

# More than a Problem of Unanimity? The Chairmanship Dilemma and the Rule of Law Enforcement in the Council of the EU

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## Abstract:

While the difficulty of applying Art.7 of the Treaty is normally attributed to the unanimity requirement, the institutional design of the Council, and concretely the rotating Presidency, also imposes important obstacles to the success of the rule of law enforcement that are often overlooked. The use of the rotating presidential mandate as a tool for the member state in charge to pursue its own interests has led to a lack of coherence and continuity in the Council's approach to the Art.7.1 procedures activated in Poland and Hungary. This project conducts a comparative study of the performance of various national governments during their term in the rotating presidency of the Council (2018-2021). The aim is to analyze which strategies (agenda-setting, agenda-structuring and agenda-exclusion) the different member states use while in the chairmanship for trying to influence the Council's work on the rule of law enforcement issue, and whether agenda-shaping constitutes or not the real power of the Presidency.

## Key words:

Council of the EU, Rotating Presidency, Rule of Law, Enforcement, Agenda-Shaping

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## 1. Introduction

The European Union (EU) is facing a serious rule of law crisis. The democratic backsliding, as the literature has agreed on calling it (Pech & Scheppele, 2017, 2018a; Faggiani, 2019; Sadurski, 2019), in various member states, particularly Hungary and Poland is jeopardizing the basis over which the European project is built. The dismantling of judicial independence, freedom of the media, and fair elections, among other elements, constitute flagrant and systematic violations of the fundamental values of the Union. Nonetheless, in spite of the seriousness of the problem, the EU is not being able to effectively tackle it. After almost a decade of illiberal shifts in some states, the situation is far from improving. Instead, there are more member states that are ringing alarm bells in Brussels.

The EU has an ample rule of law toolbox at its disposal, broadly studied (Closa & Kochenov, 2016; Pech & Kochenov, 2019; Pech, 2020). It includes both, political and legal instruments (Maňko, 2019), among which one can find the Cooperation and Verification Mechanism (CVM), the Commission's Rule of Law framework, the infringement proceedings, or the Art.7. New instruments have been developed recently, such as the Rule of Law Report and the regulation linking the funds to the rule of law compliance. Nonetheless, none of them have been enough (or enough effectively used) to solve the crisis. Even though it is still soon to speak about the changes that the newest tools could bring, some authors have already pointed out important weaknesses on them (Bard, 2020; Pech et al., 2020) that do not invite to an excessive optimism.

Explanations of the EU failure of action have been especially focused on the role and behaviour of the European Commission (EC) (Kochenov & Pech, 2016; Closa, 2019), and its preference for a dialogue-centered approach has awakened several criticism (Pech & Scheppele, 2017; Kochenov, 2019; Uitz, 2019). Most authors coincide in pointing out the necessity of a shift in the Commission's strategy (Kochenov, 2019; Pech & Kochenov, 2019; Scheppele et al., 2021). However, while it is true that the Commission plays a role in almost all of the available EU instruments aimed to deal with rule of law breaches, at the end of the day this role is constrained to be merely an initiator. The institution having the last word in the strong mechanisms of enforcement, i.e. sanctions (both in Art.7 and the new conditionality regulation) is the Council of the European Union (the Council). Nonetheless, much fewer attention has been put on this European institution and its role on rule of law enforcement.

As a consequence, this paper aims to study the failure of the rule of law enforcement in the European Union attending to why the Council has been unable (or unwilling) to act. In spite of the fact that Art.7.1 procedures were activated against both, Poland and Hungary, by the EC in 2017 and by the European Parliament (EP) in 2018 respectively, the Council has not even conducted a vote on whether to address recommendations (which only require a fourth fifths majority) to these two member states. The use of the second and third parts of the Art.7 appears to be completely discarded: the unanimity requirement seems impassable in the Council.

However, the unanimity requirement may not be the only obstacle that the Art.7 faces at the Council. Other institutional dynamics which determine its functioning capacities might be essentially determining the lack

of advances in the procedure. Particularly, the design of the Council's chairmanship, which rotates every six months among EU member states, seems to have an apparent influence in the Art.7 procedures: the different approaches of the presidencies towards this issue have led to a lack of continuity and coherence that has ended up in a complete stoppage of the Union's "nuclear weapon".

As Müller (2014) puts it: "clubs don't function unless someone enforces the rules from time to time, and the EU is no exception". It is fundamental to conduct a comprehensive research on which dynamics explain the Council's failure to act within the framework of the available EU rule of law tools. Whether strong means of enforcement have success possibilities in the Council or not and why are key questions whose answers can help to solve the Union's rule of law crisis.

This paper aims to answer the question: Why do the rotating presidency of the Council fundamentally influences the paralysis of the Art.7 procedures? The main argument is that the rotating presidency leads to a lack of coherence and consistency in the Council's approach to the rule of law enforcement issue, and particularly to a paralysis of the Art.7 procedures, as each member state is able to shape the agenda in accordance with its preferences while in term. As a result, periods of activity can be followed by periods of a complete stoppage, depending on whether the member state is in favor or against the rule of law enforcement.

This work examines the role of the Council's chairmanship, which rotates every six months among member states, in shaping the Council's work agenda. The idea is to determine whether holding the Presidency constitutes a real power in terms of agenda-shaping, i.e. if the government of the member state in the chairmanship can really influence the Council's activity regarding the rule of law enforcement, and concretely the Art.7; and how it does so.

The paper is structured as follows. First of all, I conduct a literature review in order to anchor this question and the main hypothesis in the theory. I revise, on the one hand, the literature on rule of law enforcement; and, on the other hand, the literature about the functioning of the rotating presidency of the Council and its agenda-shaping power (or lack of it). Secondly, I develop the methodological part of this work, which consists in a comparative study among the performance of the governments that have held the Presidency between 2018 and the first semester of 2021 regarding the rule of law enforcement. The idea is to determine whether their agendas match the final action of the Council regarding the rule of law enforcement during those six months. Finally, I discuss the results and present some conclusions.

## **2. Theoretical framework**

### **2.1. Shifting the focus: why rule of law enforcement should be studied from the Council's perspective**

Enforcement can be understood as "public action with the objective of preventing or responding to the violation of a norm" (Röben, 2010). It has been argued that the EU has a management-enforcement model

which works quite effectively: drawing from the premise that law violations are the result of member states' capacity limitations or a lack of rule clarification, deterrent sanctions are enough as a final step to ensure compliance, most frequently guaranteed by monitoring systems or legal clarification of the norm provided by a supranational authority (Tallberg, 2002). However, the management-enforcement model does not apply to the rule of law problem: it is not prepared for dealing with systemic violations of a fundamental value.

Firstly, because the institution in charge of the enforcement function in this case is not a supranational one, but has an intergovernmental nature. The Commission reactive enforcement tool, the infringement procedure, is not enough to deal with systemic violations of a norm, concretely of a fundamental value of the Union (Schepelle, 2016, 2021).

Secondly, because in spite of having being designed as a remedy of last resort for extreme circumstances (Kochenov & Pech, 2016), Art.7 is not perceived as so. The EU lacks a deterrence mechanism that discourages governments from perpetrating rule of law offenses, since the unanimity requirement in the Council unravels any credibility of this instrument among member states.

