475-6765.2009.00850.x>.

<sup>71</sup> Edward Best, “The EU Agenda and the Right of Initiative,” EIPA Paper (European Institute of Public Administration, June 2020).

<sup>72</sup> Amie Kreppel and Michael Webb, “European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind?,” *Journal of European Integration* 41, no. 3 (April 3, 2019): 383–404, <https://doi.org/10.1080/07036337.2019.1599880>.

<sup>73</sup> George Tsebelis, “The Power of the European Parliament as a Conditional Agenda Setter,” *The American Political Science Review* 88, no. 1 (1994): 128–42.

<sup>74</sup> Amie Kreppel, “What Affects the European Parliament’s Legislative Influence? An Analysis of the Success of EP Amendments,” *Journal of Common Market Studies* 37, no. 3 (1999): 521–37, <https://doi.org/10.1111/1468-5965.00176>.

<sup>75</sup> Torsten J. Selck and Bernard Steunenberg, “Between Power and Luck: The European Parliament in the EU Legislative Process,” *European Union Politics* 5, no. 1 (2004): 25–46.

demonstrated that the European Parliament is able to shape legislative outcomes through adoptions, amendments and veto. But does the European Parliament also make effective influence on agenda-setting process of shaping the EU policy agenda and fostering EU legislative actions?

While the European Parliament has no formal power to initiate a legislative proposal, it can still exercise legislative rights by means of informal or indirect agenda-setting. And this parliamentary agenda-setting can be viewed as “the continuing process through which public issues are transformed into parliamentary debate, receive attention, and priority.”<sup>76</sup> Informal rights of initiative mechanism of the European Parliament is to draw up own-initiative reports. The European Parliament has had the right to adopt resolutions on own-initiative reports since its creation in 1957.<sup>77</sup> Article 1 of Procedure for granting authorization to draw up own-initiative reports provides that there are five categories of own-initiative reports: Legislative Own-Initiative Reports (INL), Strategic Reports, Non-Legislative Own-Initiative Reports (INI), Annual Activity and Monitoring Reports, and Implementation Reports.<sup>78</sup> The last two reports concern the European Parliament’s supervisory powers, while European Parliament resolutions (INI and INL) are used to shape political discourse and to set EU agendas.

Parliamentary own-initiative reports identify and address “a major concern, idea, project, or intention towards other collective actors.”<sup>79</sup> Especially INL report refers to the formal indirect right of initiative to ask the Commission to initiate legislations under Article 225 TFEU. European Parliament’s Rule of Procedure (9th parliamentary term) Rule 47 indicates that the European Parliament may request the Commission to submit a proposal for adopting a new act or amending an existing act

by adopting a resolution on the basis of an own-initiative report drawn up by the committee responsible in accordance with Rule 54. The resolution shall be adopted by a majority of the component Members of Parliament in the final vote. Parliament may, at the same time, set a deadline for the

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<sup>76</sup> Maurer and Wolf, “The European Parliament’s Right of Initiative,” 21.

<sup>77</sup> Kreppel and Webb, “European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind?”

<sup>78</sup> European Parliament, “Compendium of the Main Legal Acts Related to the Rules of Procedure” (European Parliament, January 2021), 218-9, <https://www.europarl.europa.eu/compendium/en/contents>.

<sup>79</sup> Maurer and Wolf, “The European Parliament’s Right of Initiative,” 36.

submission of such a proposal.<sup>80</sup>

While INL reports have a specific legal basis, INI reports are not clearly stated in the EU Treaties. Nevertheless, the European Parliament has drawn up INI reports even before the formal introduction of INL reports, in order to influence the legislative agenda and to put political pressure on the Commission by expressing concerns and ideas of the European Parliament.<sup>81</sup> Even when INI reports do not result in new legislative actions, it is one way of presenting the European Parliament's interest and position in EU politics. Also, in terms of procedure, in order to adopt resolutions on own-initiative report, a simple majority is needed to pass resolutions, while the ordinary legislative procedure requires an absolute majority.

The European Parliament has constantly demanded a legislative right of initiative since its direct elections in 1979, while the Commission's monopoly of legislative initiative has still been maintained. Despite increased legislative power from ordinary legislative procedure, the parliamentary reports are "an important working tool and political instrument for the European Parliament" as they bring diverse topics of interest and express position of the European Parliament in EU politics.<sup>82</sup> The adoption of resolutions, as a part of the legislative process or as an outcome of own-initiative reports, is one of the instruments that the European Parliament can employ to present its voice in EU politics.

### **iii. Requests of the European Parliament and follow-up by the Commission**

Own-initiative reports are the instruments that the European Parliament can use in order to wield agenda-setting powers. After INI or INL reports are debated and adopted in the responsible committee and then in the plenary, the Commission decides how to answer to the requests by the European Parliament. As it is not compulsory for the Commission to deliver a legislative proposal, the adoption of

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<sup>80</sup> European Parliament, "Rules of Procedure of the European Parliament" (European Parliament, January 2021), 35, [https://www.europarl.europa.eu/doceo/document/lastrules/TOC\\_EN.html](https://www.europarl.europa.eu/doceo/document/lastrules/TOC_EN.html).

<sup>81</sup> Silvia Kotanidis, "Parliament's Right of Legislative Initiative," Briefing (European Parliamentary Research Service, February 2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646174/EPRS\\_BRI\(2020\)646174\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646174/EPRS_BRI(2020)646174_EN.pdf).

<sup>82</sup> Klaus Welle, "Strategic Planning for the Secretariat-General of the European Parliament" (European Parliament, January 2016), 16, [https://www.europarl.europa.eu/RegData/publications/2016/0002/P8\\_PUB%282016%290002\\_XL.pdf](https://www.europarl.europa.eu/RegData/publications/2016/0002/P8_PUB%282016%290002_XL.pdf).

the resolution in the European Parliament does not guarantee the implementation of concrete legislative action. Despite this lack of binding power, as indicated in Article 16 of the Framework Agreement on relations between the European Parliament and the European Commission<sup>83</sup> and in Inter-institutional Agreement on Better Law-Making,<sup>84</sup> the Commission has agreed to provide follow-up documents, a written answer, in response to specific requests within three months of adoption of the corresponding parliamentary resolution.

569 INI resolutions and 22 INL resolutions were adopted during the 7<sup>th</sup> parliamentary term (2009 – 2014), and 521 INI resolutions and 15 INL resolutions during the 8<sup>th</sup> term (2014 – 2019). Among them, the Commission presented a written response to 942 out of 1090 INI resolutions (response rate approximately 86.4%), and to 31 out of 37 INL resolutions (response rate approximately 83.8%).<sup>85</sup> The recent study which analyzed European Commission follow-up to European Parliament requests adopted between January 2017 and May 2019 identifies that 3934 requests in 219 resolutions were raised by the committees, and the Commission provided a reply to requests in the majority of cases (approximately 66%) which were mostly delivered to the European Parliament after five to six months. However, 61% of replies were general and vague, and they did not present proposals or promises to undertake an action. Furthermore, the study noted that in case the Commission gave answers with proposals or promises for implementing an action, 56% of them were carried out.<sup>86</sup>

The Commission has acknowledged the role and responsibilities of the European Parliament as a legitimate legislative body. It is written in the Andriessen report in 1983 that “Parliament's full potential as a democratic power can only be realized in a climate of open cooperation between the three institutions.” While the Commission has stressed the importance of the European

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<sup>83</sup> Framework Agreement on Relations between the European Parliament and the European Commission, OJ L 304 (2010), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010Q1120%2801%29>.

<sup>84</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123 (2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29>.

<sup>85</sup> “Legislative Observatory,” European Parliament, accessed June 13, 2021, <https://oeil.secure.europarl.europa.eu/oeil/home/home.do>.

<sup>86</sup> Milan Remáč et al., “European Commission Follow-up to European Parliament Requests 2017-2019” (European Parliamentary Research Service, June 2020), [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2020\)642838](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2020)642838).

Parliament's role in the decision-making process, it also clearly stated that “[t]he Commission's right to initiate Community legislation is one of the original and cardinal features of the Community structure.”<sup>87</sup>

**iv. Parliamentary involvement for establishing an EU mechanism on democracy, the rule of law and fundamental rights**

Article 14(1) TEU specifies the role of the European Parliament that:

[t]he European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.<sup>88</sup>

In addition to legislative roles, it states the European Parliament’s engagement with democracy, the rule of law and fundamental rights. Furthermore, under Article 13(1) TEU, EU’s institutional framework “shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States.” Emphasis on protecting EU founding values of Article 2 TEU is also manifested in Article 3(1) TEU which makes it the Union’s aim to “promote peace, its values and the well-being of its peoples.”<sup>89</sup> Accordingly, the EU institutions are bound by the treaty objectives to uphold and safeguard the values.

Based on earlier works by Bourguignon-Wittke and others,<sup>90</sup> Grabitz and others,<sup>91</sup> Steppat,<sup>92</sup> Schmuck and Wessels,<sup>93</sup> and subsequent studies, Maurer defines functions of the European Parliament as policy-making, controlling, elective, and system-developing. To put it briefly, the policy-making function refers to the parliament’s participation in and influence on “the preparation,

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<sup>87</sup> European Commission, “Relations between the Institutions of the Community (Commission Communication of 14 October 1981 to the Council and Parliament)” (European Commission, October 7, 1981), <https://aei.pitt.edu/5056/>.

<sup>88</sup> Consolidated version of the Treaty on European Union.

<sup>89</sup> Consolidated version of the Treaty on European Union.

<sup>90</sup> R. Bourguignon-Wittke et al., “Five Years of the Directly Elected European Parliament: Performance and Prospects,” *Journal of Common Market Studies* 24, no. 1 (1985): 39–59, <https://doi.org/10.1111/j.1468-5965.1985.tb00082.x>.

<sup>91</sup> Eberhard Grabitz et al., *Direktwahl und Demokratisierung: Eine Funktionenbilanz des Europäischen Parlaments nach der ersten Wahlperiode* (Bonn: Europa Union Verlag, 1988).

<sup>92</sup> Sabine Steppat, “Execution of Functions by the European Parliament in Its First Electoral Period,” *Journal of European Integration* 12, no. 1 (September 1, 1988): 5–35, <https://doi.org/10.1080/07036338808428924>.

