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How has the democratic backsliding in Hungary delegitimized the European Commission and  
their role as Guardians of the Treaties?

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**Abstract**

Since 2010 Hungary has employed illiberal tactics to increase the post functionalist character that is present in their contemporary society. This has come in various forms and been most prominent during the different crises that have been experienced since the accession of the Fidesz party and Viktor Orbán to the governmental position. As a member of the EU they have gone against the Treaty of the European Union's (TEU) fundamental values that are portrayed in Article 2. Despite these numerous breaches the European Commission has been unable to get Hungary inline and even made attempts to trigger Article 7 against them. Previous studies have shown that Article 7 is insufficient to create any change in this aspect but has not explored whether this fact has delegitimized the European Commission and their role as Guardians of the Treaties. The violations of the TEU, such as the Rule of Law, by Hungary have shown to be a threat against the democratic features that the Commission are meant to protect. Yet, Hungary is still a full fledged member of the EU despite these continued breaches and their post functionalist actions persist without proper counter measures to ensure democracy for all member states.

## **Introduction**

The European Commission has been under immense pressure for quite some time now to get member states that are implementing illiberal policies going against Article 2 of the Treaty of the European Union (TEU) in line with the Rule of Law principle that all member states should follow. This article within the treaty simply states:

‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’  
(Eurolex, 2 October 1997)

The article emphasizes on the collective common respect for these rights to be upheld by all member states but yet there have been a few instances throughout the Unions history where this treaty article has been met with defiance. One of the most apparent cases has been Hungary’s quite abundant and clear violation of this article which has on multiple occasions led to attempts to trigger Article 7 of the TEU (Peirone, 2019; Priebus, 2022; Appel, 2019; Platon, 2022 & Braun, 2020). The Article 7 of the TEU is a mechanism that the European Union (EU) institutions can seek to use in case of breaches of Article 2 by any member state. To trigger Article 7 there must first be ‘one third of the member states,..., acting by a majority of four fifths of its [institutions] members after obtaining the consent of the European Parliament’ (Eurolex, 2 October 1997) to determine if a member state is violating the values of Article 2. Second, the European Council must determine on a breach after unanimously agreeing to the proposal and act upon it by a third majority of the Member States (MS) or Commission. Of course this also

needs to be approved by the European Parliament (EP) before being able to advance with any determination of a MS breach of Article 2. If this is approved by all parties in a qualified majority vote (QMV) the MS voting rights in the EU, along with all other benefits (such as numerical benefits) are revoked until determined by a QMV and internal EU institutions that the MS has met the requirements set out under Article 2 (Eurolex, 2 October 1997). In theory this should work as a deterrent for MS to work against the values set out in the TEU which aim to foster a collective identity under one EU.

Yet, since 2010, with the accession of Viktor Orbán and his party Fidesz as Hungary's government, there has been a notable democratic backsliding in Hungary (Peirone, 2019). They are noted in the Eurobarometer reports as lacking in the fields of democracy and internally perceived as untrustworthy regarding the spread of information (Eurobarometer, March 2023). Their adoption of illiberal policies that go against Article 2 of the TEU have been quite extensive and despite efforts from the EU, through the EP and Commission, to trigger Article 7 there has been little to no remedy to their democratic backsliding. In turn, considering that the European Commission (EC) is one of the main bodies that implements policies (EC, 25 February 2019) and also can propose to trigger Article 7 against any MS that breaches the Rule of Law this paper seeks to explain how the EC's legitimacy has been affected by the democratic backsliding in Hungary. Previous studies have focused on Article 7 and its effectiveness in keeping member states from breaching Article 2, like Hungary, resulting in a collective agreement on the ineffectiveness of the mechanism (Peirone, 2019; Platon, 2022; Priebus, 2022 & Appel, 2019). To this extent the thesis investigates whether the Hungarian democratic backsliding is affecting the legitimacy of the European Commission. In turn I am trying to understand which actor is allowing Hungary to continue its illiberal shift and hopefully discover what further research may

be needed in this question. I want to understand if Hungary's democratic backsliding is directly affecting the legitimacy of the European Commission or if other factors are affecting their legitimacy.

Most noticeable feature of Hungary's descent from democratic principles and the EU itself, is a strong pursuit of an individual identity. The actions of the Hungarian government since 2010 has shown that they are trying to create a Christian Hungarian identity (Goździak, 10 October, 2019) that separates them from others creating a highly individualized society. As noted, this has triggered the Commission to attempt to invoke Article 7 against them but to either none or minimal effect. This paper argues that this invokes delegitimization of the EC from Hungary's perspective and I use the theory of Post Functionalism.

This theory is related to the theories of intergovernmentalism and neofunctionalism but differentiates in the fact that it perceives the processes within political discourse and society as conflictual through examination of the cause and effects of politicization. The politicization of the EU has been existent since the enlargement in 2004 and through the 2009 Lisbon Treaty (Peiron, 2019) where the Commission was given more authority to handle political questions outside of the EU strengths (economic policies), such as collective EU migration policy.

Simultaneously, it is noted that Hungary's pursuit to detach themselves from the Commission's grasp is led by high levels of politicization through establishing an individual identity that is separate from a European one. By moving away from the Rule of Law, which is twofold in the essence that 'it is both a principle of unity... and a principle of union' (Peiron, 2019, p.95), they are creating an individual society but does this disconfirm the legitimacy of the Commission.

I must also consider the principal- agent relationship between the Council of the EU and European Commission. The Council of the EU (the principal) is considered the main legislative

body whilst the EC (the agent) is considered the Guardians of the Treaties and creators of the policy (Pollack 2003). In this regard I am trying to determine whom may be responsible for the lack of action in correcting the democratic backsliding of a MS leading to a delegitimization of the EC. The Council of the EU (Council) is considered to be the main decision making body of the EU and has powers to change the Commission's policy proposal, yet only through unanimity (Hage, 2008). Despite the unanimity, which has also been noted to be generously used in the Council, as main policy creators within the EU they must also be considered to bear responsibility for the lack of action taken towards Hungarian democratic backsliding. If this is the case it may alter my hypothesis to favor this explanation more.

To determine the legitimacy of the Commission in the view of Hungarian society I must also combine the theory of post functionalism with legitimacy. In this aspect, I am noting that legitimacy of the Commission is the dependent variable in this paper as Hungary's post functionalist shift is affecting the EC's perceived legitimacy. In order to measure legitimacy I will use the process of legitimation. This entails measuring the narrative, tone and intensity (Tallberg and Zürn, 2019) of the discourse and actions by the Hungarians to understand the perception of legitimacy in which the European Commission stands. The Commission's legitimacy is continually under scrutiny and to measure it in more precise terms will garner a better understanding of whether they are perceived as such by Hungary and if the actions of democratic backsliding by Hungary are reason for this. Of course there are issues with using such a method to examine empirical data as it can be 'Limited, sporadic and based on observational data.' (Rimkutė & Mazepus, 2023, p. 1407).

Yet with the use of the process of legitimation and process tracing I will be able to determine in this single case study whether the democratic backsliding in Hungary affects the legitimacy of

the Commission. I will look at evidence spanning from 2010 up until December 2023 that may include interviews, other reliable studies, Hungarian government statements, European Commission statements, news articles, etc. which have relation to the topic and can determine to some extent certitude and uniqueness (Toshkov, 2016) of the evidence. Of course there are limitations to using process tracing, such as the limitation to generalize the outcome (Toshkov, 2016) to other actors in the EU as we cannot use this information to determine whether other member states that have shown signs of democratic backsliding affect the legitimacy of the European Commission. However, I do think a possible route to take to strengthen this method is to use the analyticist approach to process tracing which treats the mechanisms as analytical constructs instead (Meegdenburg, 2023). This I will delve deeper into in the methodological section but before that I will discuss the theoretical framework that will be used for this thesis. Later I will examine the evidence from which I can determine the effect Hungary's pursuit of an individual identity and democratic backsliding affect the legitimacy of the European Commission and their role as Guardians of the Treaties. Finally the conclusion will determine whether the evidence provided is proof to whether the hypothesis holds true or not and if further research may be needed to determine a true outcome.

### **Theoretical Framework: The Post Functionalist Approach and Legitimacy**

For this paper we will focus on the theories of post functionalism and legitimacy. These theories are separate but yet still intertwined in the fact that they are both dependent on the processes of political discourse (Hooghe & Marks, 2019 and Tallberg & Zürn, 2019). Of course they might view discourse in political arenas differently such as the process of legitimation that focuses on tone, intensity and narrative whilst post functionalism highlights on the conflictual nature of



politicization noted in contemporary societies. These differences do highlight that they are separate theories but post functionalism can work to explain legitimacy through the process of legitimation considering that they center their evidence around the discourse experienced in political arenas. To further understand this we will explore the theories individually first to later develop why they are concurrent theories.

Post functionalism, as neofunctionalism and intergovernmentalism, views the processes within political discourse and society as a whole on a wider spectrum. Post functionalism however diverges from the positive aspects of neofunctionalism and intergovernmentalism. It posits that the processes within political discourse and society are conflictual that arise from incompatible belief systems (Hooghe & Marks, 2019). Genschel and Jachtenfuchs put it quite efficiently when they state that ‘Postfunctionalism posits a tradeoff between the functional scale of governance and the territorial scope of community: functional scale is large and transnational for efficiency reasons; community is small-scale and (sub-) national for reasons of social trust and collective identification.’ (Genschel & Jachtenfuchs, 2021, p. 350) . They of course view this from within the processes of discourse and society during the 2008 financial crisis compared to the Covid-19 pandemic, however, this can still be useful in understanding Hungary’s stance in regard to their illiberal adaptations since 2010. Since Primeminister (PM) Viktor Orban’s succession in 2010 the illiberal policies adapted have gone against the Rule of Law principles of the European Union (EU) and despite efforts to bring the Hungarian government in line through the triggering Article 7 trade-offs have been made from different stakeholders in order to not disrupt the “bigger” Union goals.

To view post functionalism as a complete theory we must also understand its different concepts that define it which are explained further below.

Fragmentation features nonfunctioning contemporary societies, social and political lives, that are not integrated and characterized by conflicting interests, values, and identities. In turn this pluralism creates dysfunctional roles for stakeholders and institutions which Moravcsik identifies in his concluding comments, noting the EU as 'a constitutional system that no longer needs to expand and deepen in order to assure its own continued existence' (Moravcsik, 2005, p.376). To this extent it could be understood that the institutions, like the European Commission, within the EU are unwilling to truly change to meet the challenges that they may face in order to not disrupt the status quo. Conclusively the EU and its institutions are potentially creating this fragmentation through their inaction if we consider Moravcsik's point. Yet the fragmentation may be more visible in the illiberal governments that have started to appear in Europe implementing authoritative policies that are not inline with Article 2 of the Treaty of the European Union (TEU).

The prior concept considers the characteristics of contemporary societies. The post functionalists focus on the decline of traditional institutions is also important to understand as it pertains to Hungary's descent from the liberal institutions of the EU. Indications of lost effectiveness and legitimacy come into question where institutions like the Commission are unable to face social divisions of behavior in member states with effective regulations. This is noted by Braun when he states that 'issues that are crucial for a country's perceived identity, as happened with the V4 [Visegrad group] countries following the so-called migration crisis, leads to an increased politicization' (Braun, 2020, p.925). As Hungary is part of the Visegrad group it portrays that the level of politicization around their illiberal acts to increase their national identity has shifted the Hungarian public away from the identity as Europeans. However this shared identity within the

Visegrad group notes a sense of intergovernmentalism with cooperation and a shared identity (Hooghe & Marks, 2019 and Braun, 2020).