Thirdly, the management-enforcement model assumes that violations are the result of a misunderstanding of the norm, while in the Hungarian and Polish governments cases the rule of law dismantling is the result of a whole set of reforms and strategies (Bard & Grabowska-Moroz, 2020; Vachudova, 2020). In spite of these governments' argument that the concept of the rule of law is extremely vague and not properly defined, and thus national interpretations can be accommodated, the reality is that concrete definitions of the rule of law have been extensively provided by both, the literature (Pech & Schepelle, 2018b) and international organisms (Venice Commission, 2011, 2016), including the EU (European Commission, 2014).

And fourthly, the decentralized system of individuals securing their EU rights in national courts does not exist in the rule of case. None of the mechanisms of the Union's rule of law toolbox allows citizens to appeal to the EUCJ for a systemic violation of the rule of law in their member states.

As a result, the study of the rule of law enforcement issue in the current EU context must be approached from the enforcement in international institutions' perspective. The Council must be placed as the central object of research, as the only institution capable to act within the limits of the current European legislation against rule of law deficits as the ones that can be found in Hungary and Poland.

## **2.2. Council's Presidency as an agenda-setter**

The extent towards the presidency of the Council can influence the EU's agenda has not attract as much scholar attention as it could be expected given the relevance of the issue in the institution's functioning. The literature on this matter has been mostly descriptive, and very few studies have attempted to develop a political science theory of the presidency (Elgström, 2003; Tallberg, 2004). The responsibility of shaping the agenda has traditionally been attributed to the Commission, as the exclusive owner of the legislative proposal, and hence limited attention has been payed to the Council's Presidency (Christiansen, 2005).

Nonetheless, there exist a deep debate among those which have worked upon the matter on whether the governments of the member states can act as decisive agenda-setters while in their term in the rotating chairmanship.

Lacking any specific functions when firstly constituted in 1957, the Council's Presidency has developed its competences, normally at the expense of the Commission's ones, through the creation of informal practices (Elgström, 2003) and as a response to the parallel progressive reinforcement of the European Parliament's position (Jensen & Nedergaard, 2014). Its functions are basically nowadays those of setting political priorities; mediation and administration and co-ordination; and representation ahead of third countries (Elgström, 2003). These responsibilities assumed by the Council's chairmanship can be justified from a functionalist point of view as a response to multilateral bargaining problems (Tallberg, 2010). Concretely, its function as an agenda-setter comes as a result of the need of institutionalization of the agenda-control to set priorities and avoid over-crowded agendas (Tallberg, 2010).

Taking member states' influence as "the extent to which their actions result in decision outcomes that are congruent with its preferences" (Thomson, 2008), there exists discrepancies in which regards to the real power of the governments' of the member states to influence the Council's Presidency agenda while in term. Several authors (Dewost, 1984; Fernández, 2008; Leconte, 2012) have defined the presidency as "responsibility without power", even pointed out that "it seems clear that presidencies' ability to upload their preferences onto the EU level is very limited, if not non-existent" (Leconte, 2012). As a result, these scholars argue that even though member states' governments can use their agenda-setting influence to emphasize or de-emphasize certain issues, several constraints such as the general EU context and the path-dependency logic created by previous presidencies (Leconte, 2012), dilute the effect of these actions. These constraints are the result of the evolution of the Presidency's institution over its six decades of existence, which has resulted in an "institutional development that has locked down the action of the member states" (Fernández, 2008). Other authors recognise the fact that the presidency gives incumbent member state "responsibility with power" (Thomson, 2008). However, they argue that this power has to do with the member state influence in the last stages of the adoption of a decision, rather than with its agenda control (Thomson, 2008).

On the other hand, the most extended position among scholars is that agenda-structuring is in fact "the true power of the chair" (Tallberg, 2003). These authors (Tallberg, 2003; Christiansen, 2005; Bjurulf & Elgström, 2004) defend that the presidency has at its disposal several tactics to influence the issues that take part of the agenda each term by setting priorities and excluding those subjects that are not so attractive to the member state in charge (Tallberg, 2003; Christiansen, 2005). The member state in the presidency enjoys a privileged position, both in terms of information access and procedural resources, that enables it to pursue national gains and "exploit the position as a broker to favour the outcomes they desire" (Tallberg, 2004). Hence, even though it is tied to both formal and informal constraints, the member state enjoys enough power resources to significantly influence the Council's negotiation outcomes through the management of the agenda among other instruments (Tallberg, 2004, 2010; Bjurulf & Elgström, 2004), as case-studies prove (Panke, & Gurol, 2018). As a result, having the competence of deciding which dossiers to include or exclude during its term

not only gives the Presidency real power, but also may prevent other actors (particularly the Commission) of exercising theirs (Bjurulf & Elgström, 2004).

This paper aims to contribute to the Presidency's theoretical debate by demonstrating whether its agenda-setting powers have a crucial influence or not in a case study: the rule of law enforcement.

### **2.3. More than a problem of unanimity: Council's chairmanship and the rule of law enforcement**

In spite of being traditionally conceived as an unanimity issue, the paralysis of Art.7 procedures on Poland and Hungary may be attributed to another weaknesses of the Council's institutional design. Indeed, to accredit the stoppage entirely to the unanimity requirement might result over-simplistic. Firstly, because both the Commission and the EP activated the first part of the Art.7 and not the second and third ones. Art.7.1 establishes that in order to address recommendations to a member state the Council shall firstly determine the existence of a clear risk of a serious breach of fundamental values by a majority of four-fifths. Hence, although the Council normally works by consensus (Novak, 2014), the veto threats announced by Poland and Hungary in order to protect each other in the rule of law matter loose their relevance: there is not an unanimity constraint to address the recommendations. Secondly, because in spite of the fact that just 22 states need to vote in favor of the use of Art.7.1 so it to be enforced, no voting has yet taken place. Therefore, the unanimity justification for inaction cannot apply when an actual voting has not been held yet.

The rotating design of the Council's Presidency implies that each six months a different member state holds the "privileged" position through which it can influence EU's work agenda. These short terms imply an important trade-off: while the rotating layout of the Presidency imposes a form of control on the chairmanship by the rest of the member states, it also raises issues on discontinuity, which indeed have been pointed out as the most serious deficiency of the chairmanship design (Tallberg, 2006). In order to ease this weakness, certain forms of cooperation among member states have emerged, being the most important one the trios of Presidencies. Born in 2006, the idea of the trio was formalized in the 2007 Lisbon Treaty with the aim of giving more coherence and consistency to the office (Jensen & Nedergaard, 2014). Nonetheless, the idea of the "team presidency" has not completely prevented individual action on the part of the governments of the member states. The level of coordination among the different trios has substantially vary from ones to others (Jensen & Nedergaard, 2014). Moreover, the "trio program" is not binding. Hence if national preferences are significantly different great levels of autonomy among governments can be expected. The degree of discretion with which the different chairmanships operate may have had a crucial influence in the paralysis of Art.7 procedures against Poland and Hungary in the Council of the EU. As a result, the institutional design of the Council's rotating Presidency might posse a fundamental obstacle to the rule of law enforcement as it leads to a lack of continuity and coherence in the Art.7 procedure approach, and no path-dependency can be observed.