<sup>93</sup> Otto Schmuck and Wolfgang Wessels, *Das Europäische Parlament im dynamischen Integrationsprozess: Auf der Suche nach einem zeitgemässen Leitbild* (Bonn: Europa Union Verlag, 1989).

adoption, implementation, and control of binding legislative acts.” The controlling function is related to the parliament’s involvement in scrutiny activities and hearings. The elective function covers the parliament’s power to participate in the nomination of other institutions. And the system-development function can be defined as

the participation of the European Parliament in the development of the EU’s constitutional system (such as institutional reforms and the division of competencies). Making full use of this function also relies on instruments such as the use of internally binding law such as the Rules of Procedure. Thus, the system-development function refers to Parliament’s ability to present, promote, and defend proposals for institutional reform.<sup>94</sup>

According to these functions, the power and role of the European Parliament is not simply limited to legislative acts and investiture, but it is also deeply committed to EU mechanisms on protecting democracy, rule of law and fundamental values.

Parliaments have a crucial role in protecting human rights and other values, by providing a forum for discussion, enacting legislations and monitoring administration.<sup>95</sup> Defending democracy, the rule of law and fundamental rights is one of the core political rights of the parliament. As the only democratically elected institution, having a close link with individual EU citizens, the European Parliament has been active in upholding EU founding principles and values which safeguard the constitutional core of the EU and its Member States.

Since 2016, the European Parliament has asked the Commission for setting up an EU mechanism on democracy, the rule of law and fundamental rights through legislative initiative procedure. The resolution addressed recommendations on

a Union Pact for democracy, the rule of law and fundamental rights (EU Pact for DRF) in the form of an interinstitutional agreement laying down arrangements facilitating the cooperation between the Union institutions

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<sup>94</sup> Andreas Maurer, “The European Parliament between Policy-Making and Control,” in *Debating the Democratic Legitimacy of the European Union*, ed. Beate Kohler-Koch and Berthold Rittberger (Lanham: Rowman & Littlefield, 2007), 77–8.

<sup>95</sup> Keith Ewing, “The Parliamentary Protection of Human Rights,” in *Constitutionalism and the Role of Parliaments*, ed. Katja S. Ziegler, Denis Baranger, and Anthony W. Bradley (London: Bloomsbury Publishing Plc, 2007), 253–69.

and the Member States in the framework of Article 7 TEU.<sup>96</sup>

A new EU Pact is to integrate, align and complement existing mechanisms, to be evidence-based, objective and non-discriminatory, and to include preventative and corrective elements. Additionally, a panel of independent experts undertakes an assessment on the values referred to in Article 2 TEU and provides annual reports with country-specific recommendations. If a clear risk of a serious breach of the values is found, the European Parliament, the Council and the Commission shall hold a formal debate on the activation of Article 7 TEU procedure. The resolution also emphasized the role of the European Parliament and the national parliaments “in measuring the progress of, and monitoring compliance with, the shared values of the Union, as enshrined in Article 2 TEU,” because parliaments maintain “the necessary continuous debate within the common Union consensus” on EU founding values.<sup>97</sup>

The formal reply from the Commission was delivered four months after the adoption in the plenary, supporting the objective underlying the resolution to ensure that common values and rules are respected and enforced. Even so, the Commission decided to focus on existing instruments such as the Rule of Law Framework by the Commission and a rule of law dialogue by the Council in order to promote and uphold the rule of law, democracy and fundamental rights. Also, the Commission added that the need for, feasibility and added value of an inter-institutional agreement is uncertain, as there are also practical and political concerns and the structure of the new mechanism is controversial in terms of legality, institutional legitimacy and accountability.

Even though the Council and the Commission did not support the resolution to set up an EU Pact for DRF, the European Parliament has maintained that an inter-institutional agreement on the EU Pact for DRF should be adopted and be linked to the protection of the EU budget in case a Member State consistently fails to protect democracy, the rule of law and fundamental rights.<sup>98</sup>

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<sup>96</sup> European Parliament, “EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2015/2254(INL)),” October 25, 2016, para 1, [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html).

<sup>97</sup> “EU Mechanism on Democracy, the Rule of Law and Fundamental Rights,” para 9.

<sup>98</sup> The Commission has not acknowledged the need of the new mechanism, but agreed on linking a generalized deficiency as regards the rule of law in a Member State and protective measures including the suspension or reduction payments from the EU budget. On 2 May 2018, the Commission put forward the

A resolution, which the European Parliament adopted on 14 November 2018, called on the Commission again to propose the new mechanism, and also called on the Council to properly inform and include the European Parliament at all stages of Article 7 TEU procedure.<sup>99</sup> After the call from the European Parliament, the Commission decided to set up additional measures in order to promote a rule of law culture, to prevent rule of law problems and to respond effectively to breaches of the rule of law. The measures include to establish a Rule of Law Review Cycle monitoring the situation of the rule of law in all Member States and additionally to publish an annual Rule of Law Report.<sup>100</sup> The Commission emphasized importance of collaboration and collective decision-making between institutions, especially regarding Article 7 TEU, but at the same time, consolidated its position and autonomy as a guardian of the Treaties.<sup>101</sup>

Even though the European Parliament welcomed the actions by the Commission, it repeatedly called on the Commission and the Council to establish an EU pact for DRF in the form of an inter-institutional agreement. Once again, the European Parliament adopted a resolution on 7 October 2020 based on INI procedure.<sup>102</sup> The proposed mechanism consists of an Annual Monitoring Cycle on all aspects of the values laid down in Article 2 TEU which provide more extensive coverage than the scope of annual rule of law report by the Commission.<sup>103</sup> The annex to the resolution suggests that the Annual Monitoring

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proposal for a Regulation on the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States, based on Article 322(1)(a) of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community. See Karoline Kowald, "Protection of the Union's Budget in Case of 'Rule of Law' Deficiencies" (European Parliament, December 15, 2020), [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_ATA\(2020\)659409](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA(2020)659409).

<sup>99</sup> European Parliament, "Need for a Comprehensive Democracy, Rule of Law and Fundamental Rights Mechanism (2018/2886(RSP))," November 14, 2018, [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0456\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0456_EN.html).

<sup>100</sup> The first annual rule of law report under the new annual Rule of Law Review Cycle, covering all Member States was published on 30 September 2020. See European Commission, "2020 Rule of Law Report - Communication and Country Chapters" (European Commission, September 30, 2020), [https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters\\_en](https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en).

<sup>101</sup> European Commission, "Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Strengthening the Rule of Law within the Union - a Blueprint for Action," COM(2019) 343 final, July 17, 2019, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2019%3A343%3AFIN>.

<sup>102</sup> European Parliament, "The Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INI))," October 7, 2020, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251_EN.html).

<sup>103</sup> The Commission's rule of law assessment focuses on four pillars: the national judicial system, the fight against corruption, media pluralism and freedom, and institutional issues related to the checks and balances.



Cycle shall publish an annual monitoring report on compliance with Union values, and on the basis of the findings of the report, the three institutions (the European Parliament, the Council and the Commission) determine whether to trigger Article 7 TEU procedures or infringement proceedings, or to apply budgetary conditionality tool. The European Parliament keeps pointing out that “the Union remains structurally ill-equipped to tackle democratic, fundamental rights and rule of law violations and backsliding in the Member States,” and its role in monitoring compliance with EU values should be respected in accordance with Article 7 TEU.<sup>104</sup>

The recent reply from the Commission was delivered on 3 March 2021. Despite its support to reinforcing Union values and its recognition of the importance of strengthening the EU’s capacity to monitor the respect of the values, the Commission maintained its position to cooperate under existing mechanisms and current Rule of Law report, because engaging an external panel of experts can raise legitimacy concerns, the scope of the European Rule of Law Mechanism by the Commission covers broad issues, and the report will reinforce current practice and instruments.

The European Parliament has adopted three resolutions regarding the establishment of an EU Mechanism on democracy, the rule of law and fundamental rights: a INL report in 2016,<sup>105</sup> a resolution on topical subjects (RSP) in 2018,<sup>106</sup> and a INI report in 2020.<sup>107</sup> Despite its strenuous actions for protecting EU founding values within the institutional framework of the EU, it is questionable whether decisions and voting of the European Parliament brings actual significance and implication in the EU decision-making. Resolutions adopted by the European Parliament are regarded only as preliminary by other institutions, especially the Commissions, rather than being regarded as an effective tool in the face of democratically backsliding states.

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<sup>104</sup> European Parliament, “The Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INI)).”

<sup>105</sup> European Parliament, “EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2015/2254(INL)).”

<sup>106</sup> European Parliament, “Need for a Comprehensive Democracy, Rule of Law and Fundamental Rights Mechanism (2018/2886(RSP)).”

<sup>107</sup> European Parliament, “The Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INI)).”

In the next chapter, one of the recent actions of the European Parliament to influence EU governance will be analyzed as a case study. Facing ‘the Rule of Law crisis’ in Hungary and Poland, in its role as the directly elected legislative chamber of the EU which represents the citizens’ voice, the European Parliament has sought to take an independent action to exercise its power, to actively engage in European political issues, and to protect perceived EU fundamental values. This case study will show how the European Parliament has sought to exert political influence and to counter democratic backsliding in its Member States.

### III. Case study: The Article 7 procedure against Hungary

#### i. Background

Fidesz, Hungary's ruling center-right party of Prime Minister Viktor Orbán, secured two-thirds majorities in national parliamentary elections in 2010, 2014 and 2018. Fidesz (Fidesz–KDNP alliance) won 263 of the 386 seats in 2010, 133 seats of the 199 seats in 2014, and 133 seats of the 199 seats in 2018.<sup>108</sup> With a very strong mandate, Viktor Orbán secured his third consecutive term as Prime Minister. Using their supermajority in the Hungarian parliament, Fidesz seized power to change the national legal framework and to adopt new constitutional laws, as well as expanded control over the media and undermined human rights protection.<sup>109</sup> The government of Viktor Orbán gained the ability to amend and pass a major reform of the constitution, bypassing the parliament's check by ruling out opposition parties from the process. Using a two-thirds super-majority, the new constitution (the Fundamental Law of Hungary) was adopted in April 2011 and came into force on 1 January 2012. The Venice Commission,<sup>110</sup> as well as many Hungarian scholars,<sup>111</sup> criticized the constitution-making procedure because of the tight timeframe for drafting and adopting, the lack of transparency, and the absence of open political and social debate. In terms of the content, “[i]t violates the constitutional principles of the rule of law, legal security and separation of powers.” The new constitution also undermines the power and procedure of the Constitutional Court, which results in restrictions of numerous fundamental rights and freedom of expression.<sup>112</sup> The move of Viktor Orbán towards an ‘illiberal state’ has created tension between the EU and Hungary. This recently reached the culmination with the adoption of a resolution by the European

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<sup>108</sup> “Parliamentary Elections,” National Election Office, accessed March 27, 2021, <https://www.valasztas.hu/web/national-election-office/parliamentary-elections>.

