

Committee: Council of the European Union

Issue: In Iustitia Discordia: Dealing with Problematic Member States

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Position: President

PERSONAL INTRODUCTION

Dear Delegates,

My name is Eleni Goridari and it is a great honour for me to be serving as the President of the Council of the European Union in the 3rd DSTMUN conference. Ever since my first MUN experience, I have always dreamt about being a Student Officer one day in order to take my MUN experience to the next level.

What I find most intriguing about MUN conferences is the opportunity to interact with other people, through exchanging different ideas and viewpoints, and thus learning from them not only academically, but also spiritually. Moreover, but for the MUN conferences, I wouldn't have the chance to involve myself in such debatable and up-to-date issues, which after all broadened my horizons, and increased my diplomacy skills.

This year's topics are not only interesting but also relevant and they concern us all directly or indirectly. This study guide will provide you with adequate information about the first topic of the agenda, but you need to conduct your own research as well. If you have any questions concerning the topic, do not hesitate to contact me via my email: egoridari@gmail.com.

I'm looking forward to having a wonderful time and engaging only in a fruitful debate. I hope that this experience will forever stay in your memories!

Kind regards,

Eleni Goridari

TOPIC INTRODUCTION

This topic is more relevant than ever these days, due to the fact that many Member States of the European Union are adopting undemocratic policies. For example, many of these countries handled the coronavirus situation in a rather authoritarian way, as they adopted emergency laws that favoured their governments instead of the citizens. Whether these Member States adopt laws that benefit their government, give limited freedoms to the press or violate their legal obligations towards refugees, the conclusion is the same: These countries fail to fulfil their obligations under the Treaties of the Union. While those countries breach the European treaties, only a few measures can be taken in order to tackle this problem. The EU has taken some of these measures; however, they are not very effective, due to the bureaucracy, meaning that every step that the EU is trying to make is getting delayed by the processes and procedures that it has to follow. These procedures are very time-consuming, and they require a lot of parties to get involved in order to tackle a specific problem. Moreover, the EU itself cannot force a state out of the Union; however, it can advise it to comply with the rules, or impose financial sanctions. Ultimately, it is in the nation's discretion to change its policy, which is something that is not easy to happen.

DEFINITION OF KEY TERMS

In Iustitia Discordia

The phrase "In Iustitia Discordia" is a Latin phrase. Iustitia means justice and fairness, while Discordia means discord and dissension. Altogether, it means that justice is disharmonized. This phrase is deeply connected to the topic, as the policies of some countries are in disagreement with the Treaties of the EU. This means that these countries, contradict the values and the laws of the Union, and this behaviour is characterized as unconstitutional.

Problematic Member States

There is not an exact definition of what a problematic Member State is; however, it is perceived that any state that fails to fulfil its obligations under the EU Treaties and laws is considered as problematic. More specifically, if a state adopts undemocratic policies and allows discrimination and injustice to persist, then it does not comply with the EU's values. However, some specialists define a member state as problematic, when the state's Gross Domestic Product (GDP), is below half of the EU's average GDP.

Orbanism

“The semi-authoritarian (or hybrid) regime that the ruling Fidesz party, a national-conservative, right-wing populist political party in Hungary, has built up in Hungary over the last ten years of Viktor Orban’s premiership.”¹

Rule of law

“For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. The rule of law is fundamental to international peace, security and political stability.”²

Rule by decree

“Rule by decree is a style of governance allowing quick, unchallenged promulgation of law by a single person or group, and is used primarily by dictators, absolute monarchs and military leaders. The expression is also sometimes used when describing actions of democratic governments that are perceived to unduly bypass parliamentary or popular scrutiny. Rule by decree allows the ruler to arbitrarily edit law, without approval by a legislative assembly.”³

BACKGROUND INFORMATION

The creation of the European Union

Generally, the European Union is based on a series of legal treaties. The first treaty was signed in Rome in 1957, and since then, there have been five other treaties, the Single European Act in 1986, the Treaty of Maastricht in 1992, the Treaty of Amsterdam in 1997 and the Treaty of Lisbon in 2007.