From a rational institutionalism perspective, actors are "strategic utility maximisers whose preferences are taken as given" (Pollack, 2008). Consequently, it can be expected that while in the rotating presidency, they aim to modify the agenda to fit their national preferences (Tallberg, 2003). As Tallberg (2003) puts it:

“institutions affect policy agendas not only through the introduction of new issues, but also through their blocking powers, and their capacity to structure ongoing debates”. Therefore, national governments do not only shape the Council’s agenda while in the chairmanship term by including certain issues, but also by excluding other ones. Three ways of shaping the agenda have been identified by the literature (Tallberg, 2003). Firstly, agenda-setting includes tasks such as raising awareness of certain policy issues (e.g. by including them in the program), develop proposals for solving them, and developing new institutional practices where lacked. Secondly, agenda-structuring permits the government of the member state in the Presidency to put the accent on certain policy topics while excluding other thanks to its power to establish the frequency of the meetings on that matter, or by celebrating informal meetings. Finally, agenda-exclusion permits national governments not to deal with an issue which is not of its main interest during the term in the chairmanship. Indeed, not only can the Presidency remain silent on a topic, but also let the next Presidency in charge of managing it. These actions over the agenda have a direct effect on the final outcome: whether the Council acts or not on a certain issue during the six months. Particularly visible are these strategies on the rule of law enforcement issue, as well as it is their impact.

This paper argues that the rotating presidency has a fundamental influence on the paralysis: agenda-shaping powers of each chair lead to discontinuities in the Council's work approach to the rule of law enforcement issue that impide actual action against the rule of law offenders. Each national government uses its agenda-shaping powers while in the office to lead the Council actions towards the rule of law enforcement to its preferred outcome, i.e. action or inaction.

*H1. The agenda-shaping strategies of the Presidency constitute a real power as they crucially influence whether the Council acts or not over the rule of law enforcement during six months (the outcome)*

### **3. Methodology and data**

#### **3.1. Units of analysis**

In order to test the hypothesis, this paper conducts a comparative study with seven governments (units of analysis): Bulgaria, Austria, Romania, Finland, Croatia, Germany and Portugal. The units of analysis are selected among those governments that have exercised the presidency in recent years, from 2018 to the first semester of 2021. As the Commission launched its proposal for a Council’s decision on whether to determine the existence of serious risk of breach of the Union’s fundamental values (Art.7.1) against Poland in December 2017, the time point of departure of this research is 2018. It is mandatory to analyze how the different presidencies have treated the matter of the strong means enforcement, i.e. Art.7, from that time point onwards because the issue was not on the Council’s agenda before.

All possible presidencies have been selected in order to give the conclusions of this research the maximum validity and robustness possible. Nonetheless, some shortcomings of the units of analysis selection must be pointed out before the reader advances towards the research design section.

First of all, it was impossible to apply a MSDO pure research design due to the fact that the number national governments that have exercised the Presidency since the rule of law enforcement issue gained relevance in the Council is very restricted. However, with the aim of controlling contextual variables as much as possible, we have matched the selected Presidencies by similar characteristics, attending to various cleavages that this paper argue that do not interfere with the dependent variable. These cleavages are: western (Finland, Austria, Germany, Portugal) and eastern (Romania, Bulgaria, Croatia) member states; old (Finland, Austria, Germany, Portugal) and new (Romania, Bulgaria, Croatia) member states; conservative (Bulgaria, Austria, Croatia, Germany) and progressivist (Romania, Finland, Portugal) party in government. A second shortcoming has to do with the representativeness of the six governments of the whole EU, which is more limited than it was desirable (e.g. there is a gap of depiction of the V4 group). Finally, the small number of units of analysis (n=7) might limit the possibilities of doing strong inferences.

However, these weaknesses do not tarnish the value of the whole study, which constitutes a solid point of departure for the study of the Council's enforcement action. Moreover, the small-N permits a deeper analysis of the case studies and how the hypotheses operate in each of them, allowing to expand the study with other presidencies in the future, and even towards other issues.

### **3.2. Research Design**

The dependent variable of this study refers to the governments' enforcement actions while in the Presidency, and it is a dichotomous one: to have acted or not to acted against the rule of law offenders. Taking into account that no vote on the Art.7 has taken place yet, action is defined by having held some hearing regarding the rule of law situation against the offender member states. The Treaty establishes that before an actual voting on Art.7 can be hold in the Council the member state concerned must be invited to a hearing in the GAC. Therefore, this work takes into account the number of hearings celebrated by each Presidency to determine whether it has been an active presidency or a passive one regarding the Art.7 procedures.

The independent variable is operationalized and measured in the following way. H1 defends that the Presidency's agenda-shaping competence acts as a real power that determines Council's action. To prove it, I examine how each of the national governments that exercised the presidency between 2018 and the first semester of 2021 used the strategies highlighted by Tallberg (2003), which were explained in the theoretical section of this paper. I attend to the declarations made by the members of the national governments regarding how they aimed to manage the rule of law issue while in office (Annex I), as well as to the official documents produced by the Council, and concretely by the Presidency (Annex II). The name of the authority and the number of the quote for each piece of evidence are referred in brackets, and can be consulted in the annexes. From that information, I establish the preference<sup>1</sup> of each presidency in which regards to the rule of law enforcement (in favor or against). Then, I compare the strategies they used to shape the agenda in regards with that issue with the actual outcome of their presidency, in order to determine whether they have

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<sup>1</sup> This paper is the second of a serie of papers dedicated to the rule of law enforcement in the Council of the EU. The first paper of the serie better develops this idea on the preferences, hence serving as a complement to this work, although it is still on progress.



been able to impose their preferences (action or inaction). A national government with a reluctant attitude towards the rule of law enforcement is expected to use a strategy of agenda-exclusion while in term; while the states more willing to act are expected to use strategies of agenda-setting, to raise awareness of the issue, and agenda-structuring, to oblige the Council to discuss and act on it.

#### 4. Council's Presidency's activity in the rule of law enforcement issue 2020-2021

In order to claim whether a national government has been “active” or “passive” on the rule of law enforcement matter while in its presidential term attention must be put on its actions in this regard, i.e. whether the Presidency held a hearing of the Art.7.1 against the offender member states or not.

The following table summaries the dependent variable:

**Table 1. Action of each Presidency in regards to the Art.7.1 procedures activated against Poland and Hungary**

Time	Member state in charge of the Presidency	Celebrated Hearings	Outcome
1st semester 2018	Bulgaria	<ul style="list-style-type: none"> <li>• 26 June 2018: first hearing on Poland</li> </ul>	Active
2nd semester 2018	Austria	<ul style="list-style-type: none"> <li>• 18 September 2018: second hearing on Poland</li> <li>• 11 December 2018: third hearing on Poland</li> </ul>	Active
1st semester 2019	Romania	None	Passive
2nd semester 2019	Finland	<ul style="list-style-type: none"> <li>• 16 September 2019: first hearing on Hungary</li> <li>• 10 December 2019: second hearing on Hungary</li> </ul>	Active
1st semester 2020	Croatia	None	Passive
2nd semester 2020	Germany	None	Active
1st semester 2021	Portugal	<ul style="list-style-type: none"> <li>• 22 June 2021: fourth hearing on Poland; third hearing on Hungary</li> </ul>	Active

**Source: own elaboration**

The dependent variable shows that the rule of law issue has been dealt with discontinuity. Approaches have much varied among presidencies, and periods of activity (Bulgaria, Austria, Finland, Portugal) have been followed by periods of a complete inaction (Romania, Croatia, Germany).