<sup>109</sup> “Wrong Direction on Rights: Assessing the Impact of Hungary’s New Constitution and Laws” (Human Rights Watch, May 2013), <https://www.hrw.org/report/2013/05/16/wrong-direction-rights/assessing-impact-hungarys-new-constitution-and-laws>.

<sup>110</sup> Venice Commission, *Opinion on the New Constitution of Hungary Adopted by the Venice Commission at Its 87th Plenary Session (Venice, 17-18 June 2011)* (Strasbourg: Venice Commission, June 20, 2011), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)016-e).

<sup>111</sup> Zoltán Fleck et al., “Opinion on the Fundamental Law of Hungary,” June 2011, <https://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf>.

<sup>112</sup> Nóra Chronowski et al., “Hungary: Constitutional (R)Evolution or Regression?,” in *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports*, ed. Anneli Albi and Samo Bardutzky (The Hague: T.M.C. Asser Press, 2019), 1439–43, [https://doi.org/10.1007/978-94-6265-273-6\\_31](https://doi.org/10.1007/978-94-6265-273-6_31).

Parliament calling for a vote on the launch of the Article 7(1) TEU procedure on the grounds that “the current situation in Hungary represents a clear risk of a serious breach of the values”.<sup>113</sup>

Even though the initial goal of establishing the EU was to create a common market and to ensure peace in Europe, democracy has been a primary value of the EU as a prerequisite for peace and stability. The enlargement of the EU, especially to Central and Eastern Europe, raised concerns among the Member States about establishing and strengthening democratic political regimes. Accordingly, the EU accession criteria, also known as the Copenhagen criteria, which consist of political, economic and legal conditions, officially materialized the democratic conditionality of joining the EU.<sup>114</sup> Additionally, in order to ensure the integrity of the *acquis* in an enlarged Union, the necessity of a sanctioning mechanism was discussed. It was important for an enlarged European Union to prevent backsliding on European values and the rule of law in Member States

whose very recent past had been marred by massive and systemic violations of human rights and undemocratic political systems, and whose enthusiasm for human rights and democratic practices was not fully trusted.<sup>115</sup>

Subsequently, the sanctioning mechanism was first introduced in the Treaty of Amsterdam which came into force in 1999, where the first version of Article 7 appeared. In the Treaty of Nice, this mechanism was renewed by adding a *preventive* mechanism. This was newly incorporated after the EU found itself facing limits to the sanctions imposed against Austria in February 2000 due to the Haider affair. Even though the sanctions had an important symbolic effect in terms of showing the EU’s collective action and progress in political Europe, it was criticized for its unilateral dimension. The Wise Men report showed concerns that sanctions can become counter-productive if they stir up nationalist feeling and are wrongly understood, despite the positive impact sanctions may have. Thus, the report recommended the introduction of “preventive and monitoring procedures

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<sup>113</sup> European Parliament, “Situation in Hungary (2017/2656(RSP)),” May 17, 2017, para 9, [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0216\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0216_EN.html).

<sup>114</sup> Hélène Pinto, “The Role of European Union Accession in Democratization Processes” (Democratic Progress Institute, June 16, 2016), <https://www.democraticprogress.org/publications/research/the-role-of-european-union-accession-in-democratization-processes/>.

<sup>115</sup> Wojciech Sadurski, “Adding Bite to a Bark: The Story of Article 7, E.U. Enlargement, and Jörg Haider,” *Columbia Journal of European Law* 16, no. 3 (Summer 2010): 386.

into Article 7 of the E.U. Treaty” which are less aggressive and allow “an open and non-confrontational dialogue with the Member State concerned.”<sup>116</sup> With almost no changes, the sanctioning and preventive mechanism against Member States’ violations of EU fundamental values was carried over into the Treaty of Lisbon.

## ii. Compliance mechanisms in the EU

In order to strengthen EU values, the EU has several mechanisms and a number of tools, such as a peer review procedure, Cooperation and Verification Mechanism, the annual Rule of Law Dialogue by the Council, the Rule of Law Framework by the Commission, EU Anti-Corruption report, and EU Justice Scoreboard, as well as infringement procedures and preventive and sanction mechanisms. According to current EU law, if Hungary has failed to fulfil an obligation under the Treaties, based on the Article 258 TFEU, this may bring two consequences: The Article 7 procedure or the infringement procedure.<sup>117</sup>

There are clear differences between the Article 7 procedure and the infringement procedure in terms of the orientation, function and consequences.

[w]hile the infringement procedure refers to violation of specific norms in individual instances under the *acquis*, value enforcement tackles systemic deficiencies irrespective of the *acquis*.<sup>118</sup>

The infringement procedure, based on Articles 258 - 260 TFEU, is brought by the Commission in most cases, but also by other Member States, in order to take action on a specific and concrete violation of EU primary and secondary law by a Member State. When violations occur in a Member State, the Commission starts the procedure by sending a letter of formal notice which presents its views

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<sup>116</sup> Martti Ahtissari, Jochen Frowein, and Marcelino 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),” *International Legal Materials* 40, no. 1 (January 2001): 120.

<sup>117</sup> Bojan Bugarič, “Protecting Democracy inside the EU: On Article 7 TEU and the Hungarian Turn to Authoritarianism,” in *Reinforcing Rule of Law Oversight in the European Union*, ed. Carlos Closa and Dimitry Kochenov (Cambridge: Cambridge University Press, 2016), 82–102, <https://doi.org/10.1017/CBO9781316258774>.

<sup>118</sup> Oliver Mader, “Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law,” *Hague Journal on the Rule of Law* 11, no. 1 (April 1, 2019): 162, <https://doi.org/10.1007/s40803-018-00083-x>.

regarding the breach of EU law. If there is no reply to the letter from a non-compliant state, or if the corrective measures are considered unsatisfactory, the Commission can refer the case to the Court of Justice. This procedure usually deals with one precise part of EU law.

The Article 7 procedure, however, was developed to address the need for protection of EU values as the EU moves towards the position of being a more political entity from mere economic cooperation. Article 2 TEU states that

[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.<sup>119</sup>

In order to initiate the Article 7 procedure, the proposal should be submitted by one-third of the Member States, by the European Parliament, or by the European Commission. It should be followed by the European Parliament's consent to the proposal which requires a two-thirds majority of the votes cast. Then the Council shall hold hearings with the accused country. Subsequently, pursuant to Article 7(1) TEU, the Council votes to decide whether there is a 'clear risk of a serious breach' of the values referred to in Article 2 TEU, issuing a formal warning and recommendations, where a majority of four-fifths of its members should agree.

Article 7(2) TEU is concerned with a 'serious and persistent breach' of the values. In case the accused country does not follow the guidance by the Council and the situation does not get improved, the Commission or one-third of the Member States can present a proposal for a determination of the existence of a serious and persistent breach. After obtaining the consent of the European Parliament by a two-thirds majority, the European Council votes and its decision requires unanimity. When a determination under Article 7(2) TEU is made, according to Article 7(3) TEU, the Council, acting by a qualified majority, can determine sanctions of suspending certain of the rights, including voting rights in the Council.

The scope of Article 7 is not limited to a certain policy area of EU competence, and this article enables the EU to exert pressure on its Member States to abide by EU values. In interpreting a 'serious and persistent' breach, this can

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<sup>119</sup> Consolidated version of the Treaty on European Union.

be seen as vague and there is room for political judgement. Even though the Court of Justice of the European Union can be involved, its role in the Article 7 procedure is not clearly stated.<sup>120</sup>

### **iii. EU actions in regard to the situation in Hungary, and comparison to the situation in Poland**

The emergence of ‘rule of law crises’ or ‘democratic decay’ in Hungary and Poland has similarities. In both cases, the center-right party secured the majority in the general election.<sup>121</sup> Following this, the ruling party passed laws violating freedom of speech protections, controlling the news media, and damaging judicial independence. The opposition parties in both national parliaments are small and have no practical power. While the Barroso Commission and subsequently the Juncker and von der Leyen Commissions have made repeated comments and even public criticisms, this situation does not seem to have improved.

In regard to the situation in Poland, as the threats to the rule of law have become serious and systematic, the European Commission initiated its Rule of Law Framework for Poland in 2016. Nevertheless, the Commission’s recommendations were not taken seriously and constantly ignored. The Polish government was not willing to engage in a constructive dialogue and despite the Framework, it moved towards weakening the functioning of the Constitutional Court.<sup>122</sup> In the end, the Commission triggered Article 7(1) TEU procedure against Poland for the first time in December 2017, after several debates and hearings in the Council.

While the Commission has made efforts to address rule of law issues in

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<sup>120</sup> When Poland lowered the retirement age for judges in 2017, the European Court of Justice ruled that the Polish law is unlawful and Poland had failed to fulfil its obligations under EU law. The Commission launched an infringement procedure and also triggered the Article 7(1) TEU procedure to address rule of law issues in Poland.

<sup>121</sup> There are many scholarly expressions to describe the illiberal trajectories pursued by Orbán and Kaczynski including backsliding, constitutional capture, democratic decay and populist constitutionalist theory. See Michal Ovádek, “The Rule of Law in the EU: Many Ways Forward but Only One Way to Stand Still?,” *Journal of European Integration* 40, no. 4 (June 7, 2018): 495–503, <https://doi.org/10.1080/07036337.2018.1466958>.