¹ “Orbanism at Its Limits? Hungary's Referendum Has Exposed the First Cracks in Viktor Orban's Rule.” *EUROPP*, 11 Oct. 2016, blogs.lse.ac.uk/europpblog/2016/10/04/hungary-refugee-referendum-orban/.

² “What Is the Rule of Law - United Nations and the Rule of Law.” *United Nations*, United Nations, www.un.org/ruleoflaw/what-is-the-rule-of-law/.

³ “Rule by Decree.” *Wikipedia*, Wikimedia Foundation, 20 May 2020, en.wikipedia.org/wiki/Rule_by_decree.

More specifically, the European Union was created to cease the disputes between neighbouring countries after the Second World War. In 1951, the European Coal and Steel Community (ECSC) is established, with the aim to maintain peace throughout the six founding countries, (Belgium, France, Germany, Italy, Luxembourg and the Netherlands). In 1957, the Treaty of Rome created the European Economic Community (EEC), or “Common Market”, which later became the EU.

The Treaty of Rome (1957)

Moreover, The Treaty of Rome established four institutions (the Commission, the Council of Ministers, the European Parliament and the European Court of Justice). Its focus was primarily the economic cooperation between Europe, but from a political point of view, the focus was on creating an “ever closer union to eliminate the barriers which divide Europe.

The Treaty of Amsterdam (1997)

The Treaty of Amsterdam in 1997 ultimately changed the decision-making process within the EU, as it established the Qualified Majority Voting (QMV) that is still used today.

The values and the goals of the Union

The Union is founded on the values mentioned in Article 2⁴. These values are respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The Member States should have a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail.

Some of the goals the EU is trying to achieve include the promotion of peace, freedom, security and justice, unlimited to internal borders. Also, the promotion of sustainable development that is based on balanced economic growth and price stability, alongside environmental protection. Meanwhile, another goal is to establish a monetary union with the euro as the main currency. At the same time, the cultural and linguistic diversity that exists in the Union should be protected and respected. Last but not least, one of the most important goals of the Union is the ceasing of discrimination and injustice.

⁴ OFFICIAL JOURNAL OF THE EUROPEAN UNION. *CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION*, 26 Oct. 2012, eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

Problems of the Union

Although the European Union has many advantages, it faces many serious problems that are very hard to combat. For example, the Brexit situation and the Carbon emissions elimination are some of the most modern problems the Union is facing. However, there are also problems that threaten the Union's and the Member States' security and democracy, such as the ongoing threat of terrorist attacks. But even without terrorism and violence, some countries, which are considered problematic, are hazardous towards the democracy of the whole Union. And on top of that, the COVID-19 pandemic has not only eliminated the EU's population, but it has also damaged the Union's economy, tourism, health care systems etc. Unfortunately, the latter consequences of the virus are yet to come.

The creation and the role of the Council of the European Union

When it comes to the history of the Council, the first meeting of the Special Council of Ministers of the European Coal and Steel Community, which will become the Council of the European Union, was held in Luxembourg, on September 8th, 1952. It is also worth mentioning that the Treaty of Rome in 1957 established the Council of Ministers, along with other EU institutions.

The Council of the European Union is one of the most important institutions of the EU. Its role is to:

1. Negotiate and Adopt EU Laws. It negotiates and adopts legislations usually with the European Parliament through the ordinary legislative procedure, known as the "co-decision".
2. Coordinate Member States' Policies. More specifically, the Council coordinates Member States' economic policies, dealing with the legal and practical issues of the euro etc. It also introduces EU policy frameworks regarding the Member States' education, youth, sport and culture. Lastly, it draws conclusions and introduces a recommendation for the employment rates of each State.
3. Develop the Union's Foreign and Security Policy. Moreover, it controls the EU's development, humanitarian aid, defence and trade. In cooperation with the High Representative of the Union for Foreign Affairs and Security Policy, it maintains the solidarity and effectiveness of the EU's external action.
4. Conclude International Agreements. More specifically, the Council authorizes the Commission to negotiate on behalf of the EU agreements between the EU and non-EU countries and international organisations. Such agreements include trade, cooperation, development etc.