The trio programs have not been enough to solve this lack of coherence. In most cases they did not even include a specific section on how the trio would tackle the rule of law crisis; while in others, the trio has acted in spite of not being planned in the program. In the Estonia-Bulgaria-Austria case, the trio program only referred to the EU's rule of law crisis in a succinct phrase (Council, 1). Nonetheless, this trio can be considered the most active in this regard, thanks to the actions of both Bulgaria and Austria. In which regards to the trio consisting of Romania-Finland-Croatia, the program neither dealt with the rule of law issue in an

explicit manner (Council, 2). Finally, in spite of the fact that the Germany-Portugal-Slovenia program offers more concrete references to the commitment of the three presidencies of dealing with the Union's rule of law deficit (Council, 3), Germany did not make any advances in the Art.7 procedures, although Portugal did it.

## **5. Council's rule of law enforcement agenda: variations through Presidencies**

### **5.1. Bulgaria (1st semester 2018)**

Tackling the rule of law crisis was not among the priorities of the Bulgarian presidency, which was explicitly against the use of sanctions against Poland (Borisov, 1; Pavlova, 1; Zaharieva, 1). The Bulgarian government tried to avoid the inclusion of the issue in the agenda, and did not mention it in its program. Indeed, none rule of law discussion was planned in the Provisional agendas for Council meetings elaborated by the Bulgarian authorities. Instead, the Bulgarian presidency preferred to let the issue in the Commission's hands (Zaharieva, 2), and called for more dialogue (Zaharieva, 3).

Nonetheless, the rule of law matter actually appeared several times in the Council's meetings during the Bulgarian term. The Bulgarian presidency organized informal dialogues concerning the rule of law situation in Poland, which took place in various GACs (March, April, May) (Council, 4). In May, the EC advised that it might present the demand for a hearing regarding the rule of law situation in Poland (Timmermans, 1, 2). In June, it actually asked to include the hearing in the following GAC's agenda and received enough support from the member states' delegations (Council, 5). Finally, the hearing was held 26th June, although its outcome was scarce and vague (Council, 6). This fact partially confirmed what some authors have called an attempt of "dedramatise" Article 7(1) proceedings on the part of the Council by transforming them into "peer-review exercises", understood as "the mere provision of feedback, possibly positive, and cordial exchanges of views no matter how in-depth" (Pech, 2019).

As a result, it can be concluded that the Bulgarian government tried to use a strategy of agenda-exclusion with the rule of law dossier. It can be therefore inferred that it was against the use of strong means of rule of law enforcement. Nonetheless, the issue ended up in the Presidency's agenda several times, and the EC's initiative obliged the Bulgarian government to conduct a hearing on Poland.

### **5.2. Austria (2nd semester 2018)**

The Austrian Presidency did not include the management of the rule of law crisis in its presidential program (Austria, 2018). Nevertheless, it incorporated the rule of law matter, and concretely the discussion of the Art.7.1 EC's reasoned proposal to act against Poland in its draft GAC agendas of September and November (Council, 7). Furthermore, it included the celebration of the Annual rule of law Dialogue in October (Council, 8).

Art.7 proceedings were finally discussed in the GAC of September, October, November and December. On July, a majority of delegations requested to celebrate a hearing regarding the situation in Poland (Council, 9).

So did the Commission in November (Council, 10). Consequently, two hearings concerning the rule of law situation in Poland finally took place under the Austrian term (September and December). Nonetheless, no voting took place to determine the existence of a serious risk of violation of the rule of law, in spite of the deterioration of the situation (Timmermans, 3).

Moreover, in spite of the fact that in September 2018 the EP voted in favor of requesting to the Council the activation of Art.7 against Hungary, no hearing on the situation in this member state took place under the Austrian term. In the GAC of October, the Austrian presidency instead invited the Hungarian authorities to make a written statement on the issues raised by the EP (Blümel, 1). The situation regarding the rule of law in Hungary was also the object of a “very fruitful and long debate” (Blümel, 2) in the November meeting. The Council held a discussion on the written contribution provided by Hungary after the December’s hearing on Poland.

The Austrian government showed an ambivalent attitude towards strong means enforcement during its term in the Council’s presidency. It can be said that it tried not to raise much awareness on the rule of law issue, and hence did not include it in its program. Nevertheless, it used its agenda-structuring power to act more bluntly on Poland than on Hungary.

### **5.3. Romania (1st semester 2019)**

For its part, the Romanian government almost completely excluded the rule of law crisis from its presidential agenda. Rule of law was not mentioned among the Romanian presidency’s priorities, although the rest of the EU common values, i.e. democracy, human rights, freedom and equality were (Romania, 1). In addition, the draft agendas for the GAC only included a discussion on the Art.7.1 procedure regarding Poland in February’s meeting (Council, 9).

The issue was finally included in the agendas of the GAC’s of February and April. Discussions about the rule of law situation in Poland and Hungary were held, but there were not celebrated any hearings. No further developments on any of the two Art.7 procedures were made. In fact, the Romanian government faced itself the Art.7 threat (Timmermans, 3). As a result of various reforms that endangered the rule of law, Vice-President of the EC Frans Timmermans advised the Romanian authorities in April (Timmermans, 4), and actually the pre-article 7 procedure was launched in May. Romanian authorities criticized the EC’s decision (Dancila, 1).

The Romanian approach to the Art.7 matter was hence one of agenda-exclusion, probably motivated by its own rule of law compliance problems. The agenda-exclusion strategy seemed to work, as Romania did not carry out any hearing on the Art.7.1 procedures.

### **5.4. Finland (2nd semester 2019)**

Tables turned with the Finnish Presidency. The Finnish executive introduced for the first time the rule of law enforcement among the priorities of the presidency (Finland, 1), explicitly mentioned Art.7 procedures (Finland, 2), and was ready to increase the pressure on the offender governments (Finnish diplomatic sources, 1). In fact, the Finnish Presidency planned to discuss the rule of law issue, and concretely Art.7.1 procedures in GAC of July, September, October, November and December (Council, 11). The Finnish government also expressed in the program its support for making the EU funds conditional to the respect of the rule of law (Finland, 3).

The Finnish Presidency actually held two hearings on Hungary (16 September and 10 December), being the first Presidency in conducting any hearings on the situation regarding the rule of law in this member state. The hearings were the result of an initiative of the Council's presidency (Council, 11), instead of a proposal of the Commission or other delegations, and Finnish authorities did not discard the option of keeping on advancing in the procedure (Tuppurainen, 1). Moreover, it changed the procedural rules of Art.7 hearings towards a more result-oriented approach: instead of debating about the rule of law status in Hungary in general terms, the hearing was focused in three concrete points (Council, 12).

Rule of law situation in Poland and Hungary was finally a topic in almost all GACs held under the mandate. As a result, the issue gained prominence, as promised (Tuppurainen, 2). Nonetheless, the Finnish presidency did not organize any hearing on Poland, in order to avoid any interferences with the Polish Parliamentary elections planned for November that year (Pech & Wachowiec, 2020). Furthermore, no Art.7's voting took place, neither on Hungary nor on Poland.