<sup>122</sup> Digdem Soyaltin-Colella, “The EU’s ‘Actions-without-Sanctions’? The Politics of the Rule of Law Crisis in Many Europes,” *European Politics and Society*, November 11, 2020, 1–17, <https://doi.org/10.1080/23745118.2020.1842698>.

Poland as a guardian of the treaties by using its tools, its commitment to the situation in Hungary was less active and passionate. The Commission was reluctant to either activate the Rule of Law Framework or trigger Article 7 in the face of overwhelming evidence that Orbán's Hungary ignores the rule of law.

When Hungary first adopted the new Constitution in 2011 which seeks to limit the independence of the judiciary and jurisdiction of the Constitutional Court, to bring universities under governmental control, to open the door to political prosecution and to weaken human rights guarantees, the European Parliament has been the most vocal in condemning backsliding on democratic standards and the rule of law. The European Parliament took the initiative in bringing Article 7 procedure into European institutional discussion by adopting the Tavares report in July 2013<sup>123</sup> under own-initiative procedure (INI), in order to demonstrate its strong criticism of the new Constitution and to criticize the state of fundamental rights in Hungary.<sup>124</sup> The Tavares report recognized that modification of the constitutional and legal framework was made in very short time frames and its content is “incompatible with the values referred to in Article 2 TEU.” Through the report, the European Parliament urged the European Council and the Commission “to take appropriate, timely, proportionate and progressive measures,” and at the same time provided a number of suggestions for “setting up a new mechanism to enforce Article 2 TEU effectively.” It did not, however, recommend starting the Article 7 TEU procedure, but only to assess the appropriateness of “a swift and independent monitoring mechanism and an early-warning system,” including communication on Article 7 TEU.<sup>125</sup>

After the adoption of the Tavares report by the European Parliament, on 4 September 2013, the former Vice-President of the Commission Viviane Reding delivered a speech on rule of law mechanism in the EU, at the Centre for European Policy Studies in Brussels. In her speech, she mentioned that the EU has “been

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<sup>123</sup> The so-called Tavares report is named after its rapporteur, Rui Tavares. The official name is the report on the situation of fundamental rights: standards and practices in Hungary. The resolution was passed with 370 in favor, 249 against and 82 abstentions.

<sup>124</sup> Bugarič, “Protecting Democracy inside the EU.”

<sup>125</sup> Rui Tavares, “Report on the Situation of Fundamental Rights: Standards and Practices in Hungary (Pursuant to the European Parliament Resolution of 16 February 2012)” (European Parliament Committee on Civil Liberties, Justice and Home Affairs, June 24, 2013), [https://www.europarl.europa.eu/doceo/document/A-7-2013-0229\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-7-2013-0229_EN.html).



confronted on several occasions with a true ‘rule of law’ crisis,” which could notably be observed in Romania, France and Hungary. Nevertheless, she hesitated to “intervene and criticize or even sanction national actions” under the name of violation of the rule of law, because it is deeply related to national sovereignty. She highlighted that the Commission’s actions will be always based on the competences and legitimacy given by EU laws.<sup>126</sup>

Few days after her speech, on 11 September 2013, the former President of the Commission President José Manuel Barroso gave his State of the European Union speech which is the annual speech addressed at the European Parliament plenary session. In his 2013 State of the Union address, he also emphasized that safeguarding EU values including the rule of law is the goal and purpose of the EU. He noted increasing “threats to the legal and democratic fabric in some of our European states” and facing the various crisis in the EU, the EU needs to enhance the democratic legitimacy and to develop a robust European mechanism in order to defend non-negotiable values.<sup>127</sup>

Soon after, the Commission implemented the Rule of Law Framework in 2014, the ‘pre-Article 7 Procedure,’ but the Commission has been persistently refusing to activate the Rule of Law Framework against Hungary. Subsequently, the European Parliament once again expressed its concerns over “a serious systemic deterioration in the situation as regards the rule of law and fundamental rights” despite recent initiatives and measures in 2015.<sup>128</sup> The European Parliament constantly called on the Commission

to activate the first stage of the EU framework to strengthen the rule of law, and therefore to initiate immediately an in-depth monitoring process concerning the situation of democracy, the rule of law and fundamental rights in Hungary, including the combined impact of a number of measures, and evaluating the emergence of a systemic threat in that Member State which could develop into a clear risk of a serious breach within the

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<sup>126</sup> Viviane Reding, “The EU and the Rule of Law – What Next?” (Speech/13/677, Centre for European Policy Studies in Brussels, September 4, 2013), [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_677](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_677).

<sup>127</sup> José Manuel Durão Barroso, “State of the Union Address 2013” (European Parliament Plenary Session in Strasbourg, September 11, 2013), [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_684](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_684).

<sup>128</sup> European Parliament, “Situation in Hungary: Follow-up to the European Parliament Resolution of 10 June 2015 (2015/2935(RSP)),” December 16, 2015, para F, [https://www.europarl.europa.eu/doceo/document/TA-8-2015-0461\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0461_EN.html).

meaning of Article 7 TEU.<sup>129</sup>

The European Parliament also emphasized that “Hungary is a test for the EU to prove its capacity and political willingness to react to threats and breaches of its own founding values by a Member State.”<sup>130</sup>

Yet, the Commission did not consider that the situation in Hungary has the similar sense of urgency and threat as in Poland. Věra Jourová, the Commissioner for Justice, argued that “the Commission does not believe that there are grounds at this stage to trigger Article 7 or the Rule of Law Framework.” She added that the Commission “is actively pursuing infringement procedures against Hungary” and “the Hungarian justice system has a role to play.”<sup>131</sup>

While the European Union institutions, especially the Commission, were then reluctant to employ diplomatic and legal sanctions against Hungary, the government of Viktor Orbán continued to adopt new laws. In April 2017, the Hungarian Parliament approved amendments to the Higher Education Act, commonly known as ‘Lex CEU,’ which enabled the government to regulate the activities of all foreign universities and consequently to force the closure of the Central European University by putting a restraint on the university’s continued operation.<sup>132</sup> In that same year, the parliament of Hungary also passed the law on the Transparency of Organisations Supported from Abroad, which has been applied to all associations and foundations that receive foreign funding. Requiring them to disclose all sources of income and to be registered as foreign funded, it is discriminatory and restricts their ability as civil society actors by creating a heavy administrative and reputational burden.<sup>133</sup> Hungary’s movement towards threatening academic freedom and attacking civil society has consequently given rise to strong criticism from EU institutions, EU Member States and international

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<sup>129</sup> Ibid., para 8.

<sup>130</sup> Ibid., para 5.

<sup>131</sup> European Parliament, *Situation in Hungary: Follow-up to the European Parliament Resolution of 10 June 2015 (Debate)* (European Parliament, December 2, 2015), [https://www.europarl.europa.eu/doceo/document/CRE-8-2015-12-02-ITM-017\\_EN.html](https://www.europarl.europa.eu/doceo/document/CRE-8-2015-12-02-ITM-017_EN.html).

<sup>132</sup> “Hungary: Law Threatens Independent Universities,” *Human Rights Watch*, April 4, 2017, <https://www.hrw.org/news/2017/04/04/hungary-law-threatens-independent-universities>.

<sup>133</sup> “Hungarian Law on the Transparency of Organisations Supported from Abroad: What Is at Stake?,” *European Center for Not-for-Profit Law*, June 15, 2017, <https://ecnl.org/news/hungarian-law-transparency-organisations-supported-abroad-what-stake>.

society.<sup>134</sup> Once again, the European Parliament adopted a resolution, calling for preparations for a vote triggering Article 7(1) TEU, and it

[i]nstructs its Committee on Civil Liberties, Justice and Home Affairs therefore to initiate the proceedings and draw up a specific report with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) TEU, in accordance with Rule 83 of its Rules of Procedure.<sup>135</sup>

After continuous calls from the European Parliament for meaningful action, Frans Timmermans, the European Commission's First Vice-President, explained why the Commission turned a blind eye to Victor Orbán's government for so long.

Poland and Hungary are different. Orbán and the Hungarian government have never refused a dialogue with us. A constructive dialogue, not only pointing at divergent views, is the European way of solving such disputes. But the truth is that a few times we have opened procedures against Hungarian handling of the law. And this has stopped, for instance, decrease of the pension age for the judges [by this means Orbán tried to eliminate established judges and introduce his own].<sup>136</sup>

Regarding the Commission's reluctance to become actively involved in the situation in Hungary, Pech and Scheppele argue that in the case of Poland, the ruling party had no supermajority but still violated the Constitution, while in Hungary, the government created an illiberal state with the support of a 'constitutional majority' in the parliament, by first amending the constitution before violating it. Even though the laws themselves seem to be against EU values, they had been enacted "in a domestically constitutional manner." And therefore, the Commission was able to be confident in asking Poland to comply with its own Constitution and follow EU law.<sup>137</sup>

#### **iv. Triggering the Article 7 procedure against Hungary**

On 12 September 2018, the second Article 7 procedure was triggered against

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<sup>134</sup> Laurent Pech and Kim Lane Scheppele, "Illiberalism Within: Rule of Law Backsliding in the EU," *Cambridge Yearbook of European Legal Studies* 19 (December 2017): 3–47, <https://doi.org/10.1017/cel.2017.9>.

<sup>135</sup> European Parliament, *European Parliament Resolution of 17 May 2017 on the Situation in Hungary (2017/2656(RSP))*, para 10.

<sup>136</sup> Bartosz T. Wieliński and Gazeta Wyborcza, "Timmermans: 'Poland Should Be a Leader in Europe - but It Needs to Cooperate,'" *EURACTIV*, May 22, 2017, <https://www.euractiv.com/section/justice-home-affairs/interview/timmermans-poland-should-be-a-leader-in-europe-but-it-needs-to-cooperate/>.

<sup>137</sup> Pech and Scheppele, "Illiberalism Within."

Hungary, following the earlier procedure against Poland launched by the Commission in December 2017. The European Parliament adopted a resolution<sup>138</sup> on a proposal calling the Council to determine the existence of a clear risk of a serious breach of EU founding values by Hungary, on the basis of a report raised by the Committee on Civil Liberties, Justice and Home Affairs, which is also known as the Sargentini report, named after the rapporteur Judith Sargentini.<sup>139</sup> Under the Legislative initiative procedure (INL), the resolution was adopted with 448 votes in favor, 197 against and 48 abstention. As noted above, this resolution was preceded by numerous other resolutions adopted by the European Parliament between March 2011 and May 2017, which were concerned with issues such as the independence of the judiciary, the constitutional system, basic freedoms, and the fundamental rights of migrants and refugees. However, this vote on the situation in Hungary was the first time that the European Parliament took the initiative on triggering the preventive mechanism.