5. Adopt the EU Budget. In cooperation with the Parliament, the Council adopts the EU budget.

The Council works in the following way. All of its votes take place in public. For decisions to pass, the requirement is a qualified majority voting method. On the contrary, in order to obstruct a decision, a minimum of four Member States is needed. However, topics such as foreign and taxation policies require a unanimous vote, and issues that relate to the procedure and the administration require a simple majority vote.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

Hungary

Generally, Hungary is currently viewed as one of the most authoritarian countries in Europe. In fact, it is the only EU Member State that is considered to be “partly free” instead of “free”. Its prime minister, Viktor Orban, is an advocate of rule by decree. Given that, it is easier to understand why Hungary has limited press freedom and judicial independence while violating the rights of refugees. On top of that, Orban has adopted an emergency law during the COVID-19 pandemic, where he is allowed to rule by decree without any time limit. All of these violations have resulted in the triggering of Article 7 against Hungary. The justification that Orban gives is that he invokes national sovereignty and national security.

Upon the implementation of Article 7, he has said that the Union targeted Hungary, because of his decision to refuse to accept any refugees. Although the EU is in constant disagreement with the aforementioned decision, the reason that they triggered Article 7, was because they are concerned about Hungary’s rule of law and democracy.

Poland

Poland is also one of the two countries in which Article 7 has been triggered. The reason behind this is the lack of judicial independence.

More specifically, Poland had adopted 13 laws over a two-year period which compromise the structure of its justice system. This happened due to the fact that the executive and the legislative authorities interfered with the judicial authorities, giving it limited independence. As a result, the application of EU law was unsuccessful, simple cases such as arrest warrants and child custody were delayed and many closed cases from the past were re-opened.

The Commission expressed its concern on the fact that the retirement age is 60 for females and 65 for males, a number that has been decreased in relation with the past.

Romania

Romania is one of the countries that are considered “problematic”. It has limited independence of the judiciary and high political corruption. According to a Commission spokesman, “The main concerns relate to developments interfering with judicial independence and the effective fight against corruption”. More specifically, the Romanian government is constantly ignoring the rule of law in order to save corrupted political leaders. The Commission threatened to take legal action unless Romania alters the situation about the separation of powers. Since Article 7 has already been triggered in two European countries, it is not difficult to trigger it against Romania too, if things don’t change. Moreover, a senior EU diplomat mentioned that if Romania continues like that, it will not join the Schengen travel-free area, and it will not be granted 30 billion euros in funds for the years following 2021.

Bulgaria

The situation of the rule of law in Bulgaria is also not very good. According to a Reporters Without Borders gallop about freedom of speech, Bulgaria was placed 111 amongst 180 countries, the lowest of all EU Member States. The main problem is the spread of fake news and limited press freedom. There are serious threats of populism and limited pluralism, which result in media censorship.

Additionally, Bulgaria is bombarded with organized crime, business oligarchy and biased media, meaning it’s susceptible to corruption. This level of corruption eliminates the independence of the judiciary and the protection of human rights, meaning ultimately that there is no actual separation of powers in the country. Typically, the justice system is independent, but due to extensive political pressure, it is being manipulated, and the democracy of this state thereby keeps being undermined.

Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) ensures that EU law is applied and interpreted the same in each Member State. Therefore, it is responsible for enforcing the law through infringement proceedings. More specifically, if a Member State's government does not abide by EU law, then the Commission or another Member State can report it to the Court. If indeed a State is found guilty as

charged, it must correct its mistakes; otherwise, there will be a second case against it, which typically results in a fine.

Moreover, the European Commission can take a case against a Member State to the General Court. In these cases, the Court decides if a State fails to fulfil its obligations under EU law. Rarely, when a State is constantly breaching EU law, the Court can impose a fine on it.