In cooperation with these concepts post functionalism includes the issues surrounding individualization and globalization. Globalization has allowed for a lot of advancements in the international field, socially, technologically, increased interconnectedness, amongst other fields but this has also led to exclusion of traditional forms of community and identity creating a disequilibrium within the EU as noted by Hodson and Puetter (2019). Individualization becomes very prone to the argument surrounding Hungary's discourse and behavior towards the EU attempting to uphold the shared values of Article 2 in the TEU. This could clearly be seen in politicization of the 2015 migration crisis where they demonized the refugees through their 'xenophobic anti-immigration campaign' (Goździak, 10 October 2019). In regard to individualization it may be hard to properly determine it as it can only be measured objectively but for the sake of this paper it will be noted through the narrative and intensity of Hungarian discourse and actions against the EU.

As noted above the politics of identity and recognition are present in Hungarian political society. This concept focuses on how the activation of 'identity issues related to the configuration of the state' (Hooghe & Marks, 2019, p.1117) come about through the rise of radical left and/or right wing parties that create disorder in the established political systems of a nation, which in turn impedes on their supranational cooperation. Hooghe and Marks even indicate, in regard to such actions, that 'The systemic effect is to polarize societies on a cultural divide that arguably takes the form of a durable socio-political cleavage' (Hooghe & Marks, 2019, p.1117). This polarization is quite evident in Hungarian political discourse and even other literature notes the presence of high identity politicization that affects their interaction with the EU. Hooghe and

Marks also note that research has indicated that countries with high support for nationalist parties and in turn extensively eurosceptic have an 'exclusive attachment to the national ingroup' (Hooghe & Marks, 2019, p.1117).

Regarding the last concept of post-materialist values there may not be too much support for, in this research paper. This argument centers itself around the fact that as societies become more affluent and technologically advanced, material concerns give way to post-materialist values such as environmentalism, human rights, and quality of life. These values reflect a shift from material security to issues of identity, autonomy, and self-expression (Hooghe & Marks, 2009). The post materialist values that include human rights and quality of life are prevalent in Article 2 (Eurolex, 2 October 1997) but these materialist values are not upheld as important in former Soviet bloc member states such as Hungary where importance of identity, autonomy and self-expression are present. The 'nationalists resist dilution of national sovereignty in principle' (Hooghe & Marks, 2009, p.17) and in their view to do so it is more important to center political discourse and behavior around a notion of national identity, autonomy and self-expression.

As noted in the question of this paper, additionally noted in the hypotheses above, we are also focusing on legitimacy in the context of Hungary's discourse and behavior towards Article 2 of the TEU and its effect on the EC's legitimacy. Legitimacy is a concept that is defined by the 'relationship between the authorities that govern and those who are governed' (Tallberg & Zürn, 2019, p.586). This relationship is based on the belief as to whether the ones being governed believe that those in decision-making positions, which in our case would be Hungary prior and the European Commission to the latter, have the authority to make decisions on their behalf. Of course we must note that legitimacy is distinguishable from authority in the sense that

‘legitimacy refers to the perception that these rights are appropriately exercised’ (Tallberg & Zürn, 2019, p.586) whilst authority refers to an institution's perceived right to make decisions on specific policy (Rimkutė & Mazepus, 2023). In this aspect we could understand that a supranational institution may have its authority recognized in what policy it produces but its legitimacy may not be recognized due to the effect that policy has on a specific community. Contrary to this it could also be noted that authority leads to legitimacy in the sense that without authority an institution cannot have legitimacy. In certain terms it could be viewed that legitimacy is a byproduct of authority and as a supranational institution the European Commission does posit authority to the extent that they are one of the main policy making forces within the EU framework (Dimitrova & Steunenberg, 2017).

However, in the interest of this paper we must understand how legitimacy is obtained or more precisely how Hungary's behavior and discourse delegitimize the European Commission. To this extent we must understand the process of legitimation which examines the tone, intensity and narrative (Tallberg & Zürn, 2019) of a stakeholders discourse and behavior as to determine whether an actor is legitimate or not. We can only determine truly if the Hungarian government perceives the EC as a legitimate institution rather than the citizens of the country. Tallberg and Zürn state that they ‘find it unlikely that individuals possess the knowledge, time and capacity to rationally evaluate IO [International Organization] features independent of how these features are communicated, contested, and justified in public discourse.’ (Tallberg & Zürn, 2019, p.590). To this extent we can not truly consider the public views empirically. Additionally, we must define ‘tone’ as: interactions that are negative or positive towards either party, ‘narrative’ as: portrayal of either party being positive or negative, and ‘intensity’ as: the frequency of certain actions or discourse noted in the data. In this understanding we note that the process of

legitimation as objective but this is in line with the definition of legitimacy as it focuses on the belief one entity has in a political actor.

To consider the issue legitimacy from the Hungarian government's point of view we must firstly note how they use the discourse around identity to enhance their authority and remove the legitimacy of the EC. Supranational organizations are constantly under scrutiny and in that form 'exposed to delegitimation attempts to varying extents.' (Tallberg & Zürn, 2019, p.591). In this context we would expect that there many discursive products from the Hungarian government that will vary in tone, intensity and narrative and delegitimize the EC.

Secondly, we will consider how the behavior and discourse of the EC against Hungary's democratic backsliding will affect the process of legitimation. The Commission does seek to enhance participation from the public and 'reference to stakeholders' (Hensell, 2022, p.154) in order to legitimize themselves and through this effect create a collective EU identity where we share the same values in the Union. However, in the view of Hungary we would consider that the discursive and behavioral actions of the Commission regarding their democratic backsliding are not legitimate and demonize the Hungarian regime and the persons it represents. Here we could also consider that the Commission's authority is diminished.

Finally, we should also consider the societal factors that may influence the outcome of delegitimation. We already consider identity as an important characteristic that leads to the Commissions delegitimization by Hungary's government but we must also acknowledge 'that a broad range of individual characteristics may matter for legitimacy beliefs... political knowledge,..., economic standing, and personal values' (Tallberg & Zürn, 2019, p.592). The representatives of the Hungarian government may possess these traits and when analyzing the tone, narrative and intensity of the evidence further in the paper we may notice that individual

beliefs may enhance the delegitimization of the Commission. If they are in line with the Fidesz parties political ideology or individual remarks still pertains to the fact that the authority of the Commission is not respected. This will probably be noted from the exclusion of Hungary in decision making processes in the EU leading them to a conflictual position.

In accordance with the above we also need to understand the social factors that lead to legitimacy for a supranational institution like the EC. They try to incorporate a sense of trust, cooperation and accountability with all member states. Hensell (2022) researches on the strategies used to garner trust, cooperation and accountability in order to strengthen the EC's legitimacy. This cannot be accomplished truly unless 'a stakeholder affected by the decisions of a political institution... [is] included in the making of that decision' (Hensell, 2022, p.154). Using stakeholders to increase their legitimacy, in the form of experts and other public participation for example, the EC creates more trust, cooperation and shared accountability with EU member states. However, in the aspect of Hungary's democratic backsliding we would consider that these tactics to use stakeholders by the Commission are futile as Hungary would not view the policies set up by the EC as legitimate. In this case it could be stated that Hungary are stakeholders but not ones that adhere to the notions of trust, cooperation and accountability with the Commission. If we consider both theories of post functionalism and the process of legitimation they both help to explain how different beliefs take form and ultimately if the conflictual process from which discourse and behavior are analyzed can determine whether a political entity is legitimate or not. Both theories are based in the conception of belief where authority and identity are present but at varying levels. Post functionalism is focused on the identity beliefs whilst legitimacy is based on the authority beliefs society holds toward an entity. Yet, to this extent we can consider Hodson and Puetter's (2019) statement, that the EU as a whole is in a disequilibrium due to societal

tensions in the political system driven by consensus, and this can be taken into consideration for our purposes as well. The Commission as a EU institution can also then be considered to be in disequilibrium due to Hungary's illiberal actions since 2010 when the Fidesz party, with Viktor Orbán as its leader, formed a government. This can also be considered throughout the paper but main focus will be held on the theories of post functionalism and legitimacy. The research will analyze the tone, narrative and intensity of discourse and behavior expressed by Hungary and the European Commission in regard to the prior stakeholders illiberal acts that are not in line with Article 2 as well as the activity surrounding the attempts triggering Article 7 against Hungary. From this we can determine whether the acts by Hungary since 2010 have delegitimized the Commission and what characteristic explains how they have succeeded in doing so.

*Hypothesis: The Hungarian government's increased politicization of the national identity during different crises coupled with the Commissions inaction toward Hungary's democratic backsliding has delegitimized the European Commission.*

### **Method: Process Tracing**

Considering the fact that the research is focused on a singular case it was determined that process tracing would be the most appropriate method to analyze the Hungarian discursive and behavioral actions towards the EC in order to determine whether this delegitimizes the Commission. Process tracing (PT) is simply put as tracing a mechanism that can elicit inferences about causal explanations from within a case (Toshkov, 2016). Through this we are only focusing on a single-case and such 'studies examine multiple pieces of evidence about a single unit' (Toshkov, 2016). In this case we will be deriving causal chains from a multitude of sources



to determine the mechanism that explains the outcome To this extent we could also employ the analyticist approach as proposed by Hilde van Meegdenburg who believes that the ‘assumptions of generalizability’ (Meegdenburg, 2023, p.405) in PT are too inflexible. She would rather treat the mechanisms as ‘abstract constructs that are adduced from multiple concrete, contextually embedded, and largely *idiosyncratic instantiations*’ (Meegdenburg, 2023, p.405). In essence she is noting the shortcomings of process tracing by addressing the challenges of causality and generalizability. This will be further developed in this section but firstly we focus on the generalized PT method.

PT as stated incorporates the method to trace mechanisms of causality ‘whereby a cause (or set of causes) produce an outcome to both: (1) make *stronger evidence-based inferences about causal relationships* when we have within-case evidence of each step of the causal process (or absence thereof) in-between a cause and outcome,... (2) because tracing mechanisms gives us a better understanding of *how* a cause produces an outcome’ (Beach, 2016, p.463). In consideration of this I would need to find evidence that has a certain level of uniqueness and certitude which would mean finding information that ranges from “Straw-in-the-wind” to “doubly decisive” (Toshkov, 2016). This entails that we must gain confidence in one of our hypotheses and either dismiss or make other explanations less feasible. By using PT we can find the evidence to show what causal mechanism is creating the delegitimization of the European Commission from the Hungarian position as members of the European Union. To this extent it is a qualitative research paper that bases itself on acquiring evidence that comes from the discourse and behaviors of the Hungarian political elite in relation to their democratic backsliding since 2010. Considering the theory of post functionalism we are searching for evidence which states a conflictual act by Hungary versus the European Commission; simplified as searching for

mediating variables. Much previous research has determined that Hungary has been democratically receding since 2010, which has also been shown in many studies, such as V-Dems research into the field of global democracy which sees Hungary as an electoral autocracy (Nord et al., 2024).

From this standpoint we can hypothesize how this democratic backsliding has led to the delegitimization of the European Commission. As no study has been previously done to determine how Hungarian democratic backsliding affects the Commissions legitimacy it is considered most appropriate to form as many hypotheses as possible from the supporting theories that can lead us to causal explanations that are concluded into one. Unfortunately there is no guarantee that this is the true explanation (Toshkov, 2016).