Hence, the Finnish presidency showed a strong compromise with solving the rule of law enforcement problem, and used its agenda-setting and agenda-structuring powers for the pushing for more Council's action in this regard, achieving the celebration of two hearings.

### **5.5. Croatia (1st semester 2020)**

In which regards to the Croatian presidency, it set the rule of law issue both in the program (Croatia, 1) and in the priorities (Croatia, 2), and compromised to raise awareness on this matter (Bošnjaković, 1). Croatian authorities publicly said that they aimed to continue with the works on the Art.7(1) procedure (Lopandic, 1). However, they showed open reticence to deal with the matter through sanctions (Lopandic, 2). The Croatian government included debates on the rule of law issue, and concretely on Art.7.1 procedures regarding both Poland and Hungary, including the possibility of the celebration of new hearings, in the GAC's draft agendas of March and May (Council, 13). Nonetheless, the Croatian program did not include any mention to making advances in which regards to the rule of law conditionality regulation.

While in term, the Croatian authorities' finally did not deal much the rule of law matter. Indeed, the status of Art.7 procedures was actually not discussed in any GACs. GAC of March was cancelled due to the epidemiological situation created by the COVID-19 pandemic. Hence, the rule of law was actually an issue in the GAC of February and the Video conference of ministers for European affairs of May 2020, but only

regarding the EC's first annual report on the rule of law in the EU. Moreover, when asked about the rule of law situation in two member states, Croatian foreign authorities showed certain discomfort with having to deal with the issue at EU level (Radman, 1). Consequently, the Croatian presidency did not manage the Art.7 matter at all while in office, and used its agenda-structuring powers to avoid it.

As a result, in spite of using its agenda-setting power for the rule of law issue to gain preeminence, the Croatian presidency finally made use of its agenda-structuring powers to avoid leading Council's action on this direction, and no further developments on the Art.7.1 procedures were made.

### **5.6. Germany (2nd semester 2020)**

The German Presidency (2nd semester 2020) included the management of the Union's rule of law crisis among its program's priorities (Germany, 1). In fact, it explicitly mentioned for the first time the use of Art.7 in those member states which present rule of law deficits (Germany, 2). Furthermore, the German Presidency planned some discussions on the Art.7 procedures, concretely to take place in the GAC of September and December (Council, 14). In fact, new hearings on both Poland and Hungary were projected for the latest (Council, 14). Moreover, the German program made explicit reference to the support of the Presidency to the EC's rule of law conditionality proposal (Germany, 3).

The status of Art.7 procedures regarding both Poland and Hungary was actually discussed in the GAC of September, as arranged, in which the German authorities determined that both of them must be continued (Roth, 1), and announced its intentions of conducting further hearings (Roth, 2). Nonetheless, the Art.7 issue was not discussed in any other GAC. In fact, the rule of law matter was only included in the GAC of October and the Video conference of European affairs ministers of November, but with a focus on the Rule of law dialogue. Nonetheless, the German Presidency was able to achieve a deal of the Council with the EP on the rule of law conditionality regulation proposed by the EC in May 2018. 5 November, the German Presidency achieved an agreement with the EP on the new mechanism which will allow to cut EU funds to those member states which do not respect the rule of law.

As a result, in spite of having set the Art.7 procedure in its six months agenda, the German Presidency finally failed to structure GAC discussions in this regard, and did not celebrate any hearing. However, it is worth noticing the German Presidency was able to lead the Council towards the approval of a new mechanism of strong enforcement, the rule of law conditionality regulation, which was on the table since May 2018.

### **5.7. Portugal (1st semester 2018)**

The Portuguese Presidency included the rule of law matter in its program (Portugal, 1) and as a transversal issue in its priorities (Portugal, 2). Nonetheless, in contrast with the German Presidency, the Portuguese program did not include any specific mention to the Article 7. In which respect to its draft agendas for the GAC, Art.7.1 procedures were planned to be discussed in May, either in the form of a debate on the state or play or in the form of hearings.

The Portuguese Presidency actually conducted hearings on the rule of law situation in both Poland and Hungary during the GAC celebrated 22 June. It is important to point out that, in addition to its wildness to act on the rule of law issue, the Portuguese Presidency has received several pressures from various actors from the EP in order to celebrate new hearings on the status of the rule of law in these two member states. These actors were very concerned about the paralysis of the Art.7 procedures in the Council, and hence asked the Portuguese Presidency to advance on them (European Parliament, 1). Portuguese authorities alleged not to have celebrated the hearings before due to the COVID-19 situation, which obliged to celebrate Council meetings online (Zacarias, 1).

Other activities held by the Portuguese Presidency regarding the rule of law include the Annual Rule of Law Dialogue, celebrated during the GAC of May; and the High-Level Conference “Rule of Law in Europe”, celebrated 17-18 May. The novelty of the latest demonstrate an effort on the part of the Portuguese Presidency to raise more awareness on the rule of law issue.

As a result, by holding two hearings at the end of June (an outcome only comparable to the one of the Finnish Presidency), the Portuguese Presidency was among the most active ones in which regards to the Art.7.1 procedures. These actions were the result of a combination of both strategies of agenda-setting and agenda-structuring.

## 6. Hold the Presidency and get the lion’s share of the gains? The real power of agenda-shaping

The following table summarizes the results:

**Table 2. Results: Consistency between preferences, agenda-shaping strategies and final outcome**

Member State	Preference regarding the rule of law enforcement	Strategy(ies) used to shape the agenda	Outcome in terms of Art.7 procedures advances	Consistency between Presidency’s preference and final outcome regarding the rule of law enforcement
Bulgaria	Against	Agenda-exclusion	Active	No
Austria	Ambivalent	Agenda-structuring	Active	Yes
Romania	Against	Agenda-exclusion	Inactive	Yes
Finland	In favor	Agenda-setting and agenda-structuring	Active	Yes
Croatia	Ambivalent	Agenda-setting	Inactive	No
Germany	In favor	Agenda-setting	Inactive	Yes, it got passed the Rule of Law conditionality regulation, although it did not celebrate any hearing(*)
Portugal	In favor	Agenda-setting and agenda-structuring	Active	Yes

(\*) Even though the German presidency did not advance in the Art.7 procedures, it achieved to approve the Rule of Law conditionality regulation. This permits us to affirm that the German Presidency acted coherently with its preferences, and made

*advances EU's management of the rule of law crisis. Nonetheless, it is difficult to attribute this achievement to the agenda-shaping powers of the Presidency, but is better related with its brokerage powers.*

The results show the majority of the Presidencies have been able to direct the Council's action accordingly to what they preferred (Austria, Romania, Finland, Germany, Portugal), although not all of them. Particularly noteworthy of this failure is the case of the Bulgarian Presidency, and more difficult to classify is the case of the Croatian one.