When it comes to the problematic Member States, there have been many cases which declare that these States do not comply with EU law. Some examples are the following: On May 2020, the Court decided that holding asylum seekers at the Serbian-Hungarian border is unlawful and those who are detained have the right to take legal actions against Hungary. In a Hungarian radio, Prime Minister Orban has said that this decision was part of a “coordinated assault” from the Union and that Brussels forces the Member States to accept immigrants “against their will”. In another interview, he mentioned that when the Court makes a decision that does not comply with the Hungarian constitution, then priority will be given to the Hungarian Constitution instead of EU law. Also, in 2012, the Court declared that Hungary has failed to fulfil its obligation under EU law, due to the unequal treatment in employees and the limiting of the retirement age of judges, notaries etc. Last but not least, the Court and the Commission are investigating the legitimacy of the emergency laws that Hungary has passed.

Similarly, in November 2019, the European Court decided that the Polish law which limits the retirement age of judges and sets a different retirement age depending on the gender is contrary to EU law.

BLOCS EXPECTED

The blocs that could be formed for this topic are the following:

Problematic Member States and their Supporters

In this bloc should be the so-called “problematic” Member States, as they support each other. Also, this bloc should consist of the Eastern European countries mainly, that are not problematic, but they either support or have a neutral stance, regarding the policies of the problematic states.

Opponent Member States of the Problematic Member States

This bloc will be mainly formed by the Western European countries that do not support at all or decry the policies of the problematic member states.

TIMELINE OF EVENTS

Date	Description of event
July 23 th , 1952	The Paris Treaty establishes the European Coal and Steel Community (ECSC). The ECSC treaty, which expired in 2002, is the first founding treaty of the European Community.
September 8 th , 1952	The first meeting of the Special Council of Ministers of the European Coal and Steel Community, which will become the Council of the European Union, takes place.
March 25 th , 1957 (put into force on January 1 st , 1958)	The Rome treaties establish the European Economic Community (EEC) and the European Atomic Economic Energy Community (Euratom). The first meeting of the Council of the EEC takes place on 25 January 1958.
September 20 th , 2017	Article 7 is triggered against Poland.
September 12 th , 2018	Article 7 is triggered against Hungary.
March 2 nd , 2020	Poland adapts COVID-19 emergency laws.
March 30 th , 2020	Hungary adapts COVID-19 emergency laws.

RELEVANT RESOLUTIONS, TREATIES AND EVENTS

Article 2 of the Treaty of the European Union

This article mentions the values on which the European Union was founded. The article also states that the Union's members should respect these values, and adopt policies where equality and pluralism prevail. These policies should be free of discrimination, intolerance and injustice.

Article 7 of the Treaty of the European Union

When a proposal has been made by one-third of the Member States, the European Parliament, or the European Commission, that a State has breached the Union’s values- mentioned in Article 2- then the Council along with a majority of four-fifths of its members, upon agreement with the European Parliament, shall determine if there is a serious breach to Article 2.

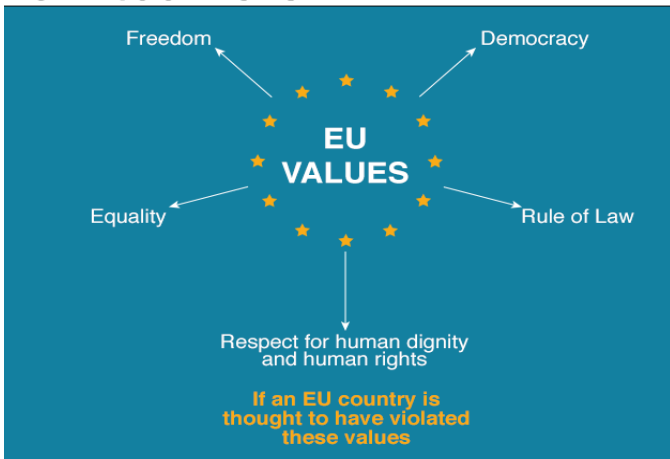
However, before the Council makes such a determination, it shall listen to the accused Member State and propose measures to it, by following the same procedure. Also, the Council must regularly check if the reasons behind such a determination continue to exist.