As touched upon, to do proper PT we need to get the evidence that either confirms or contradicts the hypotheses. This evidence though will take different forms, such as the examination of written sources, minutes from recorded minutes, votes held on triggering article 7 against Hungary, studies with similar directions, etc. Of course verbal evidence, like interviews, could be useful as well but in consideration of the researchers language constraints, lack of contacts and also time the research will be lacking in that aspect. Despite this we will be able to take information from a multitude of sources and triangulate (Toshkov, 2016) the evidence to help us determine the certitude and uniqueness of the hypothesis. This will include the use of previous studies regarding Hungary and article 7 of the TEU, new articles from various outlets that concern themselves with the Hungarian democratic backsliding and EC's actions towards this, Voting records from the EU in regard to triggering article 7 against Hungary, research into the democratic deficiency in Hungary, statements from Hungarian and EC officials in regards to democratic issues and article 7, and other sources that can be useful to elicit a causal chain

between X (Hungarian democratic backsliding) and Y (EC legitimacy). In this regard we can state that we are going into depth in the case of Hungary's effect on the Commissions legitimacy which in turn allows for visibility of covariation between variables and the causal mechanisms that connect them (Toshkov, 2016).

As the paper will look at all possible evidence from 2010 we are reconstructing the order of events that could explain the outcome. In the interest of this paper we will focus on chronological reconstruction of events in pursuit to note if there are any potential deviations from the hypothesis, if there are any specific instances that enhance the hypothesis outcome, and any events disproving Hungary's democratic backsliding affecting the legitimacy of the European Commission. We must consider that the 'evidence provided... [will be] quite anecdotal because it is impossible to develop clear empirical test of an underlying causal mechanism' (Beach, 2016, p.464) but rather we need to examine the evidence through the process of legitimation (Tallberg & Zürn, 2019) in order to determine whether the Commission's legitimacy is threatened. As discussed in the theoretical framework we will need to note the intensity, tone and narrative (ITN) of the evidence that we obtain to determine legitimacy. As we are mainly looking back at the discourse and behaviors of the EC and Hungarian government, in regard to democratic backsliding and triggering of Article 7, to determine ITN as these form the beliefs of legitimacy in the 'three central institutional features of IOs- authority, procedure, and performance' (Tallberg & Zürn, 2019, p.591). By chronologically examining the events leading to Hungary's development into an electoral autocracy we can more clearly extract the causal explanation for how this affects the legitimacy of the EC. The Eurobarometer will also be used to show the opinion of the Hungarian public in regard to democratic perceptions in regard to the EC and within Hungary. In the interest of this paper I will also consider the EC as the main

representative body of the EU as it is one of the highest decision making powers and therefore any information that includes the EU will be considered as evidence towards the EC's delegitimization, either directly or indirectly.

There are of course weaknesses to using PT such as the fact that we are bringing more context into the explanatory account despite its relevance to be a true causal explanation. Using PT essentially means that we are studying a single case out of a population meaning that we are unable to generalize the outcome to the rest of the population (Toshkov, 2016). In turn, the use of bringing in more and more evidence from multiple sources regarding one case might not give us the causal explanation truly. Additionally, we cannot build new theories out of the case and can only rely on existing theories. To this extent we cannot consider really that there is any other theory built upon the chosen one that can prove the hypotheses. In essence it is quite limiting as a method to use for a paper but considering that we are working with a token-level question (Toshkov, 2016) there is little choice. Yet, we can perhaps state that the case still has either substantive or scientific relevance to the world of social and political sciences.

Of course, we could perhaps use the analyticist approach from Meegdenburg's position as a use for 'Foreign Policy Analysis (FPA)' (Meegdenburg, 2023, p.405). As this paper is analyzing a supranational relationship I propose the possibility to use the analyticist approach and therefore also hope to get a more certain explanation as to whether Hungary's democratic backsliding delegitimizes the European Commission. In this approach Meegdenburg is 'treating mechanisms as analytical constructs... [to] (a) study how a mechanism or concatenation of mechanisms led to a particular outcome; (b) assess how the mechanism(s) functioned in a given context; and (c) abstract from the specific instantiation(s) more general propositions' (Meegdenburg, 2023, p.405). To this extent the mechanism is considered an abstract concept that obtains a certain

nature of social phenomena (Meegdenburg, 2023) as the mechanism may not only be singular but rather a population of mechanisms is present that can help to define the process. Considering that post functionalism is the main theory which I base this study around we do have multiple concepts, like fragmentation and pluralism, a decline in traditional institutions, individualization versus globalization, the politics of identity and recognition, and post- materialist values, we notice that there are multiple concepts that can help to explain Hungary's democratic backsliding effect on the Commission's legitimacy. Of course, it is noted that these different concepts share a causal mechanism in the form of identity which will be focused on as the hypothesis to be proven or not.

What the analyticist approach to PT is trying to capture is '*concrete instantiations*.'

(Meegdenburg, 2023, p.408) and by emphasizing on the multitude of mechanisms that may exist in a study they can in turn have the same outcome within the same environment. Yet it can also be that the mechanisms result in different outcomes which we must be prepared for in this paper. In order to reach these concrete instantiations Meegdenburg suggests three steps in which to obtain knowledge of a mechanism. Firstly, I would need to define the '*particular instantiation*' (Meegdenburg, 2023, p.411) by noting the common characteristics that appear in the case and how these advance the process. Secondly, I would examine the '*functioning of the mechanism in its specific context and as part of a specific process*'. (Meegdenburg, 2023, p.411) and thirdly, I would need to '*compare and contrast the instantiation to the ideal type*' (Meegdenburg, 2023, p.411) deriving insight about the functions of the mechanism. This is how I can focus the case to understand the overall effect identity has in the process of delegitimizing the Commission in the belief of Hungary.

Just like Meegdenburg I can argue that these actors '*act similarly under the same structural*

conditions.’ (Meegdenburg, 2023, p.412) avoiding minimization of agency. In this aspect it is understood that mechanisms are portable as the mechanism, in this case identity, occurs more frequently over time which can be seen in Hungary’s reiteration of a Christian national identity at multiple occasions. However, these mechanisms are also indeterminate and can result in different outcomes which leads to an ‘open space for *idiosyncrasy*, *agency*, and *contingency* in analyticist PT.’ (Meegdenburg, 2023, p.412). This facilitates diversity and individual influence at the specific case level, simultaneously deepening our understanding of the world by gradually illuminating the diverse mechanisms operating within it at a more abstract level (Meegdenburg, 2023).

In view of this, I consider that the analyticist approach may be more functional for this paper as it better serves my analyses when examining a supranational relationship and also over a large period of time. It will allow me to get a more in-depth investigation and potentially increase the variation and agency at the case level. There are weaknesses to the approach as well, such as mistaking portability for generalizability can occur and Meegdenburg even warns to use other terminology compared to “regular PT” which could include abstract mechanism instead of causal mechanism (Meegdenburg, 2023). In context it should be approached from a ‘contextual *embeddedness* or *situatedness* of concrete instantiations.’ (Meegdenburg, 2023, p.417). This may allow for more openness to the results and portability to other similar cases for further research.

### **Post functional development of Hungary**

In the case of Hungary and their democratic backsliding the EC has had a continual battle to justify their legitimacy due to their failure to bring Hungary in line with Article 2 (Eurolex, 2

October 1997) since 2010. It is interesting to note that Hungary prior to 2010 was perceived as being country at the forefront of liberalization politically and economically since the end of the Cold War ( Appel, 2019 and Peiron, 2019) but since the accession of the Fidesz party, under Viktor Orbán, the country has seen a high decline in democratic features and perhaps a return to their, not so distant, authoritarian society. There have been attempts to trigger Article 7 against the Hungarian government, which would relinquish their voting rights in the EU (amongst other participatory features) and halt all funding received from the EU. However, as noted by multiple researchers the attempt to trigger said Article was unsuccessful and previous remedies of minor improvements to the Hungarian state of affairs has seemed more proficient (Peiron, 2019; Priebus, 2022; and Appel, 2019). Previous papers/ studies have focused on the efficiency of the mechanism that is Article 7 to determine how efficiently, it can uphold the Rule of Law, the different EU institutions utilize it against democratically deficient member states, the EU is able to address the illiberal threat from different member states, and more to be evaluated. I will also incorporate the information obtained in these previous papers with my theories to analyze the extent to which it can prove if there is an effect on the EC's legitimacy due to Hungary's democratic backsliding.

### *Supermajority and a New Constitution*

In 2010 the Fidesz party, led by Viktor Orbán, gained 'a landslide victory in the national elections, acquiring more than two-thirds of the seats in the parliament' (Hajnal & Boda, 2021, p.78). This has been explained to be due to the ineffective socialist-liberal government performance coupled with the 2008 economic crisis which led to austerity measures, by multiple international organizations such as the European Central Bank, being placed on the country.

Orbán's exploitation of the situation led to a super majoritarian government that allowed for him and his party to pass a reformed constitution (Appel, 2019). Peiron examines the implications that this constitutional reform has had in relation to the Rule of Law in the TEU. He notes that it 'consisted of systematically dismantling the checks and balances provided in the [previous] Constitution by repealing certain laws, enacting counter powers, and appointing officials loyal to him [Orbán] to the remaining control positions' (Peiron, 2019, p.74). From Hajnal & Boda's interviews they noted that there were 'large-scale policy reforms in the fields of education, energy, agriculture, and social policy, among others.' (Hajnal & Boda, 2021, p.79) which indicated a high degree of centralization of the political apparatus, in turn exert influence over the public and private sectors, and society as a whole. This constitutional reform showed clear signs of post functionalism as they are dismantling the traditional institutions (Hooghe & Marks, 2019) that have been built up in the previous constitution. The new Constitution was adopted in April 2011 in which it targeted the judiciary 'by lowering the retirement age from 70 to 62 with immediate effect' (Peiron, 2019, p.75) which led to an immediate departure of the most senior judiciary officials. They were replaced expediently and with persons loyal to the new government (Peiron, 2019 and Gostyńska-Jakubowska, 22 January 2016). By doing so they moved away from their Constitution, which of course can be judged as quite new, that was grounded in the fact that the judiciary should be independent from the political institutions. This was in clear violation of the Rule of law but yet the Commission did not trigger Article 7. Rather they 'initiated an infringement procedure against Hungary with respect to the... measures lowering the compulsory retirement age for judges.' (Peiron, 2019, p.75). This case was brought in front of the Court of Justice of the European Union (CJEU) by the Commission (Peiron, 2019) under the Anti- Discrimination Directive (EU, 2000) which led to a modification of the new



Hungarian Constitution. Despite a minor success in this case the overall Constitutional reform was still in place and not inline with the Rule of Law set out by the EU. The fact that the 'professional judges are appointed by the President of the Republic [of Hungary] and may be removed from office only on the grounds, and in accordance with the procedures, specified by law.' (E-justice, 17 November 2015) is quite concerning as the courts are still not independent. This illiberal move from traditional institutions is in clear violation of the Rule of Law which the EU so heavily rests upon, begging the question why this was not a major focus of the Commission's infringement procedure.

Despite this one aspect of the new Constitution, there were other factors within that went against Article 2 as well (Eurolex, 2 October 1997). As noted by Hajnal & Boda (2021) the Fidesz government, with its two-third majority, was able to make extensive policy reforms within education, energy, agriculture and social policy to just say a few. Through the new constitution they were able 'to rewrite Hungary's electoral rules to favor Fidesz in future elections... [by changing] the rules of proportional representation and employing gerrymandering' (Appel, 2019, p.259) in order to favor them. Additionally, it allowed for the implementation of laws that criminalized the activities of NGOs like Amnesty International and repressed academic institutions like the Central European University, established by George Soros in 1991 (Appel, 2019) which subsequently was forced to shut in 2017 (Thorpe, 6 October 2020). George Soros is Hungarian philanthropist that is 'a prominent international supporter of democratic ideals and causes' (Soros, 2024) and has been one of Orbán and the Fidesz parties main targets of anti-semetic campaigns driven in Hungary. This narrative is essentially supported in the constitution as the 'preamble- the "profession of a national faith"- enshrines an ethnic vision of Hungary as a Christian country and... evokes historical grandeur.' (Mueller, 25 April 2011).

