

# A Legal Scalpel Instead of an Axe

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**How a Reinterpretation of Article 7 TEU Could Neutralise Hungary's CFSP Veto Strategy**

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Hungary is a state that has significantly benefited from its membership in the European Union. However, it is increasingly [distancing](#) itself from the Union, clearly [regressing](#) from the conditions under which it [joined](#) the EU. Moreover, Hungary appears to be assuming the role of a Trojan horse, advancing the interests of foreign powers into whose sphere of influence it seems fatally drawn. After all, [autocratic](#) and illiberal regimes – and even those governments which, though initially democratic, harbour authoritarian aspirations – are naturally inclined to ally themselves with other autocracies.

The measures adopted by the Hungarian government within its domestic legal system openly and progressively defy the fundamental values and principles of [Article 2 TEU](#). As a result, Hungary has not only been [condemned](#) by the CJEU and subjected to [far-reaching sanctions](#) but has also faced the [freezing](#) of several streams of [EU funding](#). Moreover, two infringement proceedings against Hungary concerning violations of the Union's founding values are currently pending before the Court of Justice, with regard to the so-called "[Propaganda Law](#)" and the "[Defence of Sovereignty](#)".

Of particular concern is Hungary's conduct in the field of the Common Foreign and Security Policy (CFSP), especially in light of its obstruction of EU sanctions against Russia. Thus far, the European Union's conventional instruments have proven insufficient in curbing Hungary's veto strategy. For this reason, I propose a path that is both legally feasible and politically realistic: a reinterpretation of Article 7 TEU that would allow for a targeted use of the instrument.

## **The blackmail of Vetoes in the CSFP**

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Within the framework of the CFSP, Hungary constantly uses its veto power, only to withdraw it from time to time in exchange for concessions of various kinds. This practice is particularly evident in the case of the Union's sanctions against Russia, which Hungary, as the [scholarship](#) notes, regularly attempts to obstruct. Adopting such sanctions is challenging: although the implementing regulations (see, i.e. Regulations Nos. [269/2014](#), [833/2014](#) and [2024/2642](#), and most recently, No. [2025/932](#)) are adopted by qualified majority under Article 215 TFEU, they rest on prior CFSP decisions that, pursuant to Article 29 TEU, require unanimity in the Council.

This repeated resort to the veto amounts to political blackmail and puts a strain on mutual trust and the general duty of loyal cooperation provided for in Article 4(3) TEU. This duty extends to all areas of Union law and, in the field of the CFSP, is reinforced by the specific obligation of mutual solidarity of member States with the EU in its external action, laid down in Articles 24(3) and 31(1) TEU.

In the context of the [18th sanctions package](#) against [Russia](#), the Commission has now proposed a regulation based on Articles 207 (common commercial policy) and 194(2) (energy) TFEU. This regulation can be adopted under the ordinary legislative procedure and thus by qualified majority, in order to circumvent the Hungarian (and potentially Slovak) veto on the ban on gas imports from Russia. In its proposal, the Commission emphasises that all Union policies must respect the Union's values and the principle of

solidarity. This principle is further reinforced by Article 21(3) TEU, which requires consistency between the various areas of the Union's external action and its other policies. The proposal also refers to Article 207(1) TFEU, which states that the common commercial policy should be conducted in line with the principles and objectives of the Union's external action.

Although this approach may prove effective in overcoming the Hungarian veto on the 18<sup>th</sup> package of sanctions, it remains case-specific – linked particularly to the fact that these measures all pertain to the energy sector – and cannot provide a general solution to broader CFSP-related obstructions.

Given Hungary's overall attitude towards Union values and its duties as a Member State, it seems appropriate to consider more general solutions, because, as the Court of Justice has pointed out in its [judgments](#) concerning the conditionality regulation's validity, the Union "must be able to defend those values" (point 127). Freezing EU funds and initiating infringement actions are surely effective tools to protect EU values, but they cannot be used within the fields of the CFSP. For these reasons, legal scholars have explored possible avenues to bypass the Hungarian veto in those fields, even going so far as to propose that Hungary's vote in the European institutions should be considered [irrelevant](#), an idea that appears more as a provocation intended to awaken the European institutions from their lethargy and inertia than as a viable legal solution. However, all proposals aimed at overcoming the Hungarian [vetoes](#) require what has hitherto been absent: the political will and consent of the other member States within the intergovernmental institutions.

## A new Interpretation of Article 7 TEU

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The central issue, therefore, is to find a *legal solution* within the Treaties that would render Member States *politically* less reluctant to act against one of their own. Such an outcome could be achieved within the existing procedures of the Treaties through a novel interpretation of the second and third paragraphs of [Article 7 TEU](#). Nonetheless, this approach necessitates resolving two delicate legal issues.