Moreover, the European Council, acting by unanimity on a proposal by one-third of the Member States or by the Commission and after having the consent of the European Parliament, shall decide if there is a serious breach by a Member State, after inviting this Member State to explain their actions.

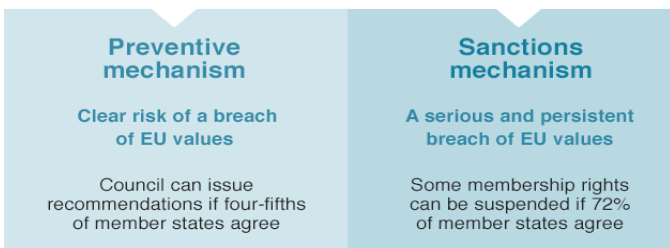
When the European Council decides that there is, in fact, a serious breach by a Member State, the Council, acting by a qualified majority, has the right to suspend specific rights from the accused Member State, such as the voting rights of the representative of the government of that Member State.

Furthermore, the Council, acting by a qualified majority, can alter or revoke measures taken, if changes occur in the situation which led the Member State to be punished.

How Article 7 works



Article 7



BBC

Figure 1: Infographic of Article 7

Article 7 of the Treaty of the European Union is also called “nuclear option”, due to the fact that it can impose the most serious political sanction on a Member State, namely the suspension of the State’s voting rights within the EU.

Article 50 of the Treaty of the European Union

This article states that any Member State wishing to withdraw from the Union should notify the European Council. Its exit should be voted upon the Qualified Majority Voting (QMV). This article allows Member States to leave the Union, but it does not allow the Union to force a state out.

Article 258 on the Functioning of the European Union

This article states that if the Commission considers that a Member State has breached an article of the Treaties, it shall justify its opinion. If the accused State does not comply with the opinion proposed by the Commission, then the Commission may bring the matter upon the Court of Justice of the European Union.

Article 259 on the Functioning of the European Union

In this article, it is stated that if a Member State feels that another Member State is breaching the Union's laws, then it should bring the matter before the Court of Justice of the European Union. However, before bringing the case before the Court, it should bring the matter before the Commission.

Article 260 on the Functioning of the European Union

This article states that if the Court of Justice of the European Union observes that a Member State has breached the Treaties, the State will be required to comply with the verdict of the Court. Nevertheless, if the Commission believes that the Member State has not complied with the judgment of the Court, it shall bring the matter before the Court. It should specify the amount of the lump sum or penalty payment that needs to be paid by the Member State. Finally, if the Court finds that the accused State has not complied with its judgment, it shall impose a lump sum or penalty payment on it.

Hungary's Emergency Law

In order to tackle the coronavirus pandemic, the Hungarian parliament voted on some "emergency laws", that have been deemed as authoritarian. The parliament gave Orban the power to rule by decree without a specific time-limit. The same law criminalizes the spread of disinformation about the virus and states that whoever spreads false information will be arrested.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Article 7 of the Treaty of the European Union

Article 7 has been triggered twice in the past. The first time it was triggered was on 20 September 2017 against Poland, and the second time was on 12 September 2018 against Hungary.

Even though Article 7 is the strictest sanction the EU can impose, its procedure is prolonged, and it is almost impossible for it to lead to any outcome. In order for a Member State to eventually lose its voting rights, it needs to have zero allies within the Council, because the decision of whether the State has breached some laws requires unanimity. For example, in this case, Hungary supports Poland and vice versa.

Since Article 7 has been triggered, the EU has proposed four corrective recommendations to Poland. Eventually, Poland altered some of the offending laws, without alleviating its control over the judiciary system. When it comes to Hungary, its justice minister, Judit Varga, strongly objected to the validity and plausibility of the charges.