This fragmentation is in essence enshrined in their new constitution to create a Christian Hungarian identity separate from the “others”. It is difficult to properly define what “others” fully entails but we can understand this simply as those that do not agree or sympathize with the Hungarian regime and their ideals. Returning to the fragmentation that this post functionalist reformed constitution creates, we can understand that it is done through the individualization of the Hungarian people and playing into nationalistic sentiment. Though Hooghe and Marks focus on integration the idea that ‘Mass politics in elections, referendums, and party primaries open the door to the mobilization of national identity’ (Hooghe & Marks, 2019, p.1117) we can still attribute this to the case as the Fidesz party, representing Hungary, is politicizing their constitution to induce a higher and individual form of national sovereign identity. This is of course not directly aimed at the EU or the European Commission but considering the notion that the EU is based on a collective identity (as noted in Article 2 of the TEU) it must be considered that the 2011 constitutional reform in Hungary seeks to separate itself from the EU through the use of conflictual ideals. Systematically, they are polarizing the society through a cultural divide that ‘takes the form of a durable socio-political cleavage.’ (Hooghe & Marks, 2019, p.1117). From this point of view we only understand that the actions by Hungary to implement a new constitution featured post functionalist attributes that, at least, start to push the country to become one of the former soviet blocs ‘electoral bureaucracies’ (Nord et al., 2024). However, I must also consider factors that may have led to this and as briefly explained above the shift from a socialist- liberal government to a right wing populist government was due to ‘years of economic mismanagement..., Culminating in a major financial crisis’ (Appel, 2019, p.258). The utilization of the Euro crisis by Orbán to garner support and win a super majoritarian parliament was very successful and allowed for the constitutional changes that Fidesz implemented. As noted the

Orbán administration put high taxes on banks to counter the budget deficit from the Euro crisis and was hailed as a successful 'crisis tax' (Bod, 13 April 2011) by the public. Hooghe and Marks (2019) look at the effects of the Euro crisis and its effect on integration. They noted that to be able to counter the effects of the economic crisis the EU would need to rely on the 'result of intergovernmental bargaining.' (Hooghe & Marks, 2019, p.1118). Yet with the implementation of austerity measures on a supranational level, affecting all member states, led to politics of finger pointing and a disunion within the EU. The Orbán administration's increase in taxes was a reaction to this and showed that 'EU coordination met rising resistance to supranational solutions as the crisis became salient in domestic politics' (Hooghe & Marks, 2019, p.1119). This became a major pressure point for Hungary against the EU which they could build further upon in the future. Nonetheless, this crisis showed that governments, just like Hungary's, were 'acutely aware of public opinion' (Hooghe & Marks, 2019, p.1119) and could politicize the national discourse and serve as a mechanism on which to build their separate and conflictual national identity. With this in mind, the fragmentation created by the EU institutions during this crisis brought, perhaps unintended, consequences of delegitimization despite neofunctionalist efforts to create policies that allowed the union to tackle the challenge collectively. From this understanding my first hypothesis holds true, yet, there can be an argument made that the measures taken by Hungary to counter the economic measures implemented by the ECB were individual acts that substantiated from ideals of individualization versus globalization. To this extent it can be understood that the Constitution in itself is an act of post functionalism to a certain degree and the abstract mechanisms of instantiation. However, this does not fully determine whether the Commission's legitimacy and its role as Guardians of the Treaties is recognized by Hungary. The new Constitution that they formed has been noted to be very

authoritarian`and what many critics see as a clear departure from shared European standards for liberal democracy.` (Mueller, 25 April 2011). With consideration to the treaty of the European Union and Article 2 that rests heavily on the notion of democratic principles that should be upheld in all member states (Eurolex, 2 October 1997) the narrative of the 2011 reformed Hungarian Constitution enforces undemocratic acts such as Article L, paragraph 1, that stipulates that the Hungarian government only protects the right of marriage between a man and a woman setting a high tone on the fact that it is in the interest of national survival (Constitute project, 2011). This indicates that LGBTQ+ minorities are not protected under the constitution and therefore go against the Article 2 of the TEU regarding minorities, in turn, delegitimizing the EU and EC. Even as discussed previously this also relates to the preamble of the constitution where they introduce the notion of being built on solely Christian values and that they `recognise the role of Christianity in preserving nationhood.` (Constitute project, 2011). The strong reliance on a historical narrative in the Constitution focused on a nationalistic Christian identity evokes a separation from other minorities in the country that are not considered to be representative of the Hungarian nation (Mueller, 25 April 2011). Yet, in different parts of the Constitution there are notions of support for the European project, were even in the preamble they state; `We believe that our national culture is a rich contribution to the diversity of European unity.` (Constitute project, 2011). This could indicate that there is still a belief in the European project considering the tone and narrative of this passage but it is quite singular in its weight and does not provide counterweight to the narrative of national identity in the document.

These features are not all of the constitution but do cover some of the main themes that convey what the Hungarian government has stated and built upon for other challenges met in the future. This mechanism proper (Meegdenburg, 2023) of identity within the Constitution has laid the

groundwork for their ability to stand against the EU and indirectly delegitimizing the EC. The Constitution has allowed the Fidesz government, and Orbán, to implement laws that enhance their position to further their agenda surrounding the Christian Hungarian Identity. In the next section I will explore the migration crisis of 2015 which set off a lot of issues in the EU as a whole. In this the Hungarian were adamant to not be of any real support and even showed xenophobic and anti-muslim dispositions (Goździak, 10 October 2019).

In a Eurobarometer study conducted in Autumn of 2013 where the trust for the national government was 58% tending to not trust the Hungarian government, whilst trust for the Commission was at 50% compared to 40% distrust (Eurobarometer 80, 2013). Considering the development above the Hungarian government was unable to change the public opinion on the Commission's legitimacy but this may change with the next crisis.

### *The 2015 Migration Crisis and Hungary's Action*

The European Union has mainly been a supranational institution that has had heavy expertise in the fiscal policy arena as this was its main area from the beginning when it was known as the European Coal and Steel Community (Directorate-General for Communication, 2024). Since 1993, with the establishment of the EU through the Maastricht Treaty (a.k.a the TEU) the Union has become more politicized with more areas of policy being covered, within which migration policy has been active as to find a common European policy framework. This was done through the Dublin Regulation (replacing the 1990 Dublin convention) established in 1999 that has seen subsequent changes since to try and better serve the EU and migrants according to the 1951 Geneva Convention on the protection of refugees (Directorate-General for Migration and Home Affairs, 2024). This was seen as quite an extensive and well established regulation that the EU

put forward that also was inline with humanitarian standards. Yet, this regulation had its limits which was very evident when the 2015 Migration crisis swept the European continent and presented a Union that was unprepared and overwhelmed when ‘An estimated 2.7 million immigrants arrived in the in EU-28’ ( Hooghe Marks, 2019, p.1120). The Dublin regulation ‘was not designed to absorb large numbers’ (Hooghe & Marks, 2019, p.1120) and a large abandonment of the system occurred when essentially all member states subsequently decided to abandon it and introduce border checks in contradiction to the Schengen agreement to stifle the numbers of migrants entering their countries.

The Hungarian response to the migration crisis was quite predictable and shown when they ‘employed anti-immigrant, anti-muslim, xenophobic rhetoric, infamously referring to refugees as “Muslim invaders.”’ (Appel, 2019, p.259). This rhetoric ties back to their identity as Christian Hungarians that should not be integrated with other cultures which do not share their Christian values, which in turn are not overly clear except as to protecting family values (considered anti-LGTBQ+ rhetoric) and anti-immigrant (more specifically Muslim immigrants). The EU during this crisis requested the Hungarian government to house ‘1,294 refugees.’ (Goździak, 10 October 2019) but instead of following this, seemingly simple, request the Hungarians opted to utilize ‘approximately 28 million euros on a xenophobic anti-immigrant campaign’ (Goździak, 10 October 2019). This was a clear call by Orbán and his government to rally people behind the Christian Hungarian identity moving the Hungarian mindset from globalization and toward a more individual one centered around the national identity. This was even more evident with the construction of a fence on the southern border of Hungary, facing Croatia and Serbia, in late 2015 (Appel, 2019 and Goździak, 10 October 2019), erected to keep the “others” out. This could be viewed as a literal example of post functionalist action in the understanding that they want to

separate themselves from others and create a society that is individual from, in this case, the EU.

‘Despite Hungary’s EU commitments, Orbán asserts that it is Hungary’s sovereign right to ensure that the country remains ethnically Hungarian and Christian, and that it not become a society of migrants.’ (Appel, 2019, p.259).

Orbán and his government utilized this situation through this rhetoric very effectively to garner even more support for their regime and this was also notable in their cooperation with other EU member states that they were in close cooperation with through the Visegrad group (V4) (Braun, 2020). This group consists of Hungary, Poland, Slovakia and Czech Republic (Braun, 2020), all former Soviet bloc countries, and are all collected together in a group that interests itself in the development of their region and can be considered a counter group to the EU after all its crises (Braun, 2020). They have found common ground surrounding the different crises that have impacted the EU since their accessions in 2004, including the Euro and migration crises. This group showed quite a united front in light of the migration crisis in 2015 showing that Hungary does have intergovernmental tendencies but only with those that share similar values and support them in other aspects, such as in the V4 group. Even in light of the pressure from the EU to support member states with the number of immigrants entering Europe during this period member states like the ones in the V4 could ‘stonewall pleas for accepting refugees without fearing that their defection would come back to bite if others followed suit.’ (Hooghe & Marks, 2019, p.1121). This is inline with the intergovernmentalist approach but considering that this was done against the EU and the Dublin system, and subsequently the EC, we would also consider it a post functionalist act of fragmentation as they only sought to improve their own national interests that happened to be in accordance with other member states, specifically those in the Visegrad group. Hooghe and Marks (2019) note that this is present in most acts by member

states during this crisis, mostly seen through the actions to divert from the Schengen agreement and implement passport checks at borders between member states. The Schengen agreement that came under this pressure 'produced severe intergovernmental conflict about sharing the crisis burdens, and led to high domestic politicization.' (Schimmelfennig, 2018, p.970). This politicization is even noted by Braun in his discussion on identity politics affects on integration stating that 'When integration moves into issues that are crucial for a country's perceived identity... it leads to an increased politicization of the integration process.' (Braun, 2019, p.925). This can also be attributed to the question of legitimacy as high degrees of politicization could lead to a crisis of legitimacy for the EC as 'the rise of Euroscepticism across the continent have made it abundantly clear that there is a growing disconnect between the EU and the people it governs' (Hensell, 2021, p.152).

However, with this crisis of immigration the need for extensive reform of the EU's collective migration and asylum policy was necessary and this was noted by the EC that started a process to reform already in 2015 in response to the crisis (Hooghe Marks, 2019). With the default of the Dublin regulation there were 'outlined immediate steps to tackle the crisis along with medium-term reform of the Dublin system.' (Hooghe & Marks, 2019, p.1121) but this was in most part rejected by member states setting a precedent of collapse in the system itself. Luckily, supranational cooperation allowed it to persevere but only with the result of increased nationalistic parties in member states utilizing the xenophobic, anti-immigrant sentiment, making it 'vastly more difficult for national governments to craft compromise deals at the European Level' (Hooghe & Marks, 2019, p.1122). Coupled with this was the lack of a common asylum procedure under the EU as all member states still possessed their own (Schimmelfennig, 2018) and as noted above, Hungary was not very welcoming in this aspect. As of September 2015 they



even went as far as to criminalize the illegal crossing of their new border fence, damaging it, or even trying to obstruct the construction of it with a punishment spanning from three to ten years in prison (Goździak, 10 October 2019).