According to Article 7 TEU, following the request from the European Parliament, the Council may determine whether there is a clear risk of a serious breach of EU values. The Council held three hearings with the Hungarian government: in September 2019 and December 2019 under the Finnish Presidency, and recently in June 2021 under the Portuguese Presidency. The first hearing, however, only started almost a year after the European Parliament initially triggered the procedure. In response to the European Parliament's action, the Hungarian government legally challenged the procedure in front of the Court of Justice of the European Union, claiming the annulment of that resolution under Article 263 TFEU due to infringement of Article 354 TFEU by the European Parliament and its rules of procedure.<sup>140</sup> On 3 December 2020, Advocate General Michal Bobek delivered his opinion to advise the Court to dismiss the case.

This rule of law crisis in the EU has recently expanded to the area of the EU budget and the Recovery Fund, which is the EU's financial action to respond

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<sup>138</sup> European Parliament, "The Situation in Hungary (2017/2131(INL))," September 12, 2018, [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html).

<sup>139</sup> Judith Sargentini, "Report on a Proposal Calling on the Council to Determine, Pursuant to Article 7(1) of the Treaty on European Union, the Existence of a Clear Risk of a Serious Breach by Hungary of the Values on Which the Union Is Founded" (European Parliament Committee on Civil Liberties, Justice and Home Affairs, July 4, 2018), [https://www.europarl.europa.eu/doceo/document/A-8-2018-0250\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html).

<sup>140</sup> Hungary v. European Parliament, C-650/18 (2018).

to the economic damage caused by the Covid-19 pandemic. The Rule of Law mechanism was devised by the Commission, the proposal for a Regulation on the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States. It introduces protective measures including suspension of payments, reduction of funding, and prohibition to enter into new legal commitments.<sup>141</sup> The governments of Hungary and Poland, which both face charges of democratic backsliding from EU institutions, opposed the mechanism. They vetoed the Multiannual Fiscal Framework, the EU's seven-year budget for 2021-27, including the Next Generation EU program, accusing the European Union of aiming to punish them politically.<sup>142</sup> In the end, on 10 December, the European Council reached an agreement for the EU budget where the measures remain unchanged but allowing Hungary and Poland to have the chance to challenge its legality.<sup>143</sup>

If a serious and persistent breach of Article 2 values is identified by the European Council, the ultimate penalty of Article 7 is a suspension of voting rights in the Council, but such sanctions have never been implemented. The Article 7 procedure requires unanimity in determining whether there has been a serious and persistent breach, which is a preliminary but necessary step for imposing sanctions, such as the removal of voting rights. Both Hungary and Poland had said they would protect each other from such measures.<sup>144</sup> By exercising a veto against each other on any steps in the Article 7 procedures, they can make the whole procedure ineffective. Member State governments and even EU institutions have been very reluctant to accept a centralized mechanism at the EU level controlling over national democratic institutions.

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<sup>141</sup> European Commission, "Proposal for a Regulation of the European Parliament and of the Council on the Protection of the Union's Budget in Case of Generalised Deficiencies as Regards the Rule of Law in the Member States" (Brussels: European Commission, May 2, 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0324>.

<sup>142</sup> Monika Sieradzka and Keno Verseck, "Poland and Hungary Gamble on Funding with EU Budget Veto," *DW News*, December 2, 2020, <https://www.dw.com/en/poland-and-hungary-gamble-on-funding-with-eu-budget-veto/a-55795455>.

<sup>143</sup> Lili Bayer, "EU Leaders Back Deal to End Budget Blockade by Hungary and Poland," *POLITICO*, December 10, 2020, <https://www.politico.eu/article/deal-reached-to-unblock-eu-budget-and-recovery-fund/>.

<sup>144</sup> "Joint Declaration of the Prime Minister of Poland and the Prime Minister of Hungary," *Serwis Rzeczypospolitej Polskiej*, November 26, 2020, <https://www.gov.pl/web/eu/joint-declaration-of-the-prime-minister-of-poland-and-the-prime-minister-of-hungary>.

The European Parliament has taken more proactive steps to protect democracy in the EU compared to other European institutions, and has kept the relatively strong stance on the rule of law crisis through constant and multiple resolutions calling for activation of EU mechanisms to tackle breaches of the rule of law, despite party-political sensitivity in the European Parliament. Nevertheless, its actions do not seem to resolve the current situation of democratic backsliding or protect key principles that the EU is to safeguard and to promote.

The final chapter will be focused on EU governance in the European Parliament in order to figure out how legitimate EU actions are against a democratically backsliding Member State. As the directly elected legislative chamber of the EU, the European Parliament undertakes its activities and exercises its powers, seeking to contribute to the EU. Its representative involvement will be further investigated in terms of its position in the EU and its impact of its work and actions.

#### **IV. Evaluation and Discussion**

The recent rule of law crisis in Hungary have brought the nature and future of the EU into the center of political and academic debate again. The issue of democratic backsliding in Member States and involvement of the EU clearly show how the EU struggles to protect its values when a national government is threatening or violating them. EU institutions are involved in the issues raised by the situation in Hungary, and especially the European Parliament has taken initiative and active position in order to tackle these issues, but most of actions did not lead to any tangible results. Despite constant demands from the European Parliament for a legally binding mechanism to protect EU values, there has been no meaningful progress in using the formal mechanism, in particular with regards to ongoing Article 7 procedures. The current mechanisms to enforce EU founding values have not been fully used due to different institutional approaches and limited cooperation, while the Article 7 procedure requires the European Parliament, the Commission and the Council to work in harmony.

##### **i. The proactive role of the EU in national democratic backsliding**

As explained in the previous chapters, ensuring legitimacy becomes essential in order to justify EU actions and intervention in national sovereignty issue. In the process of European integration, establishing the supranational polity, the expansion of powers and competences of the EU has been accompanied by a decrease in the autonomy of the Member States which has been considered as a political threat to them. The absence of a sufficient level of democratic legitimacy and adequate political accountability, caused by decreased capacity of citizens to control and influence how they are governed, hinder secured application and adoption of EU rules and regulation, destabilizing political order.<sup>145</sup>

The EU has been regarded as a union of democracies, and the Copenhagen criteria which are the rules for joining the EU and Article 2 TEU clearly state that Member States should preserve democratic governance and respect democracy, the rule of law and human rights. The goal was not to build or apply a uniform model of democracy, but rather for Member States to uphold the common values

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<sup>145</sup> Beetham and Lord, “Legitimacy and the European Union.”

of the liberal tradition.<sup>146</sup> Recent democratic backsliding in some Member States, including Hungary, Poland, Romania, Bulgaria and Slovenia has shown that core values of the EU are endangered, and thus the EU should act and step forward in order to defend those values in Member States.

The case of Hungary shows that the constitutional order and political direction by the government of Viktor Orbán is in a head-on collision with the fundamental values of the EU's political constitution. Article 2 TEU specifies six values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, while until the Treaty of Maastricht, they were referred to as the democratic principles.<sup>147</sup> Even though Article 2 TEU itself does not contain binding characteristic of the values, as they are required by the Copenhagen criteria and there is the enforcement mechanism in Article 7 TUE, they can be considered to have legal consequences.<sup>148</sup> Also, the shift from principles to values in the Treaty of Lisbon indicates that the EU is based on deeper constitutional legal order rather than simple economic goals, and values are important in "creating and promoting unity, integration, legitimacy and identity within a legal or political order."<sup>149</sup> Thus, protecting founding values of the EU requires sincere cooperation from all Member States as stated in Article 4(3) TEU, and systemic deficiency of values poses a intrinsic and instrumental challenge for the legitimate and effective operation of the EU.

In addition to each Member State's duty to protect the values, "EU primary law provides a solid constitutional basis for active EU engagement to ensure compliance with the values of Article 2 TEU."<sup>150</sup> Pursuant to Article 3(1) TEU, the aim of the EU "is to promote peace, its values and the well-being of its peoples." Article 13(1) TEU repeatedly emphasizes that the EU institutional framework "shall aim to promote its values, advance its objectives ... and ensure the consistency, effectiveness and continuity of its policies and actions." And Article

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<sup>146</sup> Bugarič, "Protecting Democracy inside the EU."

<sup>147</sup> Mader, "Enforcement of EU Values as a Political Endeavour," 133-170.

<sup>148</sup> Armin von Bogdandy, "Constitutional Principles," in *Principles of European Constitutional Law*, ed. Armin von Bogdandy and Jürgen Bast, 2nd ed. (Hart Publishing, 2010), 11-54.

<sup>149</sup> Mader, "Enforcement of EU Values as a Political Endeavour," 137.

<sup>150</sup> Christophe Hillion, "Overseeing the Rule of Law in the EU: Legal Mandate and Means," in *Reinforcing Rule of Law Oversight in the European Union*, ed. Carlos Closa and Dimitry Kochenov (Cambridge: Cambridge University Press, 2016), 63, <https://doi.org/10.1017/CBO9781316258774.005>.



13(2) TEU adds that “[t]he institutions shall practice mutual sincere cooperation.”<sup>151</sup>

Moreover, in terms of the democratic quality of the EU, democratically backsliding Member States can jeopardize justifiability of EU competences and decisions, as well as legitimacy of EU actions. While the protection and promotion of the EU fundamental values demonstrate how the EU formulates and strives for its priorities and policy goals and how EU institutions exercise their powers and operate, involvement of Member States which does not comply with the democratic rule of law and fundamental rights commitments “matters both intrinsically and instrumentally for the legitimacy and equitable and effective functioning of the EU.” It is because such democratically backsliding, authoritarian Member States are not able to “fairly represent their citizens in EU decision-making” and also are able to distort votes in the Council and the European Parliament.<sup>152</sup> It is also pointed out that if national democracy and the rule of law does not work properly, mutual recognition and political interdependence will end, because the decisions in which illiberal Member States are participated govern the lives of all EU citizens.<sup>153</sup> Therefore, the Hungarian illiberal democratic regime and the rule of law crisis in Member States, undermining the EU fundamental values, are not domestic matter of individual Member States anymore, but this is a matter of legitimacy, foundation, credibility and accountability of the EU, in addition to its functioning.

