

Study Guide - Week 10

CoEU- Expulsion of Members from the European Union

1) TDLR:

When it was created, the European Union set forwards some core principles for its member states that were designated as the values underlying their cooperation: Democracy, Rule of Law, Respect for Human Rights, etc. When the treaties of the EU were written all of the founding states were hoping for a peaceful and friendly cooperation which resulted in very limited disciplinary measures being agreed upon. Over the years it has led to a situation where multiple institutions of the Union can acknowledge that one of the member states is not fulfilling its duties but no factual response can be raised.

Examples of Hungary and Poland are often the first that come to mind, situations where the European Commission raised concerns but eventually since the disciplinary mechanisms in the EU require a consensus, no action could be taken. Since the Covid pandemic the Commission guaranteed itself the right to withhold funds from specific programmes, if a member state is not fulfilling its obligations. Some countries believe this is not enough. Seeing how some countries use their veto power to block the progress of the Union, an idea was raised to finally include the procedure of expulsion of a member state from the European Union.

2) Background Information:

Some of the core values of the European Union are: Democracy, Rule of Law and Respect for Human Rights as described in Art. 2 of the Treaty on European Union [TEU]. It was created with the hope of bringing unity and cooperation to the continent which had a history of being torn apart by wars. Something that the founding member states did not consider far enough in advance however, was an answer to a simple question: *What do we do when a member of the EU starts going against those values?*

So far the most serious disciplinary mechanism that the EU has for its member states when they start going against the values of the union is, the famous “nuclear option”, Art. 7 of the TEU which allows for the suspension of rights of the individual member state, including the voting rights in the Council. That requires every member state, other than the one being accused, to vote whether or not they are breaching the values of the EU. It is then decided what rights of that member state should be suspended through a qualified majority vote. Until this day Art. 7 has not been used against any member state.

One of the countries facing numerous calls to be subjected to Art. 7 has been Hungary. The European Parliament has debated multiple times over the possibility of starting the Art. 7 procedure against Hungary. Some of the concerns raised in the discussions were the deteriorating state of democracy in Hungary, violations of human rights, especially the rights of minorities and concerns about the rule of law. One of the most recent causes for such calls has been the emergency act of 2020. A bill passed by the Hungarian Parliament allowed Prime Minister Orbán to change law by decrees and made 'distribution of misleading information that obstructs responses to the pandemic' punishable by up to 5 years in prison. Similar, though less heated, discussions about the possibility of invoking Art. 7 against Hungary have resurfaced multiple times since 2022, with vetoes against support packages for Ukraine or sanctions against Russian Federation.

Until this day the country who has come closest to having the procedure of suspending their rights invoked is Poland. At the end of 2017 the European Commission started the procedures of preparing the recommendation to the Council of the European Union to suspend the rights of Poland in accordance with Art. 7. Such action came after a series of reforms and policies enacted by the government of Poland that raised serious concerns over the freedom of press, respect for human rights, especially the rights of women and minorities, balance of power between judiciary and executive and rule of law. Formally the recommendation was never formally considered by the Council because they were aware of the likely Hungarian veto. In May of 2024 after a change of government in Poland, the Commission withdrew the recommendation of invoking Art. 7. following the eventual progress done by the Polish government and redress of its violations of EU core values.

So far, recognizing the likelihood of suspension of rights under Art. 7 is very unlikely as the European Commission has been making use of a different mechanism. Introduced with the NextGenerationEU funds, the mechanism allows the Commission to withhold fund transfers if the member state has consistently shown misuse of EU funds, deteriorating state of democracy or other actions standing against the core EU values. It has served as a workaround of the Art.7 allowing for disciplinary actions against member states.

3) Key Issues:

3.1) Legal basis for changes: If the council determined that any changes to the current disciplinary measures of the European Union against its member states have to be made, then a renegotiation of Treaties would have to be called. Matters such as suspension of rights or expulsion of members are regulated by the TEU and therefore require amendments to the Treaties. Should Council recommend the amendment of treaties to allow for more efficient disciplinary measures? Should the Council have measures for revoking the memberships of individual countries? How should such a procedure function?

3.2) Unity vs efficiency: Establishing procedures for expulsion of members or other methods of punishing violations might help the efficiency of EU's actions in areas such as migration, sanctions or rights of minorities. However such changes may lead to disagreement among members. Some may feel under threat if such sanctions could be used against them. How do we ensure fairness of disciplinary procedures? What is more important, unity or efficiency of the union? Would creation of extended disciplinary mechanisms go against the values of cooperation and friendship that established the EU?

3.3) Definition of serious violations: The current state of the TEU allows for disciplinary action if serious breaches of core EU values are taking place. Any additional punishment mechanisms will likely have the same requirements which leads us to a key issue: What is the definition of 'serious violation'? How should the Council determine whether serious violations are taking place? Should we find a more objective criterion for invoking the disciplinary mechanisms?

4) What can the CoEU actually do?

The Council of the European Union has a key role in creating the policy and legislation of the European Union. It is composed of the relevant ministers of governments of the EU nations and makes decisions or recommendations aimed at the European Council [Heads of Government] or European Commission. Some of the powers of the Council are:

- Proposing legislation, legal framework or treaty reforms to the European Council [Heads of governments] or European Parliament
- Negotiations, sanctions or disciplinary actions
- Recommending financial measures to the European Commission [Freezing funds, restricting access to EU programmes, etc.]
- Recommending reforms and actions in line with the values of Art. 2 of TEU to governments of member states

5) Major Stakeholder's:

1) Hungary: Hungary as one of the countries who was on the verge of having Art. 7 being invoked against them is in strong opposition to expanding the disciplinary capabilities of the EU. They value national sovereignty and independence and stand for the European Union based on cooperation of individual states rather than further integration. In the debate they would oppose introducing any expulsion mechanism. They would likely advocate for withdrawing the ability of the European Commission to withhold funds when a country violates core EU principles without officially invoking Art. 7.

2) France: France is a strong supporter of European integration, cooperation and efficiency of the union. They favour stronger disciplinary mechanisms of the EU to allow it to deal with member states who disregard the EU statutes. In the debate they would advocate for introducing the expulsion mechanisms and likely support loosening the requirements for invoking Art. 7 to allow for swift proceedings within the Union without fear of immediate veto.

3) Germany: Germany strongly supports further integration of the EU but is cautious of forceful mechanisms. They are defenders of the need for unity in the EU and would concentrate more on the economic influence. In the debate they would support economical pressure mechanisms such as withholding funds or subtracting money from them for violations of core EU principles.

4) Italy: Italy balances in the middle between advocating for strong cooperation and retaining individual sovereignty of the member states. They favour dialogue and corrective mechanisms rather than suspension or expulsion. In the debate they would put a strong accent on affirming that any disciplinary action is objective and non-political. Additionally they would likely propose some soft measures to take place before the Council would consider expulsion.

5) Poland: As a country which previously had Art. 7 procedures initiated against it, Poland is cautious of granting further rights that would interfere with national sovereignty. Being a generally pro-EU country, Poland would likely advocate for strong and detailed procedures that would have to lead up to potential expulsion. They would likely concentrate on creating a transparent mechanism for disciplinary action that would be preceded by soft measures.

6) Sources and further reading:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M/TXT>

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<https://www.bbc.com/news/world-europe-60400112>

<https://scholarlypublications.universiteitleiden.nl/access/item%3A3278567/download>

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