On 16 January 2020, the European Parliament adopted a resolution that stated, “the situation between Poland and Hungary has deteriorated since the triggering of Article 7(1)” and that “failure by the Council to make effective use of Article 7 continues to undermine the integrity of common European values, mutual trust and the credibility of the European Union as a whole”⁵. According to Freedom House, a non-profit organization, Hungary no longer falls under the category of democracy, since interfering with education and passing emergency laws which allow it to rule by decree.

The former President of the European Commission, Jean-Claude Juncker, mentioned in an interview that he had “given up” on trying to communicate with Orban about his governing style and his country’s policies because he said, “there are big differences” between the two of them and “I constantly explain to Viktor Orban that this radical rhetoric he’s directing towards Europe helps neither him nor Europe”.

⁵ “How the EU Can Better Protect the Rule of Law in Its Member States.” *EUROPP*, 20 May 2020, blogs.lse.ac.uk/euoppblog/2020/05/08/how-the-eu-can-better-protect-the-rule-of-law-in-its-member-states/.



Figure 2: Viktor Orbán and Andrzej Duda shaking hands

Declarations of the Court of Justice of the European Union

Throughout the years, the Court of Justice of the European Union has declared many actions of the problematic Member States, illegal. The most important decisions the Court has made are about Hungary and Poland.

More specifically, Hungary has troops guarding its borders and has erected a barbed-wire fence in order to keep refugees away. It keeps the refugees in transit zones, without letting them enter the country or return to Serbia. However, under EU asylum law, the maximum that one can be kept at a state's borders is four weeks, and after that, the Member State must welcome the refugees to their country. Therefore, the Court has mentioned that the situation existing in Hungary's borders is a detention, and has ruled it illegal.

Additionally, Hungary adopted an arbitrary law that lowers the retirement age for judges, notaries and prosecutors radically, and as a result, hundreds of judges have been forced to retire. This law violates an EU law regarding equal treatment; thus, the Court ruled that Hungary violates EU laws.

When it comes to Poland, the Court found that the government does not allow the justice system to function independently. Therefore, the Court declared that Poland infringes Article 19 of the Treaty of the European Union because it does not respect the country's judicial independence.

POSSIBLE SOLUTIONS

Monitoring law enforcement

Undoubtedly, monitoring the rule of law in the European Member States is a very simple, but a basic step towards eliminating corruption. The Union demands full cooperation with law enforcement authorities of the Member States, in order to solve any occurring problem.

However, the EU Commission has its own law enforcement agencies as well, with the most famous being Europol. Nevertheless, these agencies do not have autonomous investigative capabilities, and thus they are not in charge of operational law enforcement activities.

Regardless, the Commission with its agencies can improve law enforcement cooperation with the Member States. One measure is to enhance the information exchange systems by setting up databases in which Europol and the Member States can share information. Furthermore, the Commission can assist the States with the implementation of legal instruments.

When monitoring law enforcement, the Union is aware of which countries are breaching its values and which are obeying them. When the Union recognizes an infringement, it shall take legal actions, such as the triggering of Article seven.

Suspension of EU Funds

The European Union could establish a mechanism that withholds financial assistance for any Member States that breach Article 2 of the Treaty of the European Union, regarding the Union's fundamental values, or any law regarding the Union. Such violations include enforcing indefinite emergency laws, like the ones that Hungary and Poland enforced during the COVID-19 pandemic. An act like that insinuates that the Union has no intention of assisting the Member States that breach its core values or adopt undemocratic policies.

Protests by the Citizens

Besides decisions that the EU can make in order to solve this problem, there are some actions that the citizens of the Member States can take. By far the most effective action is protesting. If the citizens feel uncomfortable or unsatisfied with the condition of their government, they can then protest peacefully and demand change. This is a very common practice among almost all democratic nations, and it has been proved to be successful. There have already been protests in Poland, Hungary and beyond that oppose authoritarian tendencies. What remains open is

the question of how the EU can bolster the claims of these protesters and help bring about the necessary change in countries that are not willing to embrace it.

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FIGURES

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