In the case of Germany an important nuance must be pointed out. In spite of not having celebrated any Art.7 hearing, the German Presidency achieved to get a deal on the new regulation that links the EU funds to the rule of law compliance. Yet this achievement must be attributed to its brokerage powers, i.e. its ability to “construct compromises capable of capturing the underlying zone of agreement” (Tallberg, 2010), and not to its agenda-shaping powers. In which regards strictly to the Art.7 procedures, the German Presidency used an agenda-setting strategy, and highlighted the issue in its program, although finally it did not act. Two conclusions can be extracted from this evidence. Firstly, as it occurred in the case of the Croatian Presidency, agenda-setting seems to be insufficient to guarantee action when not followed by an agenda-structuring strategy. Secondly, that being willing to act in defense of the rule of law, the German Presidency preferred to use its resources and tools to conclude the rule of law conditionality agreement that to move the Art.7 procedures forward. Hence, a trade-off on where to better invest time and efforts to protect the rule of law in Europe can be identified in the German Presidency

The cases of the Finnish and Portuguese presidencies demonstrate that a combination of agenda-setting and agenda-structuring permits a Presidency in favor of the rule of law enforcement to effectively act in order to make advances on the Art.7 procedures against Poland and Hungary. Moreover, the Austrian case proves that agenda-structuring alone may be sufficient to guarantee action: the Austrian government achieved to act against Poland and not against Hungary, as it preferred.

Agenda-exclusion does not seem to guarantee success to a government reluctant to act. While it functioned in the Romanian case, the Bulgarian government could not get away with its preference for inactivity, and ended up holding a hearing against Poland. Further research must be conducted to explain why the agenda-exclusion strategy can fail. However, a first approach to the issue through theory (Christiansen, 2005; Leconte, 2012) and evidence (the EC asked the Bulgarian Presidency to introduce a hearing on Poland in the GAC agenda) suggests that the EC's behaviour in relation with the Council may play a role. Art.7 cannot be used if it is not activated, and the Commission holds, together with the EP and one-third of the member states, the competence to do so. Moreover, the EC is also normally represented at the General Affairs Council (GAC) meetings, and Art.3.2 of the Council's Rules of Procedure (CRP) establishes that the Commission can make requests for inclusion of an item on the agenda. Thus, the EC might have a fundamental role pushing governments to action in which regards to the rule of law enforcement issue. The extent to which this influence can be effectively used, and under which circumstances, is, as said, a potential issue for future works.

As a result, it can be said that following a strategy of agenda-setting combined with agenda-structuring over an issue of its interest results in the most successful combination of strategies for the Presidency to effectively lead Council's action towards its preferred outcome in which regards to the rule of law enforcement issue, and more concretely to the Art.7.1 procedures. Agenda-structuring seems to be a necessary condition for a Presidency to act according to its preference, while agenda-setting is not sufficient if not combined with the former. Finally, a strategy of agenda-exclusion does not guarantee that government in the Presidency can actually avoid the issue during its term, as the action of other institutions and particularly the EC may prevent it to do so.

## **7. Conclusions**

Art.7.1 procedures against Poland and Hungary are paralyzed in the Council. Indeed, both procedures have suffered a deadlock of a year and a half. While normally attributed to an unanimity problem, the roots of this paralysis must be sought beyond this over-simplistic explanation, which in fact is not even applicable to the current procedures that require a majority of just fourth-fifths to be passed. Attention must be put in the institutional design of the Council and in how its dynamics of functioning are affecting rule of law enforcement. Concretely, the rotating Presidency plays a fundamental role in the lack of advances.

Council's work on the rule of law enforcement issue has varied a lot among Presidencies. Periods of activity (i.e. celebration of hearings) have been followed by periods of complete inactivity. The government in charge of the rotating Presidency each term seems to have an important influence on whether the Council advances in these procedures or not thanks to its agenda-shaping competences. Therefore, agenda-shaping constitutes a real power of the Presidency, as it permits the chairmanship to direct Council's action towards its preferred outcome. However, it must be properly exercised to guarantee this action. In this sense, a combination of agenda-setting and agenda-structuring strategies seems to be the most effective approach to achieve action regarding the rule of law enforcement, whereas agenda-exclusion does not guarantee inaction. It would be necessary to explore which are the limits of agenda-setting; as well as the reasons why whereas agenda-structuring appears to work even when applied alone (e.g. Austrian case), agenda-setting does not (e.g. Croatia, Germany). In which refers to agenda-exclusion, further research is also needed to verify which factors make it work in the context of a particular Presidency (e.g. Romania) and not in others (e.g. Bulgaria).

In spite of the seriousness of the rule of law crisis, the latest trio programs have not sufficiently dealt with it. Indeed, until very recently, i.e. the latest trio, programs did not even mention the issue. The reasons for this exclusion need to be further explored, as well as its effects in the lack of coordination of the Presidencies' actions in this matter. Giving more relevance to the rule of law enforcement issue in the trio programs may help it to gain relevance and put pressure on national governments, even on the most reluctant ones. Hence, trios need to work harder on agenda-setting in this sense.

The deepness of the rule of law crisis in which the Union is immersed makes essential a complex and deep analysis of this matter from a political science perspective. It is time to move the focus from the unsuccessful



dialogue-based approach of the European Commission to the lack of effectiveness of the application of strong means of enforcement on the part of the Council. In this sense, the rotating presidency proves to play a role in this paralysis, and it might be challenging not only the effectiveness of the rule of law enforcement, but of other issues as well.

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## **Annex I - Actor's statements**

### **BULGARIA**

#### **Boyko Borisov, Prime Minister of Bulgaria**

1. In January, Borisov publicly affirmed that “a vote on sanctions against Poland over its rule of law issues would give the EU sleepless nights and should be avoided”, and that Bulgaria “will do its best not to bring the discussion to the Council”. He argued that such an action “would set a very dangerous precedent” and breaches to the rule of law were “so vague” to measure (Maurice, 2018).

#### **Lilyana Pavlova, Minister in charge of the EU presidency of Bulgaria**

1. “I don't expect something specific with immediate effect happening” (Maurice, 2018). She affirmed that the Council “might go even beyond the Bulgarian presidency to have any kind of decision or voting” (Radosavljevic, 2018).

#### **Ekaterina Zaharieva, FA Minister of Bulgaria**

1. “Bulgaria as EU Council President will make every effort to continue the dialogue according to the plan that you mapped out – to present your stance and try to bring together the positions in order to find a solution to this really not very pleasant situation” (Euractiv, 2018).

2. “We encourage the continuation of the dialogue between the European Commission and Poland” (Council of the EU, 2018a).

3. Ekaterina Zaharieva, Bulgaria's foreign minister, said that ministers on the General Affairs Council will return to the rule of law issue in June. “We hope that in June there will be more positive news coming from the commission and the Polish government,” she said. (De la Baume, 2018)

### **AUSTRIA**

#### **Sebastian Kurz, Austrian Chancellor**

1. “There are no compromises on the rule of law. The core values need to be protected. We decided that Austrian MEPs will vote in favour of an Article 7 procedure” He also admitted the importance of this decision taking into account that Austria was at the moment at the Presidency of the Council (Rettman, 2018).

#### **Heinz-Christian Strache, Austrian Vice-Chancellor**

1. He considered the idea of using Art.7 against Hungary “absurd”, and invited the Fidesz group “to a future cooperation in a common EU group” (Rettman, 2018).