In addition to this new law the Hungarian citizens were asked on October 2 2016 in a referendum if they `want the European Union to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?' (Goździak, 10 October 2019). Despite a low turnout, which should not have qualified as a valid result according to Hungarian law, the referendum was approved (MacDowall, 2 October 2016) and in light of this Viktor Orbán broadcasted a televised speech where he proclaimed:

*`The European Union's proposal is to let the migrants in and distribute them in mandatory fashion among the Member States and for Brussels to decide about this distribution. Hungarians today considered this proposal and they rejected it. Hungarians decided that only we Hungarians can decide with whom we want to live. The Question was `Brussels or Budapest' and we decided this issue is exclusively the competence of budapest.`* (Goździak, 10 October 2019).

This was one of the first main indications that the Hungarians were distancing themselves from the European Union. Orbán's speech was heavily centered around Hungarian national identity and pushing anti-EU sentiment creating fragmentation with promotion of individualization. Assisted by heavy xenophobic, anti-immigration campaigns that even took aim at blaming the EU for the immigrants "illegal" entrance to Hungary (ECHR, 20 January 2020) insinuating that it is not the national government's fault for the influx of migrants but rather the EU and its

institutions that are responsible for this. In this effect Hungary deemed it fit to send all illegal immigrants back to Serbia considering it a safe country which the EU Parliament (together with the EC) accepted after amending the asylum law (Halmai, May 2018). In contrast the European Court of Human Rights (ECHR) stated that the electoral procedure was invalid and that the removal of migrants to Serbia was illegitimate (ECHR, 20 January 2020 and Halmai, May 2018). Even in November 2015 the EC received a 'European Citizens' Initiative (ECI)' (Maurice & Zalan, 30 November 2015), as well as a EP resolution in December of the same year, to initiate Article 7 procedures against Hungary as they had broken multiple European fundamental rights. These were in light of the inhumane policies implemented against migrants and even fear that the 'measures that are antidemocratic, xenophobic and contrary to the founding principles of the rule of law' (Maurice & Zalan, 30 October 2015). Conclusively the Commission did not trigger Article 7 in 2015 as it deemed that the framework to initiate the "nuclear option" with a successful outcome would not be possible (Kochenov & Pech, 11 May 2015). However, after amending the procedure to better serve the Union and better uphold the EU fundamental rights the European Parliament voted to in September 2018 to trigger Article 7 against Hungary (Appel, 2019). This was after 'A report by Dutch MEP Judith Sargentini into Hungary and Prime Minister Viktor Orban's Fidesz party' (Cuddy, 12 September 2018) which detailed the democratic backsliding in Hungary and breaches of EU values. The reports findings noted 'that Hungary had threatened the Rule of Law, press freedom, academic freedom, freedom of association, and the rights of minorities, among other violations' (Appel, 2019, p.261). This was evidently not well received by Hungary whose Prime minister, Viktor Orbán, defensively insinuated that this was blackmail and that the 'report applies double standards, [that] its is an abuse of power, it oversteps the limit on spheres of competence, and the method of its adoption

is a treaty violation' (Cuddy, 12 September 2018). He even went on to say that 'Hungary shall continue to defend its borders, stop illegal immigration and defend its rights- against you, too, if necessary' (Cuddy, 12 September 2018) indicating a direct threat to undermine the EU and its legitimacy considering that he also refers back to the Hungarian people being more capable of determining their rights.

Despite the attempt to trigger Article 7 the EU was unsuccessful in making it a reality. This has been explained to be due to the rise of far-right 'populist parties in France, Italy, Germany, Sweden, Austria, and other countries' (Appel, 2019, p.262) which has led member states to shift focus more internally and ignore the xenophobic and anti-muslim rhetoric displayed in Hungary. This was noted as well as a tolerance by the European right in the EP, of Viktor Orbán and his Fidesz party, where the center- right European People's Party (EPP) continually ignored the blatant violations of 'EU norms until the breaches became too frequent and extreme to ignore.' (Appel, 2019, p.262) as the substantial support the Fidesz party got in the EP was essentially for the EPP's continued partisan advantage. The EPP were even noted to dismiss the report submitted in 2013 as 'politically motivated' (Appel, 2019, p.262). Yet, the 2018 triggering of Article 7 saw the implications of Hungary's continued democratic backsliding as the EPP went against Fidesz by suspending them from the group in 2019 (EPP, 20 March 2019, and Kelemen, 2020) following a personal attack by Orbán on the Commission (Appel, 2019). Together with the 2018 resolution by the EP that 'garnered 448 votes in favour and 197 against' (Platon, 2022, p.544) to trigger Article 7 the tide seemed to be turning in favor of democracy and the values of the EU. However, this resolution is still under review as many other challenges, like the Covid pandemic and the Ukraine-Russia war, have emerged and the EP resolution 'could be challenged according to ECJ case law.' (Platon, 2022, p.546) which the Hungarian government has done. By

doing so they have managed to slow down any determination by the Council whether to proceed with triggering Article 7 against Hungary as the EP resolution was only to determine if the procedure should be considered by the Council and the EC (Platon, 2022 and Appel, 2019).

From these previous papers on Hungary's democratic backsliding it could be understood that the fragmentation and individualization identified are due to many actors' involvement. Yet it is notable that the actions by the Hungarian government under the Fidesz party and Viktor Orbán have led to many politicized policy implementations that have led to a high fragmentation and pluralism against the EU. Hungary's xenophobic and anti-muslim sentiment (Goździak, 10 October 2019) was quite widespread and put them on a collision course with the EU and Article 2 of the TEU. Similarly, the substantial tone that was put on the Christian Hungarian national identity (Goździak, 10 October 2019; Mueller, 25 April 2011, and Macdowall, 2 October 2016) showed a high degree of individualization and anti- EU sentiment which was also noted in comments by Orbán and other Fidesz representatives after the EP resolution to trigger Article 7 (Appel, 2019). From a post functionalist perspective we can note a clear procedure by the Hungarian government to seclude itself, mostly, through the use of a Christian Hungarian identity and brandishing the EU and those in the EC as agitators through various statements and ad-campaigns. However, the Commission in turn has not been too active in pushing back against Hungary (at least not publicly) but rather letting the other institutions within the EU lift the question of democratic backsliding and breaches of the Rule of Law within Hungary.

Considering that the Commission is labeled as the Guardians of the Treaties it could be presumed that they would be more active in actually standing up for the values more clearly than they did during this period.

Additionally, in a Eurobarometer survey from Autumn of 2018 there was an overall lower trust

of the EC at 83% for the whole EU (Eurobarometer 90, 2018). For Hungary the trust for the EC has risen slightly from 2013 to 52% (Eurobarometer 90, 2018). This indicates that the Hungarian government is continually unable to change the public opinion of the Commission and therefore not delegitimizing them in the public opinion. In turn this indicates that the Hungarian government are the ones that find the Commission illegitimate through their acts and discourse.

### *A Pandemic and then a War*

In 2019 the world was engulfed in a pandemic known as the Corona- crisis (Covid-19) which stopped Europe and the EU from functioning properly as countries started to close their borders ‘in the name of security’ (Genschel & Jachtenfuchs, 2021, p.350). This crisis led to an essential closure of the Schengen area and saw more limitations on EU interactivity through ‘restricting domestic movement to limit contagion.’ (Genschel & Jachtenfuchs, 2021, p.351). The main focus by most member states (MS) during this crisis was security and this would come in different forms as all MS acted very independently in this situation despite tries by the EC and other institutions like the EMA (European Medicines Agency) where questions of legitimacy became visible. The EMA was quite highly legitimate and in consideration of Rimkuté and Mazepus’ (2023) study surrounding the agency's legitimacy it is understood that member states would listen to their recommendations but the agency lacked any formal regulative power. In this respect ‘EU- level non-majoritarian institutions are mandated to deliver credible and timely science-based solutions to serve societal risks, and if EU agencies successfully deliver on their core responsibility in the polity, they are expected to score high in terms of legitimacy in the eyes of the relevant stakeholders.’ (Rimkuté & Mazepus, 2023, p.1410). For Hungary during the Covid-19 pandemic there was not much stating indifference to the suggestions by the EMA but

mainly concerns about monetary issues concerning money continuing to come from the EU Cohesion Fund despite the introduction of the Corona Response Investment Initiative (CRII) (Genschel & Jachtenfuchs, 2021).

This pandemic hit all member states very hard but some of these policy implementations in the name of ‘security’ (Genschel & Jachtenfuchs, 2021, p.350) were only self-inflicted restrictions leading to economic down turns. This highly affected civil society which saw mass unemployment subsequently leading to an increased need for fiscal support from international monetary organizations. One of Hungary’s main monetary incomes has been the European Cohesion Fund. They were ‘the largest recipient on a per capita basis... amounting to 3.43 per cent of gross national income’ (Kelemen, 2020, p.490). Kelemen (2020) even notes that 95% of all public investment into Hungary has been co-financed by the EU. A majority of this money has been stated to be ‘fueling corruption and clientelism’ (Kelemen, 2020, p.490) and ending up in Fidesz government officials and loyalists pockets. This in turn is aiding the Hungarian government in maintaining the status quo of an authoritarian regime and even helping them to increase the undemocratic society they are creating. As noted before they have used EU funds to fuel fragmentation with the EU and portray the EC as anti-Hungary trying to dominate their way of life. One way we can see this is through their push for continued funds from the cohesion fund which should be unaffected by the resourcing of a collected CRII fund to replace it (Genschel & Jachtenfuchs, 2021). The cohesion fund is a big source of income for the Hungarian government which could seriously hinder their ability to function and produce “self beneficial” policies.

Additionally Hungary experienced another democratic backslide during the pandemic in 2020 when ‘On March 30th, the Hungarian parliament passed a law enabling the Fidesz government to rule by decree.’ (Borbáth, 15 April 2020). They used the existence of a global health security to

gain more power over essentially all functions within civil society through the use of emergency powers to bypass their parliament that did not have an end date for when the provision would expire (Walker, 30 March 2020). Despite the clear violation of democratic freedoms imposed by the Orbán government the EU still continued to send money on multiple occasions in order to support Hungarian business and their economy as a whole (DG for Communication, 2021). These measures were directly adopted by the Commission 'under the state aid Temporary Framework and EU state aid rules' (DG for Communication, 2021) which could be considered as a necessity to make sure that all MS are treated the same, especially during a crisis which affects everyone equally. Yet, considering past evidence of EU state aid money being used to stoke fear and distrust in EU programs, similarly there was a fear that this new decree and with the aid of EU state aid that the Hungarian government would abuse these gained powers (Borbáth, 15 April 2020). This new decree even led to the defunding 'of political parties and municipalities, many of which- including Budapest- are governed by parties in opposition.' (Borbáth, 15 April 2015). Orbán used the crisis as an excuse to restrict the fundamental rights of not just party freedom but all of Hungarian society in an action to get a stronger grip of power without opposition. He even used this pandemic to stoke further fears of migrants by stating that Hungary was in a two-front war (Borbáth, 15 April 2020) where he insinuated that migrants brought the pandemic to Hungary. Even the closure of Universities was reasoned by the government stating that they 'cannot separate the tens of thousands of foreign students from the Hungarians' (Borbáth, 15 April 2020). We can equate these misconceptions to the spread of false information by the Fidesz government itself to garner more support for the Christian Hungarian identity.