## **ii. Limits of EU intervention and the Article 7 procedure against Hungary**

The Article 7 procedure was brought in the EU treaties in order to protect the EU fundamental values by imposing penalties which include, but are not limited to, the possible suspension of voting rights in the Council. The adoption of the proposal for launching the Article 7 procedure against Hungary by the European Parliament in 2018 shows EU’s commitment to secure its founding values, by

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<sup>151</sup> Consolidated version of the Treaty on European Union.

<sup>152</sup> Richard Bellamy and Sandra Kröger, “Countering Democratic Backsliding by EU Member States: Constitutional Pluralism and ‘Value’ Differentiated Integration,” *Swiss Political Science Review*, March 13, 2021, <https://doi.org/10.1111/spsr.12448>.

<sup>153</sup> Jan-Werner Müller, “Should the EU Protect Democracy and the Rule of Law inside Member States?,” *European Law Journal* 21, no. 2 (March 2015): 141–60, <https://doi.org/10.1111/eulj.12124>.

sending out a clear warning to Victor Orbán's government from the EU institution directly representing EU citizens. Nevertheless, the currently available enforcement instruments under Article 7 TEU seem to be limited in terms of its enforcement and effectiveness.

One of the reasons is that the threshold for the activation of the Article 7 procedure is high, considering political inclination of avoiding such sanctions and confrontations.<sup>154</sup> The EU institutions can consider the possibility that sanctions may backfire and intervention of the EU may provoke a nationalist backlash which can lead to a rise in anti-EU sentiment, as Haider affair already showed. Despite their role to protect fundamental values, they have a limited mandate or capacity to intervene.<sup>155</sup> Thus, the EU institutions, especially the Commission and the Council, have been reluctant to express political enthusiasm and commitment on internal politics and functioning of democracy, compared to their actions on economic matters. Closa argues that there is a 'compliance dilemma' that the EU faces and the Commission is well aware of, which comes from the EU's lack in real coercive power and also from the EU's reliance on voluntary and insecure compliance by the Member States. This perception make the Commission seek amicable solutions such as dialogues to potential conflicts (even though they became actual conflicts by now), and prefer engagement strategies and infringement procedures.<sup>156</sup>

Preference for using rather 'soft power' tools is explicitly prominent in the case of Hungary, provided that the government has secured a parliamentary majority which legally support the amendment of the constitution and consolidation of autocratic regime. However, its problem for democracy and the rule of law emerges when it enables policies and governmental actions which seek to "systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state." In the 'rule of law backsliding' state, the establishment of illiberal autocracies and entrenchment of the long-term rule of the dominant party is justified and maintained by elected

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<sup>154</sup> Jan Wouters, "Revisiting Art. 2 TEU: A True Union of Values?," *European Papers* 5, no. 1 (2020): 269, <https://doi.org/10.15166/2499-8249/376>.

<sup>155</sup> Bugarič, "Protecting Democracy inside the EU."

<sup>156</sup> Carlos Closa, "Institutional Logics and the EU's Limited Sanctioning Capacity under Article 7 TEU," *International Political Science Review*, April 22, 2020, 1–15, <https://doi.org/10.1177/0192512120908323>.

authority in the name of acting on behalf of the people.<sup>157</sup> It is important to note that Victor Orbán's government has not halted its effort to dismantle national democratic institutions and constitutional system, to undermine the independence of judiciary, to restrict freedom of expression, to compromise academic system, and to infringe fundamental rights of migrants, asylum seekers, refugees and minorities. In fact, such government cannot be considered as democratic, as the political system is insulated from the popular will.<sup>158</sup>

The Commission has remained disengaged in democratic backsliding in Hungary, which made the Article 7 procedure long overdue, considering that Victor Orbán's government and his party has seized power since 2010, undermining values contained in Article 2 TEU and weakening constitutional safeguards. The European Parliament criticized that "the inaction of the EU may have contributed to" similar developments in other Member States.<sup>159</sup> At the same time, the Rule of Law Framework by the Commission, designed to address systemic threats to the rule of law and to avoid the use of Article 7 TEU mechanisms,<sup>160</sup> did not solve or effectively respond to the situation in Hungary and Poland.<sup>161</sup> Rather, the dialogue only indicates that "would-be-autocrats are free to undermine the rule of law as long as they agree to enter into a dialogue with the Commission"<sup>162</sup> And the dialogue can be used as a means to delay the activation of the Article 7 procedure.

The procedural hurdles and ineffectiveness are also considered as another core element that hinders tackling the problem of systemic breaches of EU values

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<sup>157</sup> Pech and Scheppele, "Illiberalism Within," 8-9.

<sup>158</sup> Yascha Mounk, "The Crisis of Liberal Democracy," in *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It* (Cambridge: Harvard University Press, 2018), 23–132.

<sup>159</sup> European Parliament, "Situation in Hungary: Follow-up to the European Parliament Resolution of 10 June 2015 (2015/2935(RSP)),", para 5.

<sup>160</sup> European Commission, "Communication from the Commission to the European Parliament and the Council: A New EU Framework to Strengthen the Rule of Law," COM(2014) 158 final, March 11, 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0158>.

<sup>161</sup> In the most recent rule of law report, the Commission expressed concerns, persisting with regard to judicial independence, proper anti-corruption measures, media pluralism, the transparency and quality of the legislative process. Additionally, Hungarian parliament passed a new anti-LGBTQ law in June 2021, banning the depiction or promotion of homosexuality and gender change at school and on TV, which violates EU fundamental rights. See European Commission, "2021 Rule of Law Report - Country Chapter on the Rule of Law Situation in Hungary" (Brussels: European Commission, July 20, 2021), [https://ec.europa.eu/info/sites/default/files/2021\\_rolr\\_country\\_chapter\\_hungary\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_hungary_en.pdf); Keno Verseck, "Hungary Approves Law Banning LGBTQ+ Content for Minors," *DW News*, June 15, 2021, <https://www.dw.com/en/hungary-approves-law-banning-lgbtq-content-for-minors/a-57909844>.

<sup>162</sup> Pech and Scheppele, "Illiberalism Within," 22.

and non-compliance. This refers to technical implementation rather than institutional capacity, but it explains why the Article 7 procedure is regarded to be political and confrontational, and why the procedure against Hungary and Poland has been stalled for years since its activation. This is mainly related to Article 7(2) TEU requiring the unanimous decision in the European Council, the precondition to take meaningful sanctions. It means the sanctioning mechanism can be easily neutralized and halted by two illiberal Member States supporting each other through backsliding coalition, even though the Member State concerned loses its voting rights in decision of Article 7(2) TEU. The unanimity requirement and some Member States' reluctance in supranational decisions explain the intergovernmental EU institution's inaction against the rule of law crisis in Hungary and Poland.<sup>163</sup>

Consequently, the actual enforcement of the Article 7 procedure, far-reaching sanctions to the Member State concerned, in practice is questionable. The procedure, especially with regard to Article 7(2) TEU and Article 7(3) TEU, is often referred to as a 'nuclear option' because it can result in the most serious political sanction which is the suspension of the right and the exclusion from participating in EU decision-making.<sup>164</sup> In fact, when the procedure was established, Member States expected that its presence would sufficiently prevent democratic backsliding.<sup>165</sup> Just like nuclear weapons, Article 7 TEU has been regarded merely as the warning and preventive mechanism. Also, disagreement among all essential actors involved in the procedure and lack of political will to resolve the current impasse only makes both Article 2 and Article 7 TEU less crucial and secured.<sup>166</sup>

Despite limitations, Article 7 TEU is a unique and important tool in that it

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<sup>163</sup> Peter Oliver and Justine Stefanelli, "Strengthening the Rule of Law in the EU: The Council's Inaction," *Journal of Common Market Studies* 54, no. 5 (2016): 1075–84, <https://doi.org/10.1111/jcms.12402>; Ulrich Sedelmeier, "Political Safeguards against Democratic Backsliding in the EU: The Limits of Material Sanctions and the Scope of Social Pressure," *Journal of European Public Policy* 24, no. 3 (March 9, 2017): 337–51, <https://doi.org/10.1080/13501763.2016.1229358>.

<sup>164</sup> The term 'nuclear option' was first used by José Manuel Durão Barroso, the former President of the European Commission. See José Manuel Durão Barroso, "State of the Union 2012 Address" (Strasbourg, September 12, 2012), [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_12\\_596](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_12_596).

<sup>165</sup> Pech and Scheppele, "Illiberalism Within."

<sup>166</sup> Dimitry Kochenov, "On Bites, Barks, and Promises," in *Constitutionalism under Stress*, ed. Uładzislau Belavusau and Aleksandra Gliszczynska-Grabias (Oxford: Oxford University Press, 2020), 147–53, <https://doi.org/10.1093/oso/9780198864738.003.0011>.

provides the procedures to deal with the concerns that the EU may have, including a threat of breaching EU values, while not being restricted to the scope of general EU competences.<sup>167</sup> In particular, the involvement of the European Parliament can help justifying the EU's intervention and provide legitimacy in EU's actions. As a democratic and representative institution, the European Parliament is able to effectively and convincingly respond to the EU's technocratic characteristic. Moreover, legitimate power and role to maintain and safeguard the EU is conferred on the European Parliament provided that it is directly elected to represent EU citizens, and therefore it is to become a genuine European institution. While national parliaments are mainly concerned with national interests and politics, the European Parliament "can constitute the place where national cleavages are willing to be pieced together through an open debate and mitigated in their most extreme manifestations."<sup>168</sup> Accordingly, the role of the European Parliament is to function beyond national preferences, to act as a voice of EU citizens, to exert democratic control over EU politics and governance, and to add European dimension in EU political discussion.