#### **Gernot Blümel, Austrian Minister for the EU**

1. “We have agreed that we’re going to invite Hungary to make a written statement, which they have agreed to” (Council of the EU, 2018b)

2. “We had Art.7 procedures concerning Poland and Hungary, followed by a very fruitful and long debate on rule of law generally in Europe” (Council of the EU, 2018c)

#### **ROMANIA**

##### **Viorica Dăncilă, Prime Minister of Romania**

1. She called this Art.7 threat a “dangerous thing”, and a discrimination towards Romanian citizens: “I’ll reply to Mr Timmermans and I will request that my country and the Romanian people get fair treatment and the respect the other European citizens get” (EURACTIV network, 2019).

#### **FINLAND**

##### **Tytti Tuppurainen, Minister for European affairs of Finland**

1. "It will be up to the next weeks and months for us to decide how we will move forward," said the Finnish minister, Tytti Tuppurainen, adding that the ministers were keeping their options under Article 7 sanctions alive (DW, 2019)

2. “The rule of law is an essential part of our common value base. It is something that unites us. Finland therefore attaches particular importance to strengthening the rule of law in the EU. As presidency, we want to approach this debate in a positive and constructive spirit. The aim is to find better and more efficient ways to ensure respect for the EU’s common values in the member states” (Council of the EU, 2019)

##### **Finnish Diplomatic sources**

1. Diplomatic sources reported that the Finnish were ready to increase the pressure on Hungary and aimed to initiate a hearing regarding the rule of law situation in this member state at the beginning of its presidency (Istrate, 2019)

#### **CROATIA**

##### **Dražen Bošnjaković, Justice Minister**

1. "During our presidency we certainly want to put emphasis on the rule of law in all member states. We believe that all EU member states need to have a high level of the rule of law" (Government of the Republic of Croatia, 2019)

**Bruno Lopandic, Croatian Presidency spokesman**

1. "The Croatian Presidency expects to continue the proceedings initiated under Art. 7 (1) TEU for Poland and Hungary. The content, format and frequency of such discussions shall be determined in consultation with all partners in the Council and the European Commission" (Zsiros, 2020).

2. "Our position is that the meaning of the procedure initiated under Art. 7 (1) should not be the sanctioning of countries where such weaknesses exist, but their elimination and finding satisfactory, mutually acceptable solutions through reasoned dialogue and mutual respect, which is essential for the preservation of European unity" (Zsiros, 2020).

**Grlic Radman, Foreign Affairs Minister**

1. "Let's allow other countries to look at it differently ... It's an internal political issue for every country. The rule of law should be evaluated in every country" (Vladislavljevic, 2020)

**GERMANY**

**Michael Roth, Germany's Minister of State for Europe**

1. "Today, based on extensive reports from the Commission on the situation in Hungary and in Poland, we have established that the conditions to end the Article 7 procedure are not present and the Article 7 procedure will be continued," (Reuters Staff, 2020)

2. "We are planning to have further hearings" (Council of the European Union, 2020)

**PORTUGAL**

**Ana Paula Zacarias, Secretary of State for European Affairs**

1. "As you are aware, Article 7(1) TEU requires that "the Council" hears the Member State in question. However, with the current Covid-19 pandemic, the Council rarely meets physically and instead informal videoconferences of ministers are organized. These informal videoconferences of ministers are not formal Council meetings. The hearing of the Member State in question by the Council under Article 7(1) TEU is an essential procedural requirement, the respect of which may be reviewed by the Court of Justice of the

European Union pursuant to Article 269 TFEU. Therefore, a formal hearing of the Member State in question under Article 7(1) cannot be held in informal videoconferences of ministers” (Zacarias, 2021)

## **EUROPEAN COMMISSION**

### **Frans Timmermans, EC Vice-President**

1. “The full spectrum of possibilities is still on the table. It could also be on the other side of the spectrum that we don’t advance at all anymore and we have to ask the Council to engage in the follow-up phase of Article 7” (De la Baume, 2018).
2. “I got the opportunity, thanks to the Bulgarian Presidency, to update the Council on the ongoing rule-of-law dialogue with the Polish government. Some progress was made over the last couple of weeks, but not enough to say that the systemic threat to the rule of law would be removed. I think that both the Polish government and the Commission agree that you cannot continue endlessly with this dialogue. We will have to draw a conclusion, and that conclusion will have to be drawn pretty soon (Council of the EU, 2018d)
3. Commission vice-president Frans Timmermans expressed concern that the situation in Poland has deteriorated since the ministers last put the issue on their agenda. [...] ”Sadly, things have not improved. They have deteriorated”. Timmermans also expressed concern over reports of intimidation of judges by the Polish authorities who turned to EU court for an assessment of the reforms (Zalan, 2018)
4. “While we have managed to restart a discussion at the technical level – and it is a constructive discussion – and a dialogue between Romania and the Commission – which is also a constructive dialogue – regrettably we have not yet been able to conclude that Romania is back on the right track. If these concerns are not met, the Commission will have to act, and use the means at its disposal” (European Commission, 2019).

## **EUROPEAN PARLIAMENT**

1. “As your Presidency is kicking off, we thank you for committing to move forward on the Article 7 TEU procedure against Poland and Hungary, respectively triggered in 2017 by the European Commission and 2018 by the European Parliament. [...] We are particularly concerned by the fact that no hearings under article 7(1) of the TEU were held by the General Affairs Council (GAC) since December 2019. With no hearings, and no alternative proposals made by the Croatian and German EU Presidencies to move the discussion forward, 2020 has been a lost year for the Article 7 TEU procedure. [...] In order to understand this reasoning, we would like to ask you the following questions: 1. Which legal provisions impose on the Council the obligation to ensure that hearings under Article 7(1) TEU must take place during face-to-face meetings of the Council? Could such provisions, if any, be modified during the period of pandemic?” (Delbos-Corfield et al., 2021)



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## **Annex II - Council of the EU documents**

1. Particular attention will be given to the rise of populism, racism and hate speech and the perceived competition between migration- and refugee-related priorities. In this context the Presidencies will also attach a particular importance to the respect for the rule of law in all Member States (Council of the European Union General Secretariat, 2017).
2. The only reference to the rule of law matter within the EU was a succinct phrase: “The three Presidencies underline the importance of common values of the Union: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities” (Council of the European Union General Secretariat, 2018a)
3. The section “II. Protecting Citizens and Freedoms” explicitly express the commitment of the trio with protecting the rule of law: “The three Presidencies firmly believe in the importance of democracy, human rights, the rule of law and our open societal models, which are the foundation of European freedom, security and prosperity. In this respect, the three Presidencies look forward to the forthcoming European Democracy Action Plan and its accompanying proposals, also with regard to media freedom, pluralism and independence. The Trio underlines the vital role of free and pluralistic media, whose fact-based, timely and credible reporting and dedication to combatting disinformation have never been more essential”. It also claims: “The response to the COVID-19 pandemic has implied unprecedented restrictions to the way of life, freedom and democratic rights of our societies. The Trio stands ready to support the full application of the Values of the Union, including the Rule of Law throughout the EU. The Trio looks forward to the setting up a European rule of law mechanism that applies equally to all Member States. This preventive tool shall deepen a constructive dialogue among Member States and foster a joint awareness of the rule of law in all of them” (Council of the European Union General Secretariat, 2020a)
4. The results of these dialogues were summarized in the following phrase: “Rule of law: Under any other business the Commission updated the Council on its dialogue with the Polish authorities on the rule of law in Poland.” (Council of the EU, 2018a, 2018b, 2018c)
5. At Coreper on 7 June 2018, when discussing the provisional agenda for the meeting of the Council (General Affairs) on 26 June 2018, the Commission requested that a hearing in accordance with Article 7(1) TEU take place at that meeting. At Coreper on 13 June 2018, the Presidency asked the delegations to express themselves on the request for a hearing. Following discussion, the Presidency concluded that there was sufficient support to hold a hearing at the General Affairs Council meeting on 26 June 2018 (Council of the European Union Permanent Representatives Committee, 2018).
6. “The Council held a hearing under Article 7(1) TEU on the rule of law in Poland. The hearing offered a possibility for ministers to have an in-depth exchange with Poland on the concerns identified in the Commission's reasoned proposal” (Council of the EU, 2018d).