The Covid-19 pandemic showed that there was still strong division in the EU as most countries expedited emergency measures in the name of security (Genschel & Jachtenfuchs, 2021). This

was of course notable with Hungary but in their case it was also propped up by the fear of further autocratic measures being implemented and the absence of a 'Sunset clause' (Walker & Rankin, 30 March 2020). Of course the structural funds received were necessary for the survival of all MS in the EU but the continued monetary support to Hungary has created an 'authoritarian equilibrium' (Kelemen, 2020, p.481) where the EU/EC is stuck in a loop of demanding change to Hungary's political system and trying to trigger Article 7 against them for example, and still lending monetary support as they are not excluded from those rights within the EU (as of yet). In turn, they are indirectly supporting the autocratization of Hungary. Considering this, it could be stated that the Commission is delegitimizing themselves to a certain extent as they are incapable of getting the Hungarian government in line and still have to support them financially. Even the continued fragmentation through the comment of a two-front war (Borbáth, 15 April 2020) gave more weight to the anti-immigrant sentiment in Hungarian society prompted by the narrative of Christian Hungarian national identity. The continued monetary support and 'EU membership has helped the Orbán regime continue to fuel its economy with FDI [Foreign Direct Investment]' (Kelemen, 2020, p.491).

Gradually the pandemic subsided by the end of 2021 but was subsequently followed by the invasion of Ukraine by Russia on the 24 February 2022 (Orenstein, 2023) forming a new crisis for Europe. This war saw a lot of support come from Europe for the Ukraine (Genshel et al., 2023), in the form of arms and funds, as they had (and continue to have) a desire to join the EU. This war was stated by Russia to be due to Ukraines desire to join NATO (North Atlantic Treaty Organization) and was in turn considered a security threat to Russia's sovereignty. Countering this was the view by Europe that 'Russia's neo-imperial agenda represented Europe's most serious security threat' (Orenstein, 2023, p.333) since the end of World War Two. Initially there



were separate approaches by EU member states to be considered, such as the French and German one that continued pursuing for economic and energy collaboration with Russia to calm their 'territorial ambitions' (Orenstein, 2023, p.333). As this war is still ongoing we can definitely state that these initial ambitions have been abandoned and now the EU and its member states have put, almost, all their support behind the return of all rightful territory to Ukraine. Hungary, in this case, is an outlier that has been quite adamant on not fully supporting the Ukrainian cause mainly understood due to Orbán's close relationship with Russia's President Vladimir Putin. The EU was quite quick to act and by May 2022 they had 'earmarked €1.84billion' (Clancy, 2023, p.528) for military aid to be sent to Ukraine as support against the Russian forces. Since then many more military and aid packages have been supplied to Ukraine from the EU but not to the full acceptance by Hungary that have been quite adamant to not allow aid (mainly military) to be supplied to Ukraine despite supporting the sanctions set against Russia by the EU at the beginning of the war. Orbán is considered to have close ties with Russia and Vladimir Putin (Hodson & Puetter, 2019) and even seen to be implementing similar authoritarian policies. Initially they supported the sanctions that were put up against Russia by the EU in response to the invasion of Ukraine but later Orbán and his cronies have pointed these actions as the reason for the energy crisis in the sanctions aftermath (RFE/RL, 22 September 2022). These threats of countering the sanctions and further proposed ones by the EU have come after the 'European Commission called for the elimination of 7.5 billion euros... in EU funding for Hungary due to corruption, rights and rule-of-law disputes.' (RFE/RFL, 22 September 2022). In this action the Hungarian government is not willing to show collective support for Ukraine along with its fellow member states in the EU and choose to individually criticize the EU in an attempt to pit its citizens against the Union.

This form of frontal attack is quite unusual as noted from before as 'Challenger governments' (Hodson & Puetter, 2019, p.1162) like the Hungarian one rarely do so. It is in their nature to rather depict it as the EU being in conflict with them rather than it being their fault or even a collective problem. As we can see throughout Orenstein's (2023) paper is that the EU despite the issues related to the energy question continually applied new policies to secure member states energy deficiencies due to the war. Most effectively, the EU through EC proposals have focused on renewable energy (which has been the case for quite a while) and took this opportunity to promote the 'RePowerEU' (Orenstein, 2023, p.334) as a way to tackle the energy deficiencies in Europe whilst simultaneously tackle climate change. In consideration to this we would expect that most EU member states would support the realignment of the EU energy policy but Hungary would employ a post materialist view and treat this as an attempt at their self-expression. The war between Ukraine and Russia have shown where the EU stands in relation to European security and democracy, yet, the continued democratic backsliding and anti-EU sentiment that Hungary displays deligitimization from the Hungarian point of view. We can see this when in December of 2023 Viktor Orbán flew over to Washington D.C. to hold closed-door meeting with Republicans 'to push for an end to US military support for Ukraine' (Garamvolgyi & Smith, 10 December 2023) together with embassy staff and members of the Hungarian Institute of International Affairs which would also be an indirect way of ending support from the EU to the Ukraine. This is a clear introduction to the internationalization of Orbán's post functionalist movement that is fighting against the traditional values of the EU by promoting his own traditional values surrounding Christian nationalism coupled with the individual Hungarian identity.

Noted from the above sections the Hungarian government has utilized the different crises that the

EU has faced in the past 14 years to instill a separate national identity that is void of the EU identity. In this sense they have tried to delegitimize the EC by stating that they better serve the Hungarian people. However, from different Eurobarometer studies there is quite good support from the Hungarian population for the EU as a whole and more specifically in relation to these crises that Europe has faced 55% of Hungarians agree that the EU has become better at handling crises in the past five years (Eurobarometer 546, April 2024). Even the fact that despite the negative tone and narrative that the Hungarian government has created around the EC and other EU institutions in lieu of these crises the Hungarian people have continued to majoritarily support the EC. This would indicate that the Hungarian government has not inspired distrust in the EU and its institutions begging to question if other factors might be delegitimizing the EC.

## **Analysis**

From the information above it can be noted that Hungary has developed into a post functionalist society that is led by Viktor Orbán and his Fidesz party. They have instilled a nationalistic view of a Christian Hungarian Identity, continually, since their accession in 2010. This view has been propagated continually through this abstract mechanism that form the contextual situatedness of the concrete instantiations (Meegdenburg, 2023). What is highly noticeable is the fact that through different actions and statements by Hungarian officials, and even Viktor Orbán himself, we experience a sense of distrust towards the supranational forces within the EU. As set out in this paper I am trying to determine whether the democratic backsliding by Hungary is in effect delegitimizing the EC and their role as Guardians of the Treaties. To determine this I must analyze the different actions and discourse by Hungary, in relation to the EC, since 2010 onwards through the process of legitimation (Tallberg & Zürn, 2019) by assessing the narrative,

tone and intensity of their interaction. Legitimacy is based on belief which 'are the direct product of objective institutional features of IO's [International Organizations] that audiences care about' (Tallberg & Zürn, 2019, p.590) and to this extent we must determine what Hungary cares about regarding the European Commission. Considering the Commission a main body of the EU I can consider discourse and actions related to the EU to be evidence as well for this paper. Notably these will be based on the post functionalist aspects that are portrayed in Hungary's actions and behaviors, in turn for me to analyze the narrative, tone and intensity of the information examined in order to determine whether the legitimacy of the EC is threatened and subsequently lost in the eyes of Hungary.

Returning to the 2010 election and the first turn of events where the new Fidesz government initiated the transformation of their Constitution to later become a reality in 2011 (Mueller, 25 April 2011). The act of instigating a reform does not necessarily entail acts of an undemocratic nature, yet the Constitutional reform introduced in Hungary had some notably questionable features to it that did not stand in line with the democratic outlining of the EU's Article 2 of the TEU (Eurolex, 2 October 1997). One of these features surrounds the judicial system of Hungary that was changed within the constitution to have highest serving judges on the national court system to be chosen by the serving President of the country (Constitute project, 2011). This goes against Article 2 in the TEU (Eurolex, 2 October 1997) in consideration of member states respecting the Rule of Law. The need to separate the different powers of the state is seen as a democratic necessity to ensure accountability at all levels with lower chances of corruption. Without a clear separation of judicial and governmental offices there is a clear 'weakening of checks and balances' (Mueller, 25 April 2011) leading to a more centralized power share that instills authoritarian control over legal societal aspects. This is noted in one aspect by Aslett and

Magistro as 'Hungary has a highly centralised system' (Aslett & Magistro, 2023, p.1308). Of course this paper focuses on the ability by MS to co-opt the auditing of structural funds received from the EU and its relatable corruption risk. Yet this does relate back to the limited control the EC has as monitors as MS have been reluctant to allow this. However, the control which the Council of the EU (Council) has over the status quo of the EU emancipates the Commission from having any effect as Guardians of the Treaties in this respect, in turn delegitimizing themselves.

The post materialistic values set out in Article 2 of the TEU (Eurolex, 2 October 1997) do not really relate to the preamble of the reformed Hungarian Constitution and the mention of a traditional Christian Hungarian society that should be upheld and protected can be seen quite extensively throughout the document (Constitute project, 2011). This set a precedent that the most important factor to collect the Hungarian society around is a Christian identity with traditional family values which is a right wing abstract mechanism to further their policy goals. Already from this preamble a separation of us against the others can be noted in the narrative and tone of the constitution. It has been noted by many to be undemocratic and enshrined with 'an ethnic vision of Hungary as a Christian country... [which] evokes historical grandeur.' (Mueller, 25 April 2011). The first point of the preamble states:

*'We are proud that our King Saint Stephen built the Hungarian state on solid ground and made our country a part of Christian Europe one thousand years ago.'* (Constitute project, 2011).

and continually in a later point of the preamble they refer to Christianity as preserving their national identity (Constitute project, 2011). Notably this does relate to the hypothesis as they are

using the national identity to create stronger national legitimacy in Hungary and could therefore be considered to be delegitimizing the Commission as "protectors" of Europe. Of course this can only be noted as an indirect effect perhaps, therefore only straw in the wind evidence.

Continually there is noted emphasis on the values of family as a push against post-materialistic values of human rights where LGBTQ+ rights are high up and noticeable at the EU level. By referencing back to faith and coupling it together with the words fidelity and love they are relying on traditional institutions within the Christian faith that disagree with the LGBTQ+ minority. This may not have been so clear from the start when this constitution was formed yet there has been anti-LGBTQ+ laws passed, one being the law prohibiting 'the depiction of homosexuality to minors' (Associated Press, 13 July 2023). This in turn goes against the Article 2 of the TEU (Eurolex, 2 October 1997) where it mentions the respect of minorities rights. It is not an outright declaration of breaching their rights but the tone and narrative of the constitution, especially in the preamble, indicates that they are not under its protection. Considering this we could state that the constitution itself is delegitimizing the TEU and therefore indirectly delegitimizing the EC as Guardians of the Treaties.

Hungary was only brought to the CJEU to change the judicial procedures established in the new constitution in a case regarding age discrimination by the Commission (Peiron, 2019). The fact that there were concerning undertones of discrimination against minorities was not touched upon. This could be of course due to the inaction by member states in the Council of the EU that may not have given more support to punish Hungary in an effort to not disrupt the status quo which has been evident in the Council of the EU according to Naurin (2015). Considering the attitude to help each other within the Council in order to have unanimity as the status quo we could consider that they do not wish to disrupt this without proper cause and injure the trust

shown to the EU institutions.

Yet in the constitution there are notions referring to the respect of EU legislation and the need to work with all member states in Europe, plus those not yet part of the EU. Under Article E they clearly provide in their first point support for European unity.

*‘1. In order to enhance the liberty, prosperity and security of European nations, -Hungary shall continue to contribute to the creation of European unity.’* (Constitute project, 2011).