The first issue is whether it is possible for the European Council to determine the existence of a serious and persistent breach of the values referred in Article 2 TEU (Article 7[2]) without a prior determination by the Council of a clear risk of a serious breach of those values (Article 7 [1]).

In the case of Hungary, the procedure under Article 7(1) TEU was initiated in 2018 by the [European Parliament](#). Despite numerous hearings, however, the Council has not yet concluded the process. It could be argued that, should the Court in the case [Commission v Hungary](#) find a "self-standing" violation of Article 2 TEU, it would be easier for the European Council, on the Commission's proposal, to adopt the resolution referred to in [Article 7\(2\) TEU](#). One could even consider that once the Court finds a violation of the values of Article 2 TEU, the Commission, in its role as guardian of the Treaties, is *obligated* to trigger the procedure of Article 7(2) TEU.

In any event, I think that the autonomy of the two procedures set out in Article 7 TEU should be affirmed. Considering the reasons behind the amendment introduced by the Treaty of Nice to the original provision in the Treaty of Amsterdam, namely that the original Article 7 TEU had remained a [dead letter](#), the underlying logic was pragmatic: a “something is better than nothing” approach aimed at facilitating, rather than complicating, the peer review process. And, after all, if the European Council is able to reach the unanimous vote required by Article 7(2) TEU, as defined by [Article 354 TFEU](#), one could presume that the Council could have equally attained the four-fifths majority required under Article 7 TEU.

The second issue concerns the possibility of using Article 7(3) TEU in a targeted manner, so that it could be politically less arduous for the European Council to adopt the decision referred to in Article 7(2) TEU. The latter is a prerequisite for any measure adopted under Article 7(3) TEU. In other words, while the Article 7(1) TEU procedure is not a precondition for moving for proceeding to Article 7(2), the latter is indispensable for the application of Article 7(3) TEU.

Contrary to an opinion recently expressed by [legal scholarship](#), I think that the vote (and the veto) of a Member State found to be in serious and persistent violation of the values of Article 2 TEU may indeed be *singularly* suspended under Article 7(3) TEU.

There is no requirement that the violation established by the procedure of Article 7(2) TEU correspond to the object of the voting rights that may be suspended pursuant to Article 7(3) TEU. A determination of serious and persistent violations of the independence of judges or the freedom of the press could not limit the suspension of the Member State’s voting rights solely to legislative matters in those areas. Once the procedure of Article 7(2) TEU has created the precondition, the Council is vested with full discretion to suspend the rights of the Member State concerned. Article 7(3) TEU indeed mentions the suspension of *certain* rights, not necessarily rights directly linked to the subject of the violation. Accordingly, the suspension need not be limited to the vote that the Council majority “[finds inconsistent with Article 2 TEU](#)”. Rather, the established breach of Union values may serve as grounds for the suspension of any right, including any voting right, that the Council considers appropriate.

Within this framework, the suspension of a Member State’s right could be modulated by the Council, potentially guided by recommendations from the European Council. For instance, it could be decided that the State concerned be excluded specifically from votes under the CFSP relating to sanctions on third countries. Such a decision could be adopted either as a general measure or on a case-by-case basis, immediately prior to the relevant vote.

## Using a Scalpel instead of an Axe

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This approach necessitates a conceptual reframing of Article 7(3) TEU. The provision has been characterised as a “[nuclear option](#)”, aimed at suspending *all or most* voting rights of the Member State concerned. It is precisely the highly disruptive and confrontational

nature of this measure that has so far [discouraged its use](#). Reinterpreting Article 7(3) TEU as a ‘conventional’ weapon, used in a *targeted* manner to suspend a State’s participation in individual decisions for the purpose of neutralising its veto power, could make it politically less difficult for the European Council to initiate the procedure under Article 7(2) TEU.

Such a solution would also be proportionate, particularly in light of Article 31(1) TEU, which allows for constructive abstention. This provision implies that the dissenting State has a third option beyond either accepting or boycotting a Council decision. Hungary could therefore choose to abstain under Article 31(1) TEU and thereby not be bound by the resulting measure, or face suspension from both voting and vetoing rights, while remaining bound by all EU obligations pursuant to Article 7(3) TEU. Using a scalpel instead of an axe would have only a limited impact on the State’s overall status and may even prompt it to voluntarily retract its veto.

Moreover, such a solution could provide the Member State with a politically convenient pretext, particularly if its true motivation for exercising its veto power is to please powerful foreign “friends”.



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