### **iii. Effectiveness of the European Parliament's action for protecting and promoting EU fundamental values**

Fully taking advantage of its position as a legitimate and democratic EU institution, the European Parliament has been much more willing to take a stronger stance against breaches of values of Article 2 TEU. With regard to the situation of the rule of law and democracy in Poland, the European Parliament supported the Commission's launch of Article 7(1) TEU.<sup>169</sup> More importantly, the European Parliament triggered the same procedure against Hungary in 2018, calling on the Council to proceed with the procedure in order to prevent a systemic

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<sup>167</sup> Sadurski, "Adding Bite to a Bark," 423-24.

<sup>168</sup> Cristina Fasone, "The Struggle of the European Parliament to Participate in the New Economic Governance," EUI Working Paper, European Union Democracy Observatory (European University Institute, 2012): 2, <https://cadmus.eui.eu/handle/1814/23429>. See also Panagiota Manoli and Georgios Maris, "The Role of the European Parliament in Managing the International Economic Crisis," in *The European Parliament and Its International Relations*, ed. Stelios Stavridis and Daniela Irrera (London: Routledge, 2015), 70-91.

<sup>169</sup> European Parliament, "Commission Decision to Activate Article 7(1) TEU as Regards the Situation in Poland (2018/2541(RSP))," March 1, 2018, [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0055\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0055_EN.html).

threat to the EU founding values.

The European Parliament, however, still has relatively restricted power, especially as far as the Article 7 TEU procedure is concerned, considering its limited scope for action. Firstly, the European Parliament's actions do not have a direct and decisive influence over Member States. The Tavares report, which was the first action by the EU and adopted in 2013 when the Fourth Amendment to the Fundamental Law was enacted with the purpose of dismantling the Constitutional court and balances of governmental powers, demonstrated Hungarian government and parliament's comprehensive and systemic constitutional and institutional reforms, with a detailed assessment of the development since 2010. The report added that the journey of the Hungarian government to become illiberal can ultimately end up with a serious breach of the EU fundamental values. The report also recommended setting up a new mechanism for enforcing the values referred to in Article 2 TEU effectively.<sup>170</sup>

The response of Hungarian government was not amicable but a harsh rejection. Right after the adoption of the Tavares report, the Hungarian parliament adopted Resolution 69/2013,<sup>171</sup> claiming that

We, Hungarians, do not want a Europe any longer where freedom is limited and not widened. We do not want a Europe any longer where the Greater abuses his power, where national sovereignty is violated and where the Smaller has to respect the Greater. We have had enough of dictatorship after 40 years behind the iron curtain.<sup>172</sup>

The resolution was a manifestation of anti-European sentiment, but also argued that the European Parliament exceeded its jurisdiction and violated sovereignty of Hungary. This was the reflection of the perspective of Viktor Orbán, the Prime Minister, on national sovereignty and EU intervention: "We write our own constitutions. We do not need writing lines, nor do we require the unsolicited

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<sup>170</sup> Tavares, "Report on the Situation of Fundamental Rights: Standards and Practices in Hungary (Pursuant to the European Parliament Resolution of 16 February 2012)."

<sup>171</sup> "69/2013. (VII. 5.) OGY Határozat a Magyarországot Megillető Egyenlő Elbánásról [the Equal Treatment for Hungary]," Wolters Kluwer, accessed July 22, 2021, <https://mkogy.jogtar.hu/jogszabaly?docid=a13h0069.OGY>.

<sup>172</sup> Translation of the Resolution 69/2013 by Gábor Halmai. Quoted in Gábor Halmai, "Abuse of Constitutional Identity. The Hungarian Constitutional Court on Interpretation of Article E) (2) of the Fundamental Law," *Review of Central and Eastern European Law* 48, no. 1 (2018): 25, <https://doi.org/10.1163/15730352-04301002>.

assistance of foreigners wanting to guide our hands.”<sup>173</sup>

Secondly, the impact of the European Parliament’s actions on other EU institutions, especially the Commission and the Council, is weak as well. As mentioned in the previous chapter, before initiating the procedure in 2018, the European Parliament kept adopting the resolutions calling on the Commission to take action against rule of law backsliding in Hungary especially by initiating the Article 7 procedure. While the Commission did not disregard the situation in Hungary but rather use infringement proceedings,<sup>174</sup> it is questionable whether the ordinary infringement actions were the best option to deal with Hungary, because they “are often too narrow to address the structural problems that persistently noncompliant states pose.”<sup>175</sup> The Commission kept refusing to activate the first stage of the EU framework to strengthen the rule of law (Rule of Law Framework) or to launch the Article 7 procedure. Considering that several infringement proceedings were already launched but without visible improvement and that Article 7 is intended to address systemic and institutionalized issues concerning conformity with Article 2 TEU values,<sup>176</sup> it is reasonable to say that the conditions to deploy the Article 7 procedure have been met.

Moreover, the European Parliament has asked the Commission consistently to establish an EU mechanism on democracy, the rule of law and

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<sup>173</sup> Kester Eddy, “Orbán Compares EU to Soviet Union,” *Financial Times*, March 15, 2012, <https://www.ft.com/content/6feaca90-6ecb-11e1-afb8-00144feab49a>.

<sup>174</sup> The Commission has been actively using the infringement proceedings, and several infringement proceedings were launched against the rule of law backsliding in Hungary. “European Commission Launches Accelerated Infringement Proceedings against Hungary over the Independence of Its Central Bank and Data Protection Authorities as Well as over Measures Affecting the Judiciary,” *European Commission*, January 17, 2012, sec. Press release, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_12\\_24](https://ec.europa.eu/commission/presscorner/detail/en/IP_12_24); “Hungary: Commission Takes Second Step in Infringement Procedure on Higher Education Law,” *European Commission*, July 13, 2017, sec. Press release, [https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_17\\_1952](https://ec.europa.eu/commission/presscorner/detail/EN/IP_17_1952); “EU Founding Values: Commission Starts Legal Action against Hungary and Poland for Violations of Fundamental Rights of LGBTIQ People,” *European Commission*, July 15, 2021, sec. Press release, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3668](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668).

<sup>175</sup> Kim Lane Scheppele, Dmitry Kochenov, and Barbara Grabowska-Moroz, “EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union,” *Yearbook of European Law* 39, no. 1 (2020): 3–121, <https://doi.org/10.1093/yel/ycaa012>.

<sup>176</sup> European Commission, “Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and Promotion of the Values on Which the Union Is Based,” COM(2003) 606 final, October 15, 2003, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52003DC0606>.

fundamental rights (EU pact for DRF) since 2016.<sup>177</sup> Even though the European Parliament is regarded as the legislative body in the EU, it cannot initiate legislative proposal and the actual impact of its resolution is highly dependent on the Commission. The European Parliament's constant demands to set up a legally binding, effective mechanism, linking EU measures including procedures under Article 7 TEU, infringement proceedings and budgetary conditionality, have not drawn positive response from the Commission yet.

It seems clear that the European Parliament has made several substantial actions in trying to play an important role in tackling the situation in Hungary, but it is also noticeable that it does not have sufficient power to generate actual move or to implement structural change single-handedly. The European Parliament reiterated demanding, asking, and calling for the Commission to trigger the procedure under Article 7 TEU, even though it can activate the procedure. While the European Parliament was seeking for an interinstitutional agreement and cooperation between EU institutions and Member States in the framework of Article 7, the situation in Hungary only got deteriorated. And the Article 7 procedure was initiated after 8 years of many illiberal measures implemented by Hungarian government.

#### **iv. More empowered European Parliament for more democratically legitimate EU**

The situation in Hungary and following actions by the European Parliament illustrates the extent to which the European Parliament seeks to exert its political influence, as well as how its power and reach are limited. The policy influencing tools at the hands of the European Parliament are mainly its own-initiative reports, resolutions and opinions. When it comes to parliamentary action for the protection of EU fundamental values and application of Article 7 TEU, the European

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<sup>177</sup> European Parliament, "EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2015/2254(INL))"; The initial proposal (RSP) of establishing a new tool for compliance with and enforcement of EU fundamental values was presented, which later elaborated in the form of a legislative own-initiative report. European Parliament, "Situation in Hungary (2015/2700(RSP))," June 10, 2015, [https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.html).



Parliament's relatively limited power is visible.

For example, the relative institutional imbalance is manifested in the treaty provision. Pursuant to Article 7(2) TEU, the European Parliament does not have the right of initiative. Since the procedure under Article 7(2) and following Article 7(3) TEU is the tool that can actually make political and legal consequences, leading to sanctions including suspension of various rights to participate in the EU decision-making, if the Commission does not consider that there is a serious and persistent breach by a Member State and refuse to use Article 7(2) TEU, the possible action from the European Parliament is limited to urge, demand, ask and call for the Commission to initiate the procedure, which is not binding on the Commission's actions. Also, with regard to determining and imposing sanctions under Article 7(3) TEU, the Council has the sole competence, even though the procedure can only start after the decision of the European Council on determination of Article 7(2) TEU.

Furthermore, Article 7 TEU requires the consent of the European Parliament within the procedure in order to proceed with the procedure, but there is always a room for excluding the European Parliament in the process. In fact, when the Article 7 procedure is launched, the Council has the most decisive power, because the final determination of the existence of breach of Article 2 TEU values is made by the Council. In case of the current Article 7(1) procedure against Hungary, having held three hearings with the Hungarian government, the Council did not formally invite the European Parliament. In contrast to including the Commission in the first hearing with the Poland under Article 7(1) TEU, the European Parliament was not given a chance to defend its proposal or present an update on the relevant issues. The European Parliament has the right to formally participate and to be heard in the process, which is its prerogatives as provided by the Treaties.<sup>178</sup> The Council's differential treatment of the Commission and the European Parliament can be seen as disrespect of the power of the European Parliament, because "the power to activate Article 7(1) would be deprived of any *effet utile* if the Parliament cannot explain its position and reply to the arguments

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<sup>178</sup> "Rule of Law: MEPs Met with Council Presidency before Hungary Hearing," *European Parliament*, October 12, 2019, sec. Press Releases, <https://www.europarl.europa.eu/news/en/press-room/20191209IPR68616/rule-of-law-meps-met-with-council-presidency-before-hungary-hearing>.

of the Hungarian Government.”<sup>179</sup>

The European Parliament pointed out that the hearings are not regularly organized nor have a clear structure, and the Council has failed to use Article 7 TEU effectively which results in undermining “the integrity of common European values, mutual trust, and the credibility of the Union as a whole.”<sup>180</sup> While the last hearing on the rule of law in Hungary was held on 22 June 2021, the Council did not produce tangible output in terms of actions including concrete recommendations to Hungary.<sup>181</sup>

Despite the Commission’s central role as the guardian of the EU treaties and the Union’s values, in a communication directed towards the European Parliament in 2014, the Commission acknowledged its willingness to engage other EU institutions on the Framework to strengthen the rule of law and willingness to facilitate institutional interaction.<sup>182</sup> The case of Hungary, however, illustrates that overall actions by the European Parliament to enforce Article 2 TEU compliance in the EU Member States have been rather unsuccessful so far. Despite various mechanisms at hand, the EU does not seem to promptly handle political and systemic threat at the national level, combined with reluctance to activate and use Article 7 TEU, discursive approaches and disharmony among institutions. This only resulted in jeopardizing the values on which the Union is founded, the credibility of the EU, and most importantly the rule of law in Hungary.