Although, below this first point comes extra measures that refer to the TEU and the need for a two-third parliament majority vote to pass any international agreement, which entails that Fidesz and Orbán would have sole right to implement EU policy or not. The narrative and tone from this Article is almost in line with the EU rules set out for implementation of directives and regulations but the national two-thirds majority, gained through the use of emphasis on national identity, required to implement EU regulations are able to ignore the democratic process and either accept or deny regulations. In this aspect I would still consider that it is not delegitimizing the EC directly but perhaps indirectly as they are reducing the democratic process through creating a two-third majority requirement to pass an international regulation. In regard to the hypothesis it would again seem to be an attempt by Hungary to delegitimize the role of the EC but only indirectly as they are going against the democratic aspects of Article 2 of the TEU (Eurolex, 2 October 1997) and are not upholding the TEU as required for membership in the EU. The tone and narrative of Article E in the Hungarian constitution may seem quite uncontroversial but further examination would indicate that despite a respect for EU law they do in fact only regard their national two-majority legitimate to implement new laws.

Even Though there might be some positive undertones in the writing of the constitution it is quite loosely based and allows the principal to enact policies that are in line with their nationalistic views. Under the Freedom and Responsibility section, Article 1, of the constitution they signify the importance of the fundamental rights of man that should be respected and protected. Yet in the third point of Article 1 under responsibility and freedom it states that they are able to change the fundamental rights of people depending on their interpretation of the constitutional law and with the acceptance of a two-third majority (Constitute project, 2011). The reference to defend a constitutional value in lieu of other fundamental rights indicates that they are referring to the preamble with considering Hungary only a Christian country defunct of any pluralism almost. This narrative of defending constitutional values based on a national Christian identity leads to the effective exclusion of minorities living in the country and in turn countering Article 2 of TEU. Not only in the sense that it pushes against minorities but that the principal actors are able to change the fundamental right without question goes against the Rule of Law. `The Commission is delegated the power to monitor member-state compliance with EC law,..., and pursue infringement proceedings´ (Pollack, 2003, p.86), which means they have acted in their power perhaps but this has not truly changed the Constitution from Hungary to be truly in line with the standards of the TEU. Yet the Commission only pursued infringement proceedings against Hungary in regard to judicial allocation under anti-age discrimination and disregarded other, quite evident, breaches of the TEU which we can conclude as being self inflicted delegitimization due to inaction against Hungary's newly formed constitution. Of course `the Commission enjoys some discretion in setting priorities and deciding´ (Pollack, 2003, p.87) how and who they pursue but their inability to effectively counter an undemocratic constitutional reformation set a quite disheartening precedence for any future challenges. It should also be



considered how the Council of the EU, headed by the EU member states, was not noticeable despite their inherent decision making position within the EU framework. At least past research has not shown anything in this regard. This could be considered to be due to the fact that they wish to retain the status quo as there is a lot of internal consensus as noted by Naurin (2015). Moving on we consider the effect of the 2015 Migration crisis that Europe faced had on the legitimacy of the European Commission. During this crisis there was a lot of fragmentation noted within the EU and more specifically from Hungary's side (Goździak, 10 October 2019 and Hooghe & Marks, 2019). As noted previously the Hungarians were not too pleased to see so many migrants coming from the south and crossing their border illegally. Of course this was essentially the collective attitude of the EU member states, yet the Hungarians were more vocal and out fourth with their grievances in regard to allowing immigrants from muslim countries in (Goździak, 10 October 2019). This xenophobic and anti-immigrant sentiment came in multiple forms like policies targeting migrants, referendum against EC powers and official statements against migrants and EU policy.

As noted with the Euro crisis there was a similar display of fragmentation which `produced severe intergovernmental conflict about sharing the crisis burdens´ (Schimmelfennig, 2018, p.970) that was represented by a lot of finger pointing by member states. Hungary's finger pointing was mainly at the EU as noted above in consideration to Orbán's televised speech, where after the referendum (which was incorrectly passed), he proclaimed that Hungarians had decided to reject the EU proposal to distribute migrants to their country and that Hungarians only want to live next to Hungarians (Goździak, 10 October 2019). Considering this statement we must note that the tone is very anti-EU through creating a cleavage with the use of the abstract mechanism of Christian national identity. By stating that Hungarians voted against the distribution of

migrants and that Hungarians only want to live next to Hungarians shows an intensity to remind of the national identity and its importance in this question whilst incorporating a narrative of the “others” being a threat to them as well. A lot, if not most, of these migrants were refugees fleeing wars in the Middle East. Orbán truly used this moment to exploit nationalistic sentiment and referred to the refugees as Muslim invaders (Appel, 2019). Through these acts they are going against Article 2 (Eurolex, 2 October 1997), more specifically surrounding the respect of minorities, and human rights and dignity they are delegitimizing the EC. Even the construction of a border fence was in direct violation of the Schengen agreement but was not brought up as a major issue as most other member states also placed more border controls on Schengen borders in order to control migration (Hooghe & Marks, 2019).

However, Orbán went further than this in his anti-muslim and anti-migrant discourse by asserting ‘that it is Hungary’s sovereign right to ensure that the country remain ethnically Hungarian and Christian, and that it not become a society of migrants.’ (Appel, 2019, p.259). The narrative once again surrounds the importance of national identity and sovereignty with emphasis that it needs to be protected against the “others” that are not Christian. This asserts a tone of anti-EU and migrant sentiment simultaneously which adds to the previous examination into the EC’s legitimacy. What we can further denote from this assertion is the fact that ‘Post-functionalism shows how the migration crisis has intensified a cultural divide across Europe that pits proponents of a multicultural, open, Europe against its opponents.’ (Hooghe & Marks, 2019, p.1122). We can see Hungary stepping out against this with xenophobic comments from their ruling government, Fidesz, but the fact that they even went to lengths to actual conduct a referendum to ask:

“Do you want the European Union to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?” (Goździak, 10 October 2019).

This question can of course be considered quite leading but more specifically it directly targets the legitimacy of the EU/EC as they are the ones proposing the resettlement of migrants to aid other member states. The narrative is very negatively formed against the EU by using the national identity versus others argument, pushing the public to think that the EU wants to strip them of their identity. Also the use of the word “mandatory” in this context is misleading as the EU cannot force MS to comply without reasonable argument if we consider the description of Commission functions and roles by Pollack (2003). Despite this we can state that the tone and narrative of this question were negatively formed and targeting the EC, with the referendum in itself as a delegitimizing mechanism against the EC and their authority.

We can see this further as the Hungarian government was accused of pouring a lot of money into anti-immigrant campaigns to demonize migrants where even former Hungarian ministers and one former European Commissioner, Péter Balázs, even states that Orbán is using information from a year ago in order to stoke fear in the society (MacDowall, 2 October 2016). They even sunk ‘tens of millions of euros into negative advertising, funded by businesses that support the ruling party’ (MacDowall, 2 October 2016). The presence of private business stakeholders with loyalties to the Fidesz party are even active in the bureaucratic body of the Hungarian government which has changed immensely since the 2010 shift in government (Hajnal & Boda, 2021). Through Hajnal and Boda’s (2021) study where they conducted 22 interviews with current and previous employees of the government bureaucracy found that the centralization of

power was evident in the bureaucracy as much as the highest levels of power and even the presence of private business persons were acknowledged in meetings regarding policy formation (Hajnal & Boda, 2021). This was the Hungarian government's way of controlling the narrative and their study 'identified the trend of politicization suppressing the classic bureaucratic culture and ethos' (Hajnal, Boda, 2021, p.97) showing that the post functionalist interactions are present in the bureaucratic system of the country as well.

As we note from many news articles is the fact that a lot of the money that is being spent on these anti-immigrant campaigns with xenophobic and anti-muslim sentiment are indirectly funded by the EU. This money is most likely also sent through to the bureaucratic ministries mentioned in Hajnal and Boda's (2021) study. Unfortunately it is hard to prove without hard evidence but as the money received from the EU (and approved by the EC) by Hungary is a big part of the national budget (Kelemen, 2020) we must consider that at least some of the money has gone towards these xenophobic anti-immigration campaigns. This signifies that the EU/EC are in disequilibrium through the use of economic funding of Hungary's post functionalist interactions which simply target the EU and its values. Plainly it can be seen in the fact that Orbán said 'When I mention the European Union, I am not doing this because I think it is impossible to build an illiberal nation state within the EU' (Hodson & Puetter, 2019, p.1162) and considering the inaction by the EU Council to go against a member state, possibly disrupting the status quo. Despite the negative tone and narrative of Orbán's statement targeting and delegitimizing the EC, I must also consider that the Council of the EU's power affects the ability of the EC to act appropriately against Hungary in their illiberal acts. In this aspect the institutions are self inflicting the delegitimization of the EC due to their inaction.

However, as noted from the previous section the EU institutions have applied to launch Article 7

against Hungary but only in 2018 after a report on Hungary's breaches of EU values, migrant abuse, press freedom restrictions, etc., by Dutch MEP Judith Sargentini was released and a true process to trigger the Article took shape (Tidey & Mrav, 19 September 2018 and Appel, 2019). Yet this has still not resulted in any triggering of the Article in itself against Hungary. This threat to use it has brought many angry comments from the Hungarian side with Orbán stating that "Hungary is attacked because the Hungarian people decided that our country will not be an immigrant country," (Tidey & Mrav, 19 September 2018). The narrative around Hungarians choosing for themselves and that the EU is blackmailing them is a direct attack at the foundations of the supranational institution and could be considered an attempt to delegitimize the EC. This argument can also be supported by the tone of the statements made by Orbán in light of the report that showed their breaches against the TEU.

With this report there may have been some hope to actually see if the EU as a whole could finally put a stop to the illiberal turn of Hungary. However, with the introduction of a new crisis in the form of a pandemic this would be put on the back benches. With the introduction of Covid-19 in Europe many countries sought to close borders to those with higher infection rates in an effort to stop the spread (Genschel & Jachtenfuchs, 2021) but this was to no greater effect. Despite this effort to individually attempt to stop the spread it was noted "By late March [2020], 21 EU member states had imposed formal entry bans for non-nationals and non-residents" (Genschel & Jachtenfuchs, 2021, p.355). However the "EU has no effective means to uphold respect for the rule of law in the face of democratic backsliding" (Aslett & Magistro, 2023, p.1308) rendering their institutions unable to act appropriately. In this respect the second part of my hypothesis holds true to a certain extent but does not place the institutions at fault, rather the rules set up by them.

Yet this was an unprecedented event to occur on the European continent and the response was permitted under EU law which allows for temporary trade restrictions and border controls in case of public security or health threat is present (Genschel & Jachtenfuchs, 2021). This was what Hungary could lean back on comfortably in order to ensure the health of the nation and limit the spread of Covid-19. Yet, in the wake of this crisis the Hungarian government saw fit to implement new law that would enable 'the Fidesz government to rule by decree' (Borbáth, 15 April 2020). Other European countries had invoked similar laws under this crisis but this one differentiated itself in the fact that there was no end date set out for it and specifically targeted those spreading false information about the pandemic with criminal prosecution (Borbáth, 15 April 2020). There were fears that this decree would be used to silence critiques of the government response to the pandemic (Walker & Rankin, 30 March 2020). Considering the implications of the new law the fear of liberal actors was justified and goes against the Rule of Law in the fact that it lacked the required checks and balances to hold those in charge accountable. Additionally, the liberal opposition was in favor of having such a law in place during the pandemic but only required a 'Sunset clause' (Walker & Rankin, 30 March 2020) but were subsequently denied this. Considering the narrative of the law and the action to not compromise on one simple request indicates that principal agents were out to consolidate power and ensure that their legitimacy is not threatened. This in turn leads to an indirect attack on the legitimacy of the EC as it concerns the Rule of Law principles that all member states should uphold and the EC are meant to protect as Guardians of the Treaties.