7. In the Draft agendas for Council meetings, during the second semester of 2018 (the Austrian Presidency), discussions on the Art.7 procedures were planned for the GAC of 18 September (“Non-legislative activities [...] Rule of law in Poland / Article 7 (1) TEU Reasoned Proposal”) and 12 November (“Non-legislative activities [...] Rule of law in Poland / Article 7 (1) TEU Reasoned Proposal”) (Council of the European Union General Secretariat, 2018b)
8. The Annual rule of law dialogue was planned for the GAC of 16 October: “Non-legislative activities [...] Annual rule of law dialogue = Policy debate” (Council of the European Union General Secretariat, 2018b).
9. On 4 July 2018, a majority of delegations requested hearing Poland also during the next meeting of the General Affairs Council on 18 September 2018. The relevant item was inserted on the provisional agenda of the Council which was presented to Coreper on 25 July 2018 (Council of the EU Presidency, 2018a).
9. In the Draft agendas for Council meetings, during the first semester of 2019 (the Romanian Presidency), a discussion on the Art.7.1 Polish procedure was planned for 19 February: “Non-legislative activities [...] Rule of law in Poland / Article 7(1) TEU Reasoned Proposal State of play/Hearing/Exchange of views” (Council of the European Union General Secretariat, 2018c)
10. On 16 October and 12 November, the Council (General Affairs) took note of the state of play regarding the rule of law situation in Poland. The Commission requested that another hearing take place at the next meeting of the Council (General Affairs) on 11 December 2018 (Council of the EU Presidency, 2018b).
11. In document “Draft agendas for Council meetings, during the second semester of 2019 (the Finnish Presidency)”, the possibility of celebrating hearings concerning the rule of law situation in Poland and Hungary is mentioned in the GAC of July, September, October, November and December (Council of the European Union General Secretariat, 2019a).
12. In General Secretariat of the Council’s document on the scope of the hearing of Hungary on 10 December 2019, it is said: “It is therefore suggested that the second hearing of Hungary focuses on three issues only, in order to allow the Council to have an in-depth assessment of the situation in Hungary as regards those elements” (Council of the European Union General Secretariat, 2019b)
13. In the Draft agendas for Council meetings, during the first semester of 2020 (the Croatian Presidency), discussions on the Art.7 procedures were planned for the GAC of 24 March (“Non-legislative activities [...] Values of the Union in Hungary / Article 7(1) TEU Reasoned Proposal State of play / Hearing / Exchange of views”) and 12 May (“Non-legislative activities [...] Values of the Union in Hungary / Article 7(1) TEU Reasoned Proposal State of play / Hearing / Exchange of views”) (Council of the European Union General Secretariat, 2019c)
14. In the Draft agendas for Council meetings, during the second semester of 2020 (the German Presidency), discussions on the Art.7 procedures regarding both Poland and Hungary were planned for the GAC of 22

September (“Non-legislative activities [...] Rule of law in Poland / Article 7 (1) TEU Reasoned Proposal: State of play; Values of the Union in Hungary / Article 7 (1) TEU Reasoned Proposal State of Play”) and 8 December (“Non-legislative activities [...] Rule of law in Poland / Article 7 (1) TEU Reasoned Proposal Hearing/State of Play; Values of the Union in Hungary / Article 7 (1) TEU Reasoned Proposal Hearing/State of Play”) (Council of the European Union General Secretariat, 2020b)

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## **2. References to the rule of law in the Presidency's programs**

### **Romania**

1. "Europe of common values: Democracy, freedom, human rights and respect for human dignity".

### **Finland**

1. One of the priorities of the Finnish Presidency was "Common values and the rule of law. Cornerstones of EU action". It claimed: "At the core of the rule of law principle are autonomous and independent courts. During its Presidency, Finland will strive to improve and strengthen the EU's rule of law toolbox".
2. "At present, Article 7 procedures have been triggered against Poland and Hungary. Finland will take forward these procedures in the General Affairs Council as required by the situation".
3. "Finland's Presidency aims to [...] pursue the negotiations on making the receipt of EU funds conditional on respect for the rule of law".

### **Croatia**

1. "A Europe that protects: [...] The Croatian Presidency will focus on further establishing the Union as an area of freedom, security and justice, founded on common values, democracy and the rule of law"; "Europe as a community of values: [...] The Presidency will continue to promote the rule of law as a fundamental EU value, advocating a comprehensive and efficient approach to prevention, protection and promoting the rule of law in the Union, while strengthening dialogue and unity of Member States."

2. “A Europe that protects: [...] The European Union must show its strength and respond to current threats to the rule of law and democratic values, from intolerance and terrorism to cyber threats and “fake news” (disinformation) on digital platforms”.

## **Germany**

1. One of the priorities of the German Presidency was “V. A Europe of security and common values”. The program claimed: “The protection of our shared values, individual rights and freedoms is one of the hallmarks of the European Union. The rule of law is the fundamental prerequisite for the protection of the other values. It is essential for the EU to function. During our Presidency, we will therefore work intensively to strengthen fundamental values and particularly to promote a common, cooperative and constructive approach to dealing with the issue of the rule of law”.

2. “For us, it is also clear that where Member States have deficits as regards the rule of law, the mechanisms envisaged in the European treaties must be resolutely employed. That applies both to proceedings in accordance with Art. 7 of the Treaty on European Union and to proceedings before the European Court of Justice”.

3. “We therefore support the Commission’s proposal to make EU budgetary funding conditional on respect for rule-of-law standards in the Member States”.

## **Portugal**

1. Mentions to the Portuguese Presidency aim to protect the rule of law can be found several times in its program: “Promoting recovery, cohesion and European values [...] The EU’s resilience is also built by upholding its core values. In that context, we will promote the defence and consolidation of the rule of law and democracy, the fight against all forms of discrimination, media pluralism and the fight against disinformation”; “Implementation of the Strategic Agenda 2019-2024 [...] We will continue to pay attention to the various mechanisms put in place to strengthen the rule of law in the Union, including the new annual report published by the European Commission and its discussion in the Council. We will organise a high-level conference on the rule of law to be held in Coimbra in May”.

2. In the developing of which are their priorities, Portuguese authorities specify: “The resilience of the EU also depends on defending its fundamental values. We will accordingly work to defend and consolidate the Rule of Law, combat all forms of discrimination, promote pluralism in the media and combat disinformation”.

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