Indisputably, the roles and powers of the European Parliament in EU decision-making and EU politics have been acknowledged throughout treaty revisions which resulted in continuous empowerment of the European Parliament as co-legislator. When it comes to threats to the rule of law, democracy and

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<sup>179</sup> Laurent Pech, Dimitry Kochenov, and Sebastien Platon, “The European Parliament Sidelined: On the Council’s Distorted Reading of Article 7(1) TEU,” *Verfassungsblog* (blog), December 8, 2019, <https://verfassungsblog.de/the-european-parliament-sidelined/>.

<sup>180</sup> European Parliament, “Ongoing Hearings under Article 7(1) of the TEU Regarding Poland and Hungary (2020/2513(RSP)),” January 16, 2020, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014_EN.html).

<sup>181</sup> European Parliament, “Breaches of EU Law and of the Rights of LGBTIQ Citizens in Hungary as a Result of the Adopted Legal Changes in the Hungarian Parliament (2021/2780(RSP)),” July 8, 2021, [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0362\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0362_EN.html).

<sup>182</sup> European Commission, “Communication from the Commission to the European Parliament and the Council: A New EU Framework to Strengthen the Rule of Law.”

fundamental rights, however, the European Parliament does not have much leverage against democratically backsliding Member States. Limited power of the European Parliament on the Article 7 procedure, compared to the Commission and the Council, only raise issues concerning transparency and democratic accountability, considering the position of the European Parliament as delivering EU citizen's voices and as a bridge between national politics and EU decisions. In parallel with the relatively weak European Parliament, if the EU fails to address "the rise and entrenchment of autocratic and illiberal tendencies" in Hungary and Poland which is both extensive and longstanding, they will endanger the cohesion of the EU legal order, the effectiveness and functioning of EU common policies, and ultimately undermine the democratic legitimacy of the EU.<sup>183</sup> Thus, by empowering the European Parliament to have direct and inclusive influence on EU governance, the EU can reinforce the democratic legitimacy and validate that the values enshrined in Article 2 TEU are indeed fundamental to its citizens.

Nevertheless, concerning the democratic legitimacy of the EU and the importance and relevance of the European Parliament, empowering the European Parliament does not solve all the problems of democratic deficit of the EU and democratically backsliding Member States. It is because several other elements are closely intertwined: decrease in national parliamentary control, absence of genuinely 'European' elections, distance between citizens and the EU, and deficiency in reflection of the voters' preferences.<sup>184</sup> In particular, in terms of institutional structure and mechanism, two main internal limitations can be pointed out: partisan politics<sup>185</sup> and the election system.<sup>186</sup> Due to limited scope

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<sup>183</sup> European Parliament, "The Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INI)),” para 2.

<sup>184</sup> Joseph H. H. Weiler, Ulrich Haltern, and Franz Mayer, "European Democracy and Its Critique, Five Uneasy Pieces," Working Paper, EUI RSC (Florence: European University Institute, 1995), <https://cadmus.eui.eu/handle/1814/1386>.

<sup>185</sup> See Kelemen, "Europe's Other Democratic Deficit"; R. Daniel Kelemen, "The European Union's Authoritarian Equilibrium," *Journal of European Public Policy* 27, no. 3 (March 3, 2020): 481–99, <https://doi.org/10.1080/13501763.2020.1712455>; Christina J. Schneider and Johannes Urpelainen, "Partisan Heterogeneity and International Cooperation: The Case of the European Development Fund," *Journal of Conflict Resolution* 58, no. 1 (February 1, 2014): 120–42, <https://doi.org/10.1177/0022002712467939>; Ulrich Sedelmeier, "Party-Politics as Usual? Positions of the European Parliament's Political Groups towards Sanctions against Democratic Backsliding" (ECPR General Conference, Oslo: The European Consortium for Political Research, 2017), <https://ecpr.eu/Events/Event/PaperDetails/34622>.

<sup>186</sup> Two major deficiencies are generally discussed: the lack of a unified voting system across the EU and the absence of genuine European parties. Dieter Grimm, "The Necessity of Europeanized Elections and

of the thesis, they will not be discussed further, but it is definitely advisable to take them into consideration. Thus, further studies regarding the representativeness of the European Parliament need to be carried out in order to better understand democratic politics in the EU and to determine how to develop the European Parliament further.

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Parties,” in *The Constitution of European Democracy* (Oxford: Oxford University Press, 2017), 117–30, <https://doi.org/10.1093/oso/9780198805120.003.0007>. Regarding the voting system, see David M. Farrell and Roger Scully, “The European Parliament: One Parliament, Several Modes of Political Representation on the Ground?,” *Journal of European Public Policy* 17, no. 1 (January 11, 2010): 36–54, <https://doi.org/10.1080/13501760903465173>; David M. Farrell and Roger Scully, “Electing the European Parliament: How Uniform Are ‘Uniform’ Electoral Systems?,” *JCMS: Journal of Common Market Studies* 43, no. 5 (2005): 969–84, <https://doi.org/10.1111/j.1468-5965.2005.00604.x>. Also, regarding European parties, see Edoardo Bressanelli, *Europarties after Enlargement: Organization, Ideology and Competition*, Palgrave Studies in European Union Politics (Palgrave Macmillan, 2014); Peter Mair and Jacques Thomassen, “Political Representation and Government in the European Union,” *Journal of European Public Policy* 17, no. 1 (January 11, 2010): 20–35, <https://doi.org/10.1080/13501760903465132>.

## Conclusion

Over the last decades of economic, political and social reforms, the EU has put greater focus on common values of democracy, the rule of law and fundamental rights. The values serve as the key elements of the project of European integration and also as the tools for promoting democracy of the EU's institutional framework. As the 'European constitutional heritage,' the values function as the common culture in which EU citizens are socialized which can lead to gradual harmonization and integration of the system and people.<sup>187</sup> The EU founding values are fully recognized in the Treaty of Lisbon in order to develop European identity and enhance legitimacy of the EU. Accordingly, EU institutions should safeguard and promote the values stipulated in Article 2 TEU, and mechanism have been created in order to secure Member States' compliance with the values of the EU.

Europe has suffered from the proliferation of nationalism, populism and Euroscepticism. It is not a new trend anymore, but still, it is an ongoing issue in the EU at the EU level and the national level. Most prominently, the measures and constitutional changes, carried out by the Hungarian government since Viktor Orbán and his party Fidesz took power in 2010, have resulted in a severe deterioration of democracy, the rule of law and fundamental rights. Unfortunately, it becomes a critical and systemic threat to the protection of EU fundamental values as well as of basic rights of people in Hungary and the EU.

Notwithstanding continuous efforts and actions by the European Parliament in order to tackle the democratic and rule of law backsliding in Hungary and therefore to promote and protect the EU fundamental values, concerns and doubts have been raised over the capacity and willingness of the EU to guarantee compliance of the Member States with the values, in particularly with regards to the Article 7 procedure. Furthermore, inefficient and ineffective use of the Article 7 procedure has only made the situation in Hungary and Poland worse. The European Parliament's enthusiasm was not enough to tackle the situation, primarily due to its lack of power and autonomy in the procedure. It is clearly shown from the Commission's continuous denial to present a

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<sup>187</sup> Dominique Rousseau, "The Concept of European Constitutional Heritage," vol. 18, *Science and Technique of Democracy (The Constitutional Heritage of Europe)*, Montpellier: European Commission for Democracy Through Law (Venice Commission), 1996), 7–21, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(1996\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(1996)018-e).

proposal to trigger the Article 7(1) procedure against Hungary, the Council's exclusion of the European Parliament from the hearings, and inability to present a proposal to trigger the Article 7(2) procedure and to engage in the consequent sanctions pursuant to Article 7(3) TEU.

Facing the rule of law crisis, it is important to note that in order to justify actions and intervention of the EU and gain legitimacy, the EU needs to meet the general criteria required for legitimation of liberal democratic political system. And most obviously, based on the principle of popular sovereignty and democratic legitimacy, secured authority and competence of the European Parliament as the only elected institution and the symbol of representation of EU citizens is crucial in legitimacy of the EU. The case of Article 7 TEU against Hungary is the typical example showing how the EU finds its legitimation, intervenes in domestic political matters, and consolidates European integration. From this perspective, little impact and autonomy of the European Parliament on the current Article 7 procedure against Hungary and on protection of the EU fundamental values ultimately indicates that the European Parliament is relatively weak which causes the democratic deficit of the EU.

The topics of the democratic deficit of the EU as well as Article 7 TEU have been largely discussed in academia as well as in the political debate. The purpose of the thesis is to understand and contribute to the current debate with a specific case study, by analyzing the role of the European Parliament in the EU political system to promote and protect the EU fundamental values. In pursuit of further and deeper European integration, the legitimacy, sovereignty, and competences of the EU will be kept challenged. Therefore, the way and the result of addressing the rule of law crisis in Member State and using the Article 7 procedure serve as important indicators for democratic legitimacy of the EU. To conclude, as the only directly elected institution, as the clear channel of democratically representing EU citizens, as the institution guaranteeing democratic and legitimate EU actions, and as one of the main EU institutions sharing duties to safeguard the EU, the European Parliament has the legal competence and the political responsibility to strengthen the system of the EU and to ensure successful and effective governance.

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