However, during this time the EU again kept economically supporting the Hungarians through multiple installments over the period of the pandemic. As noted above they received multiple installations of economic support from the EU after the introduction of their decree, spanning

from April 2020 to May 2021 (DG for Communications, 2021). This has been millions of euros each received as state aid under the 'temporary framework and EU state aid rules.' (DG for Communications, 2021). This returns us to the notion of the 'authoritarian equilibrium' (Kelemen, 2019, p.482) which the Commission has been struggling with for quite some time. This is of course a crisis situation where all MS are suffering and need support so it would not be in line with fair competition principles to leave the Hungarians out of this. However, considering their violation of democratic freedoms with the decree coupled with inaction by the EC and Council of the EU, they are delegitimizing themselves by continuously supporting Hungary despite clear violations of the TEU. It could be maybe more considered as the inaction by the European council resulting in delegitimization of the EC as they continue to fund Hungary and fail to support the rectification of Hungarian illiberal acts.

Regardless of this clear violation during the Covid pandemic and discourse surrounding it, the introduction of war between Russia and Ukraine brought new issues to light where Hungary's post functionality further delegitimizes the EC. With the Russian invasion of Ukraine on 24 February 2022 the EU collected itself together in a massive show of support (Genschel et al., 2023) through the medical, military and financial aid to Ukraine. Continually this support persists and many might see it as Europe's counter action against 'Russia's neo-imperial agenda' (Orenstein, 2023, p.333). However, over the years the Hungarian Prime Minister, Viktor Orbán, has shown to have quite close connections with Russia's President Vladimir Putin (Hodson & Puetter, 2019) Giving reason to why Hungary has been against much of the support given to Ukraine. From the start they did support the sanctions set up against Russia by the EU but Hungary turned to blaming the EU for the sanctions impact on energy prices sporadic increase (RFE/RL, 22 September 2022). This statement by Orbán was incorrect though as prices of

natural gasses were already rising prior to the sanctions and as we noted this is a post functionalist tool that Orbán uses to create fragmentation between Hungary and the EU/EC. In this sense the narrative and tone of the messaging to the Hungarian public portrays fault on the supranational institution and indirectly delegitimizes the EC.

With further threats by Hungary to even counter the sanctions and showing that they do not stand with the EU line regarding Ukraine aid. This is a direct attack against the EC and a reaction to the threat to not be given “7.5 billion euros” (RFE/RL, 22 September 2022) as a response to the democratic backsliding but is supported by the fact that they stand against further aiding the Ukrainians. The fact that ‘Challenger governments’ (Hodson & Puetter, 2019, p.1162) like Hungary directly attack supranational institutions in such a manner is quite unusual. Considering Orenstein’s paper the war has definitely expedited the shift from fossil fuels to renewable energy sources through the ‘RePowerEU’ (Orenstein, 2023, p.334) and the loss of income for Hungary in this area would be quite high as a majority of their energy is supplied from Russia. For this reason the Hungarians would employ a post functionalist attitude towards the EU/EC and use the national Christian identity to promote the fragmentation that is created by the EU/EC.

Even more direct (yet could be considered indirect) way to delegitimize the EC is Orbán’s move to fly to the USA in December of 2023 to hold closed door meetings with Republicans in order to stop military aid from the USA along with embassy staff and members of the Hungarian Institute of International Affairs (Garamvolgyi & Smith, 10 December 2023). Using the support of Christian nationalists within the American Republican party, during a Democratic Presidential term, could be seen as an “intergovernmental” attempt to overturn an unfavorable situation for Hungary. However, this attempt to overturn US aid to Ukraine by one member states indicates a narrative of increasingly divisive nature where Hungary believes that they would be better suited



to serve the interest of Europe by individually ending the support to Ukraine from the US first off which in turn would threaten European security. This move is highly divisive and indicates that Hungary does not view the EU/EC to be legitimate in handling questions in regard to the Ukraine- Russia conflict and is a direct indication of the ECs delegitimization.

Yet again, the EU has not succeeded in triggering Article 7 against Hungary and continues to financially support them despite multiple attempts to counter EU actions. As noted in the analysis the actions which Hungary has taken to create a post functionalist society have pitted them against the EC time and time again. They have used the abstract mechanism of a Hungarian Christian Identity to separate themselves from the liberal European Union and its liberal member states. Notably these are indirect attacks towards the EC but the continued “acceptance” by the EC and Council of the EU of Hungary’s divisive acts indicates a broader issue with the internal system and an effect of self delegitimization by the EC.

## **Conclusion**

The democratic backsliding in Hungary has been noted by many different institutions, including the V-Dem institute which produces level of democracy around the globe annually (Nord et al., 2024) but also the EU itself through its Eurobarometer (European Commission, December 2023). This clearly shows that there is an authoritarian issue in the heart of European politics that needs to be addressed considering that ‘Democracy, the rule of law and fundamental rights are the foundations on which the EU is based.’ (European Commission, December 2023). Yet since 2010 the Hungarian government has continually breached the TEU principles and moved closer to a more autocratic society based around a Christian Hungarian identity. As we have noted previously the Commission is the ‘Guardian of the Treaties’ (Pollack, 2003, p.84) meaning that

they are a main body upholding the TEU and ensure compliance by all member states. They have been given this power through the implementation of Article 7 (Eurolex, 2 October 1997) that entails stripping functional powers from member states as well as removing all voting rights within the supranational institution. Despite having these powers they have not managed to get Hungary to rectify their illiberal actions. Simultaneously it has been noted that the Council of the EU, which is considered to have a higher decision-making position, would also be at fault for the inaction leading to a delegitimization of the EC and their role as Guardians of the treaties. First off, Legitimacy is quite a difficult concept to research due to its definition being 'a relational property, determined by the beliefs and perceptions of audiences about the exercise of authority' (Tallberg & Zürn, 2019, p.586). In this sense it is quite hard to perfectly determine whether an institution is illegitimate as it is an individual belief mainly. For the sake of this paper I did use the process of legitimation (Tallberg & Zürn, 2019) to determine the tone, narrative and intensity of Hungary's actions and discourse against the EC. This helped to form a clearer understanding surrounding Hungary's intentions towards the ECs legitimacy in regard to their own in forming policies for example. What has been noted throughout my research is a continual attempt by the Hungarian government to distance itself from the EU by delegitimizing the EC through the abstract mechanism of Christian national identity. Their actions and negative discourse have happened in relation to a different crisis occurring in the EU but only indirectly. As noted the Fidesz party accession to the premiership and with a two-third majority in the national parliament led to the illiberal reformation of the constitution which increased their post functionalist agenda encapsulated by the Christian Hungarian identity. This was shown through their repetition in the constitution referring back to their national identity and the Christian principles that they want to protect. After this we note the Hungarian anti-immigrant and

xenophobic acts and discourse from the migration crisis of 2015 which was a major crisis for the whole EU. They showed more than ever that they were not interested in upholding the post-materialist values that the EU are based on and would prefer to go a more individual path, separating themselves from the EU but still want all the benefits from being part of the Union. The last two crisis, the pandemic and the Ukraine-Russia war, have shown continued illiberal actions and discourse from the Hungarians which have either indirectly or directly delegitimized the EC. A recurring theme that has been noted is the reference back to the Hungarian people in their discourse that has targeted the EC. It is quite evident in the constitution that there are references to the Christian Hungarian Identity (Constitute project, 2011), most evidently in the preamble. It is even prevalent throughout the other crises as well where clear references are made back to the importance of the Hungarian people. To this extent I can say that my hypothesis holds true that the Hungarians' increased politicization of the national identity, being a independent variable, has delegitimized the EC but only indirectly.

Yet the inaction by both the EC and European Council must be noted as well as an effect to the EC's delegitimization. After the first breach of the TEU by Hungary through the formation of a new constitution the EC only countered the unconstitutional change in the judiciary formation in the country. This was amended but with little effect as the choice of constitutional judges is still not fully independent in Hungary to this day. The absence of counter measures against other controversial aspects of the new constitution that showed already post functional attributes that would allow the government to implement new policies that would breach Article 2 of the TEU (Eurolex, 2 October 1997) showed that the EC already then was not capable of handling the emergence of an authoritarian regime in a member state. Notably it was the first sign of an 'authoritarian equilibrium' (Kelemen, 2020, p.482) that they were experiencing to later become

an unstoppable cycle. Of course multiple attempts to get the country inline with EU values by multiple institutions within, like the EPs 2018 attempt to trigger article 7, have neither been successful and only shown to hinder post functional developments in Hungary but not deter them. One explanation for this might be the fact that since Orbán's accession to premiership in Hungary there have been many crises that have taken priority (Appel, 2019) by the EC and the illiberal transformation of Hungary has been put on standby. As noted by Pollack (2003) the EC are in a position to handle different challenges within the EU as they see most pertinent. They may also want to influence Hungary in a positive way by not triggering article 7 but rather 'increase public participation in EU policymaking' (Hensell, 2021, p.155) to increase their legitimacy without threatening Hungary's sovereignty.

Additionally the inaction by the EU Council to support the EC in enforcing Article 7 against Hungary does garner more support for the fact that the internal institutions are delegitimizing the EC themselves rather than Hungary's democratic backsliding. This can especially be seen through firstly the referendum held during the migration crisis and Orbán's statement after its results (Goździak, 10 October 2019) and secondly through Orbán and other Fidesz officials statements after the EPs proposal to trigger article 7 against them essentially stating that the action was an attempt to "blackmail" (Cuddy, 12 September 2018) them. These actions by other institutions to punish the Hungarian government are ineffective if the main decision making bodies do not support them. Conclusively it can be said that Hungary's government does delegitimize the EC but only indirectly. Their actions and discourse are negative towards the EU as a whole but are not directly targeting the EC or EU. Nor are they outright stating that the EC is illegitimate but they have used the different crises that Europe has faced in the past 14 years to distance themselves from the EU values set out in the TEU through the use of post functionalist

actions. What I did note throughout my research was the inaction by the EC and EU council may be larger factors towards the delegitimization of the EC and their roles as the Guardians of the Treaties. In this aspect the EC and Council of the EU (the Council) bear responsibility for the 'rise of Euroscepticism across the continent' (Hensell, 2021, p.152). To this extent we can say that the hypothesis holds true to a certain extent but there certainly needs to be further research into the aspect as to whether the Council or EC bears the responsibility for delegitimizing the EC. Considering there is public trust from people around Europe and more specifically the Hungarian population as noted in the Eurobarometer for the EC especially in the face of crises (Eurobarometer 546, April 2024) we can only state that it is the Hungarian government that does not find the EC legitimate. However, the evidence does only show an indirect delegitimization of the EC so further research would need to be found if other actions in their illiberal development have a direct impact on the EC and their role as Guardians of the Treaties.

The thesis asked, how has the democratic backsliding in Hungary delegitimized the European Commission and their role as Guardians of the Treaties, and as noted the effect has only been indirectly applicable. In this aspect the first part of my hypothesis, referring to the Hungarian's increased politicization of the national identity, holds true to a certain extent but very loosely. This can also be noted by the fact that despite the Hungarian government's multiple attempts throughout the crises experienced to influence the Hungarian public to delegitimize the EC, Orbán and his cronies were unsuccessful. Additionally, the second part of my hypothesis referring to the inaction of the EU institutions has some more truth to it but further research is needed to solidify if this truly holds true. So it can be stated that the Hungarian government is attempting to delegitimize the EC but unsuccessfully considering the Eurobarometers survey's results in support for the Commission. Perhaps though it is the EC or the Council of the EU that

is delegitimizing the EC due to their inaction in remedying the democratic deficiencies that are noted throughout Europe but to determine this further research is needed.

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